JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 3680 of 2015

Iftikhar Qutab
Versus
The President's Secretariat, etc.

Date of Hearing : **26.02.2021**

Petitioner by : **Mr. MNA Rehan, Advocate.**

Respondents by : **Raja Saad Sultan, Assistant Attorney General.**
Mr. Manzoor Hussain, Advocate for respondent No.3.

BABAR SATTAR, J.- The petitioner is aggrieved by the order of learned Federal Ombudsman for Protection against Harassment of Women at Workplace, Islamabad (**"Ombudsman"**) dated 12.06.2015 and the representation against such decision which was rejected by the President by order dated 02.11.2015.

2. Through the impugned order the learned Ombudsman directed the Federal Board of Revenue (FBR) to inquire into the complaint that came before the Ombudsman and to place a copy of such inquiry report before it subsequently. The President in rejecting the representation directed FBR to look into the circumstances of the resignation of respondent No.3, hold formal departmental inquiry regarding complaints filed

by the petitioner and respondent No.3 and take necessary action against the person found guilty.

3. Learned counsel for the petitioner submits that the office of the Ombudsman was established under the Protection against Harassment of Women at the Workplace Act, 2010 which was gazzeted on 11.03.2010, that such law has not been given retrospective effect by the legislature and consequently the learned Ombudsman was vested with no jurisdiction to take cognizance of the complaints moved on 07.12.2006 and 22.12.2006. He further submits that even on merit the evidence produced before the learned Ombudsman established nothing against the petitioner and in view of such evidence the learned Ombudsman ought to have dismissed the complaint filed against him as opposed to directing the FBR to conduct a further inquiry into the matter. He states that in the evidence produced before the learned Ombudsman there was an admission on part of respondent No.3 that there was no prior complaint made by her against the petitioner before 07.12.2006 which was when the petitioner recommended disciplinary action against respondent No.3 to the competent authority and on such basis submitted that the complaint filed by respondent No.3 was motivated by malice. He further submits that FBR also

filed a review petition against the impugned order of the learned Ombudsman on the basis that respondent No.3 had already retired and FBR had no jurisdiction in relation to a retired employee and further that the inquiry ordered did not fall within the scope of Government Servants (Efficiency and Discipline) Rules, 1973 and, therefore FBR was not authorized to undertake such inquiry. The learned counsel also read out the resignation letter of respondent No.3 which referred to personal reasons and said nothing as to cause of furnishing such resignation or that it was on grounds of harassment.

4. Learned counsel for respondent No.3, on the other hand, stated that respondent No.3 had resigned in 2006 but subsequently she was not allowed to withdraw her resignation and her cause of action was continuing and consequently the learned Ombudsman was vested with jurisdiction. And that the impugned order of the Ombudsman only ordered an inquiry and that cannot be a cause of grievance for the petitioner.

5. It is settled law that a statute promulgated by the Parliament has prospective effect unless it is provided by the legislature in the statute in explicit terms that it is to be given retrospective effect. Article 12 of the Constitution provides

that “no law shall authorize the punishment of a person for an act or omission that was not punishable at the time of act or omission”. The Act was promulgated on 11.03.2010 and provides for minor and major penalties under section 4. In view of the Article 12 of the Constitution and protection against retrospective punishment such penalties cannot be applied in relation to actions that transpired prior to the enactment of the Act. The office of the Ombudsman has been established under section 7 of the Act and no provision of the Act vests authority in the office of the Ombudsman to take cognizance of an act or event that transpired prior to the promulgation of the said Act. Section 10 lists the powers of the Ombudsman, including the power to impose a minor or major penalty, while section 8 authorizes the Ombudsman to conduct an inquiry into the complaint filed before it in accordance with the rules made the Act. Neither section 8 nor section 10 empowers the Ombudsman to order the employer to conduct an inquiry on its behalf and submit its report to the Ombudsman for further action.

6. In view of the above discussion, the event that transpired in 2006 which resulted into the emergence of the complaint at such time fell beyond the remit of the learned Ombudsman and in assuming jurisdiction the learned

Ombudsman acted without jurisdiction and consequently the impugned order dated 12.06.2015 is void for want of jurisdiction. The representation decided by the Hon'ble President was in disregard of such jurisdictional defect in the impugned order of the learned Ombudsman and therefore cannot subsist being rooted in a void order.

7. In view of the above, this petition is allowed and the impugned orders, dated 12.06.2015 and 02.11.2015 are set aside, with no order as to cost.

(BABAR SATTAR)
JUDGE

Saeed.