JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. NO. 844 OF 2025

WATER AND POWER DEVELOPMENT AUTHORITY

VS

FEDERATION OF PAKISTAN THROUGH SECRETARY, MINISTRY OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS, ISLAMABAD AND OTHERS

Petitioner by	**:**	**Mr. Hamood Ur Rehman Awan, Advocate.** **Mr. Muhammad Ghufran, Director of Recruitment.**
Respondents by	**:**	**Mr. Mudassir Khalid Abbasi, Advocate for the Respondent No.3.** **Mr. Shah Khawar, Advocate for the Respondent No.4.**
Date of hearing	**:**	**17.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), the Petitioner [Water and Power Development Authority] has impugned the Order dated 10.02.2025 passed by Legal Consultant**,** President Secretariat**,** Aiwan-e-Saddar, Islamabad/Respondent No.2, and recommendation/Order dated 18.10.2024 passed by Wafaqi Mohtasib (Ombudsman) Islamabad/Respondent No.3. It is also prayed that the Respondent No.2 may kindly be directed to decide the application filed by the Petitioner.

2. The brief facts of the case, as per the memo of Petition, are that Respondent No.4 filed complaint No. WMS-HOR/6682/2024 before Respondent No.3 with assertions to place him at Sr. No. 8 in the Merit List of Punjab Open Quota and issue an appointment letter against the post of AXEN (Electrical). The Petitioner contested the complaint, however, Respondent No.3 accepted the complaint and passed recommendations in terms of the Order dated 18.10.2024. The Petitioner filed representation before Respondent No.2 under Article 33 of the Wafaqi Mohtasib (Ombudsman) Order, 1983. The Petitioner's representation was fixed for hearing before Respondent No.2 on 08.01.2025, and during arguments, it was

pointed out that the Petitioner had not availed the remedy of review under Article 32 of the P.O.I of 1983 before Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad. The Petitioner's representative conceded and opted to file a review application before the Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad, and requested that the representation may kindly be disposed of with direction/observation to avail the remedy of review before the Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad. However, the Petitioner received the decision from the Legal Consultant of the Secretariat without such direction/review. The Petitioner filed an application for clarification in the President Secretariat, Islamabad on 22.02.2025, which has not been taken up so far. Respondent No.3 has issued directions to implement the recommendation by 04.03.2025. Similarly, Respondent No.2 has also issued directions for implementation of the recommendation vide letter dated 25.02.2025.

3. The Petitioner's counsel argued that the application filed by the Petitioner is pending with Respondent No.2, so this Court has territorial jurisdiction to issue appropriate orders. That all proceedings before Respondent No.3 are *coram non judice* as Respondent No.3 has no jurisdiction over matters of appointment and recruitment in a public sector company as it is an executive function that could not be performed by Wafaqi Mohtasib (Ombudsman) under Article 9 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, and the titled complaint is not maintainable in view of the dictum laid down by the august Supreme Court of Pakistan in the judgment reported as PLD 2016 SC 940, 2017 PLC (CS) 602. That the complaint is not covered under the category of service matter in view of Circular No. F.4(d)/Coord/WMS/2022 dated 10.11.2023 issued by the Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad. The misfeasance and nonfeasance of the Respondents are against the law and facts of the case and are not sustainable in the eyes of the law. The actions and inactions of Respondents are discriminatory and in violation of Article 25 of the Constitution. The Respondents' action towards the Petitioner is harsh, against the norms of justice, and in violation of Article 10-A of the Constitution, therefore, interference by this Court is called for. The Impugned Order and the recommendation/order by Respondents No.2 & 3 are against the law and the facts of the case. That the Impugned Order is against the settled principle of law, as Respondent No.4's complaint is beyond the mandate of the Order. That law

favours adjudication of cases on merits instead of technicalities, therefore, the Impugned Order is liable to be set aside on this score alone. Learned counsel placed reliance on 2018 SCMR 762, 2012 SCMR 1258, PLD 1965 SC 63. That the Court below has failed to appreciate the law on the subject and has caused the miscarriage of justice. That it was the duty of the Respondents No.2 & 3 to apply the correct law. That the law was written on the sleeves of judges, and it was the primary duty of a judge to apply the correct law. Reliance is placed on PLD 2018 SC 28. That the Petitioner has been left with no alternate, adequate, and efficacious remedy except to invoke the Constitutional Jurisdiction of this Court.

4. Learned counsel for Respondents No.3 & 4 resisted the instant Petition and prayed for its dismissal.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. Muhammad Mujtaba Khan/Respondent No.4 filed a complaint against the Petitioner before Wafaqi Mohtasib (Ombudsman), Islamabad/Respondent No.3, for discrimination and violation of merit in recruitment. Despite repeated requests, the concerned agency did not address his grievance, prompting him to file the said complaint, which was decided in his favor through findings dated 18.10.2024. The Petitioner then filed a representation against the findings/recommendations of Wafaqi Mohtasib, and as per the arguments of the Petitioner before this Court, during arguments before Respondent No.2, it was pointed out that the Petitioner had not availed the remedy of review under Section 13 of the Federal Ombudsman Institutional Reforms Act, 2013 before the Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad. The Petitioner's representative conceded and opted to file a review application before the Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad, and requested that the representation may kindly be disposed of with direction/observation to avail the remedy of review before the Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad. However, the Petitioner received the decision from the Legal Consultant of the Secretariat without such direction of availing the remedy of review before the Wafaqi Mohtasib. Rather, on the contrary, directions were issued for the implementation of the findings/recommendations of the Wafaqi Mohtasib. The Petitioner then filed an

application for clarification in the President Secretariat, Islamabad on 22.02.2025, which has not been taken up so far.

7. A perusal of the decision dated 10.02.2025 passed by Respondent No.2 reveals that, as recorded in paragraph No.6 thereof, the case was fixed for hearing on 08.01.2025. Mr. Mumtaz Ali Khan, Director General (Recruitment) and Mr. Ghufran Ijaz, Director (Recruitment), appeared on behalf of the Petitioner/WAPDA. Respondent No.4, Mr. Muhammad Mujtaba appeared in person. After arguing the matter at some length, the learned Director General (Recruitment) for the Agency wished to withdraw the instant representation and this case was disposed of as withdrawn. This shows that the stance taken by the Petitioner's counsel before this Court is totally different from that mentioned in the decision of Respondent No.2 dated 10.02.2025, where the Director General (Recruitment) representing the Petitioner Agency wished to withdraw the said representation and upon his request, the said representation was disposed of.

8. The question before this Court is as to whether the Federal Ombudsman was having the jurisdiction and authority to decide the grievance of Respondent No.4 or not. For that purpose, attention is drawn to Article 9 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, which reads as under:

> *"9.* ***Jurisdiction, functions and power of the Mohtasib.****—(1) The Mohtasib may, on a complaint by any aggrieved person, on a reference by the President, the Federal Council or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of maladministration on the part of any Agency or any of its officers or employees:*
>
> *Provided that the Mohtasib shall not have any jurisdiction to investigate or inquire into any matters which:*
>
> *a. are sub-judice before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or*
>
> *b. relate to the external affairs of Pakistan or the relations or dealing of Pakistan with any foreign state or government; or*

c. relate to, or are connected with the defence of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces.

(2) Notwithstanding anything contained in clause (1), the Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matters relating to the Agency in which he is, or has been, working in respect of any personal grievance relating to his service therein.

(3) For carrying out the objectives of this Order and, in particular for ascertaining the root causes of corrupt practices and injustice, the Mohtasib may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

(4) The Mohtasib may set up regional offices as, when and where required. ”

Similarly, Article 2(2) vide which maladministration is defined, includes

(i) a decision, process, recommendation, act of omission or commission which:

a. is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or

b. is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or

c. is based on irrelevant grounds; or

d. involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and

(ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities.”

9. The Petitioner’s counsel’s main argument is that under Article 9(2) of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, the Federal Ombudsman is barred from accepting for investigation any complaint by or on behalf of a public servant or functionary concerning any matters relating to the agency in which he is or has been working, in respect of any personal grievance relating to his service therein. The matter in the instant case is regarding

maladministration committed by the Petitioner by reducing the marks from 74.1 to 72.4 without assigning any reason. Respondent No.4 has not complained about any personal grievance relating to his service; rather, the matter relates to a new/fresh appointment to the post of AXEN (Electrical), and the Federal Ombudsman has rightly redressed the grievance of Respondent No.4. The Petitioner now cannot challenge the decision, especially when his representative, namely Mr. Mumtaz Ali Khan, Director General (Recruitment), requested to withdraw the representation before Respondent No.2.

10. With these observations, the instant Writ Petition, being devoid of any merit, is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ day of May 2025.

JUDGE

//Sajid//