JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 3563 OF 2017

DR. ZUBAIDA CHAUDHARY

VS

THE PRESIDENT ISLAMIC REPUBLIC OF PAKISTAN, ETC.

Petitioner by	**:**	**Ms. Imaan Zainab Hazir, Advocate along with the Petitioner.**
Respondents by	**:**	**Mr. Sabir Hussain, Advocate for Respondents No.3, 4 & 5.** **Raja Zamir ud Din Ahmed, Assistant Attorney General.**
Assisted by	**:**	**Ms. Amna Danial Khawaja, Judicial Law Clerk.**
Date of hearing	**:**	**12.06.2025**

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"**), Dr. Zubaida Chaudhary (**"Petitioner"**) has challenged the Order dated 17-07-2017 (**"Impugned Order"**) passed by the Director (Legal), President's Secretariat (Public), whereby the Representation against the decision/order/findings/recommendation of the Federal Ombudsman for Protection Against Harassment of Women at Workplace, filed by the Petitioner, was rejected.

2. The brief facts of the case are that the Petitioner, an Associate Professor of Botany at Hazara University, Mansehra, filed Complaint No. 1(305)/2016-FOS(Reg) before the Federal Ombudsman on 13-12-2016, alleging persistent harassment by several faculty members, specifically by three individuals named as opponents in the case. She was appointed in 2008, and soon after, Azhar Shah, a Lecturer in the Botany Department, began interfering with her official duties. In March 2010, she applied for the post of TTS Professor, but her application was ignored. The University's Syndicate later appointed her as

Chairperson/HOD, which displeased Dr. Habib Ahmad, the former HOD. Upon taking charge, she requested the student records, but Dr. Habib only provided a few hard copies. Dr. Muqrab Shah, the Registrar and brother of Vice Chancellor Dr. Sakhawat Shah, allegedly obstructed her role, excluding her from departmental decisions and assigning her only verification duties of old degrees. Lacking supporting records, she refused to verify them, which led to coercion by Azhar Hussain Shah, who also allegedly harassed her physically and mentally. In February 2011, she applied for a post of a Grade-21 Professor, but Azhar Hussain Shah was selected instead. Upon reviewing his academic credentials, she raised concerns about inconsistencies, including overlapping degree timelines. On 09-02-2012, she reported being forced to resign as Chairperson after humiliation by Dr. Muqrab Shah, Dean Dr. Bakhtiar Yousafzai, and others. She proceeded abroad for a post-doctoral study leave on 18-04-2012, returning on 25-04-2013. Her accommodation allotment was revoked the same evening and not restored even after her mother's death on 08-06-2013. Despite her qualifications, she was again ignored in a June 2013 selection process in favor of Dr. Manzoor Hussain (Ph.D. 2012), who allegedly harassed her, removed her from committees, confiscated her office materials, and cut off her electricity. In August 2013, after a minor road accident, she sought medical leave, which was later converted to leave without pay by Dr. Bakhtiar, Zubair Alam, and Bahadur Shah. Her return in December 2013 was denied on the pretext of semester closure, and previously unpaid salaries were reimbursed. She rejoined on 16-02-2014, but was unpaid until April 2014. In May 2014, only 40% of her salary was paid, and no further clarity was provided till May 2015. Her case was referred to the Anomaly Committee, where Dr. Manzoor Hussain again threatened her regarding promotion and pension. From June 2013 onwards, she was denied supervision of M.Phil and Ph.D. students. In December 2015, during an Emergency Selection Board, she attempted to present her case, but was barred by Dr. Habib Ahmad. In February 2016, she again applied for the post of Professor, but was told that the opening was for a TTS post, with BPS selections scheduled later. She also reported being followed by an unmarked vehicle, which was notified via SMS to the Vice Chancellor's Personal Secretary. On 16-08-2016, she faced alleged physical assault, the details of which were reported in a letter dated 17-08-2016 to the

Secretary HED, Peshawar; no progress was made on this complaint. Despite attending classes, she was marked absent and had her salary withheld without formal orders. Daily inquiry notices were issued by the Registrar, causing her financial hardship, mental distress, and health deterioration.

3. The said complaint was contested by Respondents No. 3 to 5, and both parties recorded their statements and cross-examined each other. Documentary evidence was produced by both parties, and after conclusion of lengthy proceedings, the complaint of the Petitioner was accepted by the Federal Ombudsman, and the Respondents No. 3 to 5 were awarded penalty of a fine of Rs. 100,000/- each along with censure letters vide Order dated 20-03-2017. The Respondents No. 3 to 5 filed representations before Respondent No. 1/President of Pakistan against the said order of the Federal Ombudsman, while the Petitioner also moved a representation to enhance the penalty awarded to Respondents No. 3 to 5 by the Federal Ombudsman vide Order dated 20-03-2017. The Respondent No. 1 dismissed the representation of the Petitioner but accepted the representations filed by Respondents No. 3 and 5 vide Impugned Order.

4. The learned counsel for the Petitioner contends that the Impugned Order, passed by Respondent No.1, is without jurisdiction, based on assumptions rather than evidence, and contrary to law and facts. It is argued that the decision primarily relies on the internal inquiry report of Hazara University, prepared under the authority of Respondent No. 3 (Vice Chancellor), who himself is accused in the matter. The Respondent No.1 failed to appreciate critical evidence, particularly the report of the SHO Shinkiyari dated 03-01-2017, which confirmed the occurrence of the alleged incident and noted that witnesses were unwilling to record statements due to fear of the Vice Chancellor. The Petitioner's allegations regarding six-hour unlawful confinement, physical abuse, yanking of hair, and attempts at inappropriate physical contact, fall squarely within the definition of "harassment" under Section 2(h) of the Protection Against Harassment of Women at Workplace Act, 2010 **("Act, 2010")**. The Ombudsman's classification of the matter as managerial or administrative is erroneous, especially since the Petitioner did not seek administrative relief, but specifically prayed for penalties under the 2010 Act for workplace harassment. Further, the order contains discriminatory and

stereotypical remarks, implying that a woman in her fifties cannot be harassed, which is an unfounded presumption not supported by law. The decision also inappropriately compares the Petitioner's case to other unrelated instances, insinuating misuse of the said Act without any basis. The counsel emphasized that the Petitioner was suspended on 07-12-2016 through the 34th Syndicate meeting without being served a show cause notice or given an opportunity of defense, which is in clear violation of the Khyber Pakhtunkhwa Universities Act, 2016. Notably, the elected syndicate members had objected to the tampering of minutes and other illegal actions of Respondent No. 3, which were also publicly reported. The Respondents failed to constitute an Inquiry Committee as mandated under Section 11 of the Act, indicating *malafide* intent. The Code of Conduct under the said Act explicitly acknowledges that harassment often occurs without witnesses, and lack of testimony should not invalidate a claim, especially when supported by circumstantial and corroborative evidence like the SHO's report. The learned counsel submits that the Impugned Order overlooks the legislative intent and purpose behind the said Act, which aims to protect women from harassment at the workplace. Therefore, the Petitioner seeks that the Impugned Order be set aside, and that major penalties be imposed on Respondents No. 3 to 5 for harassment and their failure to comply with the statutory provisions of the said Act, in the interest of justice.

5. The learned counsel on behalf of Respondents No. 3 to 5 argued that the Complaint filed by the Petitioner dated 17-12-2016 does not disclose any act of harassment. The said Complaint is just an application addressed to the Governor of K.P.K. in respect of her service grievances. Initially, the complaint dated 17-12-2016 was moved before Respondent No. 2**.** However, during the course of hearing, the Petitioner was confronted by Respondent No. 2 with regard to her Complaint dated 17-12-2016 on the ground that the same did not disclose any act of harassment. The Complainant then submitted another Application addressed to the Secretary HED, dated 17-08-2016, before Respondent No. 2, which was illegal**,** unlawful, and without any justification. Her Complaint dated 17-08-2016 was referred by the Secretary, HED, to the Harassment Committee vide Letter No. SO(U-H) H-E/12-16-Complaint/2016 dated 06-01-2017, which was decided by the Harassment Committee duly

constituted by Hazara University under the provisions of the Act, 2010. The Harassment Committee decided the matter and turned down the Complaint dated 17-08-2016, thereby recommending that the proceedings be sent to the Federal Ombudsman. The recommendation report of the Harassment Committee is in accordance with the provisions of the Act *ibid*. Nothing has been disclosed in the Complaint of the Petitioner regarding any harassment caused to her by Respondents No. 3 to 5 in the University premises. The Petitioner herself stated in her statement before the Harassment Committee that Respondent No. 3 is innocent. The Respondent No. 1 has passed a speaking and detailed order after thorough scrutiny of the entire evidence available on record, which suggests that ample opportunity was given to the Petitioner. The Petitioner herself failed to prove her baseless allegations against Respondents No. 3 to 5. The Report of the SHO is contradictory to the *Roznamcha*, which reflects his *malafide*. Moreover, prior to the filing of the Complaint by the Petitioner, an unpleasant occurrence had taken place outside the premises of Hazara University in a market wherein two students of Hazara University were murdered. The local police, without any justification or reason, raided Hazara University, severely beat several students, and also threatened the administration of Hazara University with dire consequences. The Hazara University filed an application under Section 22-A Cr.P.C. for lodging of FIR against high-ups of police and District Administration, Mansehra, which was dismissed by the learned Additional Sessions Judge-IV, Mansehra vide his order dated 17-12-2016. The order of the Additional Sessions Judge-IV, Mansehra dated 17-12-2016 is still under challenge before the Peshawar High Court, Abbottabad Bench, in Writ Petition No. 70-A/2017. The findings given by Respondent No. 1 are well reasoned. The Complaint filed by the Petitioner was baseless. Neither evidence was produced by the Petitioner before the Harassment Committee of Hazara University, nor any supporting evidence was brought forth. The Respondent No. 2, on a false and baseless Complaint of the Petitioner, punished Respondents No. 3 to 5. There is nothing on record to suggest any physical abuse by the Respondents No. 3 to 5, dragging her to the basement, or any of the other allegations. Since the decision of Respondent No. 2 against Respondents No. 3 to 5 was illegal, unlawful, arbitrary, fanciful, and without jurisdiction, the same was set aside through the Impugned Order of

Respondent No. 1. The Petitioner has sought to raise factual controversy with regard to her service matter. However, she has absolutely failed to establish the facts of the alleged arbitrary acts of the Hazara University administration. The proceedings against the Petitioner were initiated in accordance with the provisions of the Hazara University Statute by the Syndicate of the University. She was given full opportunity of personal hearing by the Inquiry Committee constituted by the Syndicate. She was also served with a show cause notice and, thereafter, on the recommendation of the Inquiry Committee, the Petitioner was removed from her service vide Notification No. 4(2)HU/Re/2017/1259, dated 24-08-2017. The Inquiry Committee, after detailed probe, found the Complaint of the Petitioner dated 17-08-2016 to be false and frivolous. The Report of the Inquiry Committee was also submitted to learned Federal Ombudsman/Respondent No. 2. Although the Report was brought to the knowledge of Respondent No. 2 and a copy thereof was submitted, yet the same was not taken into consideration. The Respondents No. 3 and 5 have no concern with the proceedings of the Inquiry Committee. The Report and recommendations of the Inquiry Committee have attained finality as the same have not been challenged at any forum by the Petitioner.

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

7. The Impugned Order reveals that Respondent No. 1 based its reasoning on the following points:-

A. Inquiry Report by Harassment Committee of Hazara University, Mansehra;

B. Inquiry Report by Investigation Committee of Higher Education Department; and

C. Interpretation of Sexual Harassment.

8. Perusal of the record shows that the Petitioner had moved an application dated 17-08-2016 before the Registrar and Secretary, Higher Education Department, Khyber Pakhtunkhwa, against Respondents No. 3 to 5, wherein she asserted allegations regarding illegal confinement, physical abuse, harassment, and threats confronted by her at the workplace, i.e., Hazara University, Mansehra. According to the contents of her Complaint, the Vice Chancellor/Respondent No. 3 telephonically summoned the Petitioner to the University on 15-08-2016, informing her that there were certain student

allegations against her which required discussion. Upon her arrival, she was asked by the Vice Chancellor/Respondent No. 3 to apologize to Dr. Manzoor Hussain/Respondent No. 5. As she had no prior knowledge of the allegations, the Petitioner sought time to consider her response, which was granted until 9:00 A.M. the following morning. Thereafter, on 16-08-2016, the Petitioner went to her department, where she was followed into her office by the Vice Chancellor/Respondent No. 3 and Dr. Mujtaba Shah. She was asked whether Dr. Manzoor Hussain/Respondent No. 5 had received her apology. Upon her request for further time, the Vice Chancellor allegedly became agitated and informed her that if no written apology was submitted by 2:00 P.M., he would take stern action. The Petitioner further alleges that she was not permitted to leave her office until 2:00 P.M., and that some unknown individuals had also been stationed outside, which caused her to fear for her safety. As such, she remained confined to her office until the appointed time.

9. Shortly afterwards, the Vice Chancellor/Respondent No. 3 arrived along with several senior faculty members and officers, including Dr. Manzoor Hussain/Respondent No. 5, Dr. Mujtaba (HoD, Botany), Dr. Azhar Hussain Shah (Controller), Dr. Sajid Gafoor (Assistant Professor, Genetics), Dr. Hakeem Rehmat, HU Security Officer Major Shirin Gul, as well as other unidentified individuals. According to the Petitioner, she was asked by Dr. Manzoor Hussain/Respondent No. 5 to come out of her room and submit a written apology. Upon her refusal, he allegedly shouted at her and attempted to snatch the letter from her hands. She further alleges that upon raising objections, members of the opposing group became physically aggressive and attempted to forcibly drag her to the basement, and in the process, one individual pulled her hair. She specifically named Dr. Manzoor Shah/Respondent No. 5 as having invaded her personal space and attempted to touch her, causing severe distress. In fear of her safety, she states that she locked herself in her room and contacted the District Police Officer (DPO), Mansehra, for immediate security assistance. At approximately 4:45 P.M., the Deputy Superintendent of Police (DSP), Shinkiyari, along with the local Station House Officer (SHO), arrived at Hazara University and facilitated her safe exit. In the presence of police, she submitted a written statement to the Registrar/Respondent No. 4. It is further alleged that the Registrar, in the

presence of the opposing group, admonished the Petitioner, stating that she had no right to involve police in departmental affairs and threatened her with serious consequences. The Petitioner concludes that she was left with no option but to leave the premises, and that her safe departure was only made possible through police protection.

10. The Complaint of the Petitioner reached the Federal Ombudsman on 13-12-2016. It is pertinent to mention herein that the Federal Ombudsman, vide Order dated 28-12-2016, took immediate cognizance of the Complaint, thereby directing the Secretary, Higher Education Department Archives & Libraries Department, Government of Khyber Pakhtunkhwa, as well as SHO Shinkiyari, to submit their report of progress on the Complaint filed by the Petitioner. Only thereafter, the Higher Education Department Archives & Libraries Department, Government of Khyber Pakhtunkhwa (hereinafter referred to as the "HED"), vide Order dated 06-01-2017, instructed that the matter regarding harassment, illegal confinement, physical abuse and threats be forwarded to the Harassment Committee constituted by Hazara University. The record further reveals that, prior to the instructions of HED, Hazara University, Mansehra, had not constituted any Inquiry Committee in accordance with the mandate of Section 3 of the Act, 2010, in order to redress the grievances of victims of sexual harassment at the University.

A. What is the legal significance of the findings rendered by the Inquiry Committee of Hazara University, Mansehra ?

11. Perusal of the Inquiry Report dated 06-02-2017 shows that the Harassment Committee comprised of five members, which is not in consonance with the mandate of Section 3 of the Act, 2010. For ready reference, Section 3 of the Act, 2010 is reproduced hereunder:-

> *"**3. Inquiry Committee:** (1) **Each organization shall constitute an Inquiry Committee within thirty days of the enactment of this Act to enquire into complaints under this Act.***
>
> *(2) The **Committee shall consist of three members of whom at least one member shall be a woman**. **One member shall be from senior management** and **one shall be a senior representative of the employees** or a senior employee where there is no CBA.*

> *One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them.*
>
> *(3) In case a complaint is made against one of the members of the Inquiry Committee that member should be replaced by another for that particular case. Such member may be from within or outside the organization.*
>
> *(4) In case where no competent authority is designated the organization shall within thirty days of the enactment of this Act designate a competent authority." (Emphasis added)*

Section 3(2) of the Act, 2010 mandates in unequivocal terms that the Inquiry Committee shall consist of three members. The composition is further qualified by express criteria, i.e., one member must be a woman, one from senior management, and one a senior representative of the employees (or a senior employee where no CBA exists). The statutory prescription of a three-member panel is deliberate and rooted in legislative intent, which is to ensure a fair, impartial, and gender-balanced inquiry process through a compact and manageable structure. The provision outlines the internal structure of the Committee: one member from senior management, one senior representative of the employees (or a senior employee where no CBA exists), and at least one female member. However, the question arises as to whether this language merely mandates the inclusion of one woman only. It is a settled principle of statutory interpretation that the words of a statute must be given their plain and ordinary meaning, unless such meaning leads to an absurdity or is manifestly contrary to the legislative intent. The phrase "at least one" is unequivocally a minimum threshold, not a ceiling. It denotes that one woman must necessarily be included, but it does not prescribe that only one woman may be included, nor does it preclude the possibility of more than one woman constituting the committee. The intent behind the provision is clear and rooted in constitutional values. It seeks to ensure that complaints of workplace harassment, particularly those brought by women, are received and deliberated upon in an environment that includes female representation, thereby promoting fairness, trust, and sensitivity in the inquiry process. Furthermore, the usage of the word "shall" in this legislative scheme is neither discretionary nor directory; it is indicative of compulsion and must be interpreted as binding in nature unless context dictates otherwise.

12. Although there is no absolute test to determine whether a provision is mandatory or directory, the primary rule is to ascertain the legislative intent as revealed by an examination of the whole Act of 2010. The intent behind enacting the Act, 2010 was to address harassment at the workplace, which is prompted on account of gender and is not limited to sexual harassment. Thereby, a special gender-balanced and gender-sensitive forum was created where harassment could be reported, inquired into, and penalized. The constitution of an Inquiry Committee, as per the mandate of Section 3 of the Act, 2010, is mandatory and compulsory upon an organization, which must necessarily adhere to the prescribed numerical limit as well as the gender-balanced scheme in the constitution of such a structured committee. The legislative intent behind Section 3 was to ensure impartiality, balance, and efficiency through a compact and well-defined three-member body. The august Supreme Court of Pakistan, in the case of *Province of Punjab through Secretary Excise and Taxation Department, Lahore and Others v. Murree Brewery Company Limited (MBCL) and Another* **(2021 SCMR 305)**, laid down the test for determining whether a provision is mandatory or directory. The relevant portion of the judgment is reproduced hereunder:-

> *"6. The test to determine whether a provision is directory or mandatory is by ascertaining the legislative intent behind the same. The general rule expounded by this Court is that the usage of the word 'shall' generally carries the connotation that a provision* ***in mandatory in nature. However, other factors such as the object and purpose of the statute and inclusion of penal consequences in cases of non-compliance also serve as an instructive guide in deducing the nature of the provision."***
> (Emphasis added)

13. In the case of *Maulana Nur-ul-Haq v. Ibrahim Khalil* **(2000 SCMR 1305)**, the apex Court, while determining whether a statutory provision is mandatory, held that: -

> *"No doubt there exists no faultless acid test or a universal rule for determining whether a provision of law is mandatory or directory and such determination by and large depends upon the intention of Legislature and the language in which the provision is couched but it is by now firmly settled that where the consequence of failure to comply with the provision is not mentioned the provision is directory and where the consequence is expressly mentioned the provision is mandatory."*

Keeping this rationale in view, a conjoint reading of Sections 3 and 11 of the Act, 2010 discloses a clear legislative intent to treat these provisions as mandatory in nature, rather than directory. For ease of reference, Section 11 of the Act, 2010 is reproduced hereinbelow:-

> ***11. Responsibility of employer. —*** *(1) It shall be the responsibility of the employer to ensure implementation of this Act, including but not limited to incorporate the Code of Conduct for protection against harassment at the workplace as a part of their management policy and to form* ***Inquiry Committee referred to in section 3 and designate a Competent Authority referred to in*** *section 4.*
>
> *(2) The management shall display copies of the Code in English as well as in language understood by the majority of employees at conspicuous place in the organization and the workplace within six months of the commencement of this Act.*
>
> *(3) On failure of an employer to comply with the provisions of this section* ***any employee of an organization may file a petition before the District Court and on having been found guilty the employer shall be liable to fine which may extend to one hundred thousand rupees but shall not be less than twenty-five thousand rupees.****" (Emphasis added)*

As further held in *Niaz Muhammad Khan v. Mian Fazal Raqeeb* **(PLD 1974 SC 134)** the general rule in which a statute is understood to be directory when it contains matters merely of direction, but it is mandatory when those directions are followed by an express provision that in default of following them the facts shall be null and void. The organization, in the instant case, had not constituted an Inquiry Committee in accordance with Section 3 of the Act, 2010 at the time of filing of the Complaint by the Petitioner. Therefore, the organization constituting a five-member Committee, having a gender disparity, expressly violated the mandatory provisions of the Act, 2010.

14. It is essential to note here that the law also permits the co-option of external members only when the organization is unable to nominate suitable individuals from within, and even then, such co-option must remain within the fixed numerical cap of three. In simple terms, the provision permits co-option of one or more members from outside the organization only if the organization is unable to designate three members from within. Such co-option, however, operates within the fixed structure of three, not in addition thereto. The said

provision does not mandate either addition and/or subtraction from the number of members to be present in an Inquiry Committee, rather the provision only allows substitution, that too, in case members cannot be found within the organization or if complainant has apprehensions qua the members appointed in an Inquiry Committee. Thus, if three members cannot be formed from within the organization, the vacancy can be filled by the members from outside the organization, however, still creating a Committee of three members in total.

15. In the instant case, the constitution of a five-member Inquiry Committee represents a flagrant departure from the mandatory structure. The inflation of membership from three to five is not a trivial or procedural irregularity; it constitutes a patent illegality that strikes at the root of the Committee's jurisdiction. The legislative intent was to ensure impartiality, balance, and efficiency through a compact and well-defined three-member body. By exceeding the prescribed numerical limit, the Inquiry Committee acted in disregard of a mandatory provision, thereby vitiating the inquiry proceedings. Any recommendation or finding emanating from such an improperly constituted body stands legally infirm and is liable to be set aside.

16. Moreover, the gender composition of the Inquiry Committee is also strikingly imbalanced, which shows that only one woman made part of the five-member Inquiry Committee, which has rendered the structure as envisaged under Section 3(2) of the Act, 2010 as heavily skewed and directly contrary to the inclusive intent of the statute. While the law mandates that at least one member must be a woman within a three-member panel, the law thereby manifests a structure of 2:1 ratio. However, it is to reiterate here that the law does not visualize the other two members to be men only; a woman can very well be from senior management and/or the senior representative of the employees. What the law envisions is a gender-balanced and gender-neutral Inquiry Committee.

17. In the instant matter, the arrangement of the Inquiry Committee demonstrates a 4:1 ratio, which indubitably dilutes the protective mechanism the law has designed to afford to the complainants. This imbalance is not merely symbolic; it undermines the purpose of the Act, which seeks to create

safe space and promote equitable mechanisms to adjudicate complaints of harassment at the workplace. A Committee overwhelmingly dominated by one gender, particularly in sensitive matters involving gender-based harm, poses a serious threat to the confidence, trust, and impartiality of the inquiry process. The question, however, arises as to whether, in cases where the employer constitutes a larger Committee, the requirement of female representation remains static or should it proportionally increase. The Act, 2010 is a social welfare legislation intended to protect vulnerable employees from harassment, and must therefore be interpreted in a manner that advances its protective and remedial objectives. It would be contrary to the spirit of the law if, in an enlarged Committee, the representation of women remains tokenistic and is limited to a single member. This would defeat the underlying legislative intent, which is to provide meaningful gender-balanced representation and a safe, impartial, and accessible redressal mechanism. Hence, by constituting an Inquiry Committee in gross violation of both the numerical and gender-related requirements as envisaged under Section 3(2) of Act, 2010, the organization in question has acted ultra vires to the mandate of the Act, 2010. Consequently, all actions, proceedings, and findings of such an unlawfully constituted Inquiry Committee are rendered legally infirm, without jurisdiction, and liable to be set aside in toto.

18. Bare reading of Section 3(1) of Act, 2010 also ostensibly indicates that an Inquiry Committee is to be constituted within thirty days of promulgation of the Act. However, the record clearly shows that there was no Inquiry Committee constituted by Hazara University at the time the Complaint was filed with the Registrar of the said University or the Secretary, HED. The Complainant, having moved a formal Complaint before the University on 16-08-2016, was entitled under the law to a prompt, structured, and protective inquiry in accordance with Sections 3 and 4 of the Act, 2010. Section 3 imposes a statutory duty upon every organization to constitute a three-member Inquiry Committee, which shall proceed without delay to inquire into Complaints of workplace harassment. In the instant case, not only was there no such Committee in existence at the time the Complaint was lodged, but the University also remained in a state of willful dormancy for nearly five months,

until directions were issued by the HED on 06-01-2017 to constitute an Inquiry Committee. In the meantime, it is a matter of record that the learned Federal Ombudsman had already assumed jurisdiction on 28-12-2016, prior to any action being taken by the University under its statutory obligations. Under Section 4(1) of the Act, 2010 it is clearly laid down that a Complainant shall have the option to prefer a Complaint either to the Ombudsperson or the Inquiry Committee. In this regard, the Federal Ombudsman can entertain a Complaint where either no Inquiry Committee exists or where the Complainant is dissatisfied with the process. Reliance in this regard is placed upon *Qazi Zaheer Ahmad Versus Federal Ombudsman Secretariat for Protection against Harassment at Workplace, Islamabad and 2 others* **(2021 PLC (C.S.) 839),** wherein the Court has propounded the following:-

> *"9. The scheme of the Act is unambiguous. An employee can file a complaint before the Inquiry Committee or the Ombudsman. If the complainant or the defendant is aggrieved by an order of the Competent Authority on the basis of the recommendation of the Inquiry Committee, Section 6 creates a right of appeal for the aggrieved party before the Ombudsman.* ***Further, as aforesaid, a complaint can also be filed by the complainant directly before the Ombudsman.*** *Thus, the argument of the learned counsel for the petitioner that the proceedings before respondent No.1 suffer from jurisdictional defect merely because respondent No.2 had previously approached the Inquiry Committee is misconceived. If a complainant is dissatisfied with the action or inaction of the Inquiry Committee or the Competent Authority, it is the Ombudsman that the complainant ought to approach for* ***redressal of such grievance in view of the scheme of the Act.****" (Emphasis added)*

19. The special law, therefore, demands not only the presence of formal structures, but also the will to act promptly when complaints of harassment arise. Delays and administrative silence in such matters are not neutral acts; they are fertile grounds for injustice. In the present case, the delayed constitution of an Inquiry Committee is emblematic of institutional failure, and any proceeding conducted thereafter by such a Committee is tainted with legal infirmity, duplicative jurisdiction, and procedural impropriety. This Court cannot endorse an inquiry process that stands on such a shaky foundation, both in law and equity. Moreover, the conduct of the Inquiry Committee falls short of the minimum standards of due process required under the law. The record

reveals that the Respondents No. 3 to 5, and their witnesses were not subjected to any meaningful cross-examination. Instead, the Inquiry Committee appeared to have accepted the untested version of the Respondents, thereby compromising both the integrity and impartiality of its findings. Such omission strikes at the heart of the adversarial process and undermines the very object of the Act, 2010, which is to afford a fair, safe, and unbiased redressal mechanism for victims of workplace harassment. An inquiry so conducted cannot be sustained in the eyes of law and is liable to be declared *void ab initio*.

B. <u>What is the legal significance of the findings and recommendations of the Inquiry Report rendered by the Higher Education Department?</u>

20. The Respondent No. 1 has relied heavily upon the recommendations and findings in the Inquiry Report dated 05-02-2013 rendered by the HED. It is, however, pertinent to underscore herein that the matter before Respondent No. 1 pertains specifically to the allegations made in the Complaint dated 17-08-2016, which bears no legal or factual nexus with the earlier Inquiry Report. Not only were the subject matter and allegations in Inquiry Report dated 05-02-2013 entirely distinct in nature, but no disciplinary or administrative action was also ever initiated against the Petitioner/Complainant on the basis of the said Inquiry Report by either Hazara University, Mansehra or the HED itself. Therefore, it is shocking to observe as to what moved Respondent No. 1 to rely upon a previous Inquiry Report, seemingly levelling different allegations, in order to decide the instant Complaint dated 17-08-2016, which is entirely dissimilar, specifically pertaining to sexual harassment. It has further been observed that the Inquiry Report dated 05-02-2013 was authored by a five-member panel, comprising exclusively of male members, in complete disregard of the statutory requirement for gender representation, if at all it was constituted under Section 3 of Act, 2010. In these circumstances, it is both legally untenable and procedurally bizarre that Respondent No. 1 would rely upon a prior report, ostensibly addressing unrelated issues, to adjudicate upon the Complaint dated 17-08-2016, which raises specific and serious allegations of sexual harassment under the Act, 2010. The reliance placed by the Respondent No. 1 upon the findings of such a body is therefore not only misplaced but also vitiates the due process owed to the Complainant under the statutory framework. The Act, 2010 in its wisdom,

has provided for a precise institutional mechanism to ensure impartiality, gender representation, and procedural fairness, none of which are reflected in the said Inquiry Report.

C. INTERPRETATION OF SEXUAL HARASSMENT:

21. The Petitioner had moved another Application dated 17-12-2016 before the office of Federal Ombudsman, wherein she alleged discrimination regarding promotion and salary at Hazara University, and specifically nominated Respondent No. 3 to 5. The Petitioner specifically named Dr. Manzoor Hussain and Dr. Mujtaba Shah, accusing them of employing pressure tactics, including verbal threats and administrative harassment. It is further alleged that in August 2016, during a Selection Board meeting, undue influence was exerted upon the newly appointed Vice Chancellor/Respondent No. 5 to exclude the Petitioner from promotion. It is contended by the Petitioner that the University administration, in concert with certain senior faculty members, took retaliatory action by halting the Petitioner's salary and subjecting her to humiliation and coercion aimed at forcing her resignation or departure. Moreover, the Petitioner claims that she was falsely reported as absent, despite having submitted leave applications for the relevant period, and was even subjected to surveillance and pressure allegedly involving state authorities. She has highlighted that her salaries were withheld for several extended periods, including from April 2012 to April 2013, September 2013 to April 2014, June 2014 to June 2015, and again from October 2016 onwards.

22. The narrative advanced in the Impugned Order dated 17-07-2017 attempts to portray the Complainant and other female faculty members as dishonest actors manipulating the protections of the law. The findings in the Impugned Order reflect a deeply troubling misunderstanding of both the legal framework and constitutional values governing workplace protections and gender equity. It is well established that the right to salary, perks, and privileges, lawfully accrued upon a person in service, is a fundamental right under Articles 9, 14, 18, 25 and 27 of the Constitution, which cannot be curtailed through conjecture, institutional bias, or unsubstantiated accusations of indiscipline. The sweeping generalizations in the Impugned Order, that too rendered in derogatory and

unverified terms, are not only legally irrelevant but also inconsistent with the duty of an inquiry body to conduct an impartial and evidence-based assessment. It is an admitted fact that the conflict *inter se* the parties is not a new one, rather the very first Complaint was filed by the Petitioner on 10-01-2012 against Mr. Azhar Shah in the Department of Botany regarding his non-cooperative attitude. However, it is pertinent to mention herein that the record is silent qua any step taken by the Vice Chancellor/Respondent No. 3 on that Complaint. It is interesting to note that the Petitioner's Complaint was counter attacked by the aforementioned faculty members by way of filing a joint Complaint, on which a meeting was duly held. The stark disparity in responsiveness and procedural diligence speaks volumes about the underlying discriminatory treatment meted out against the Complainant. Furthermore, it is an admitted position that the complainant summoned the police for assistance and safety, as reflected in the Report of the SHO, Shinkiyari Police Station. The Report further states that although witnesses were present, they were reluctant to testify due to fear of reprisal by the upper management, which palpably demonstrates a workplace environment riddled with intimidation and power imbalance.

23. The Respondents, by supporting the Impugned Order dated 17-07-2017, have relied upon the judgements cited as *Shahina Masood v. Federal Ombudsman Secretariat* **(2020 PLC (C.S.) 186)** and *Salim Javed Baig v. Federal Ombudsman* **(PLD 2016 Lahore 433)** in order to challenge the *locus standi* of the Petitioner, by contending that the latter has no remedy under the Act, 2010 as the matters leading to the incident do not establish sexual harassment. The Respondents have further contended that the matters are strictly managerial and administrative in nature; therefore, the internal departmental issues, as well as the incident reported, do not fall within the ambit of sexual harassment as per the definition under the law.

24. Before delving into the legal facets of interpretational analysis of the term "sexual harassment" as envisaged under the law, it would be imperative to reproduce the definition of harassment under Section 2(h) of the Act, 2010, which reads as follows:-

> *"Harassment" means any unwelcome sexual advance, request for sexual* ***favors*** *or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning*

> *attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment" (Emphasis added)*

25. In the judgement cited as *Shahina Masood and 9 others Versus Federal Ombudsman Secretariat for Protection Against harassment at workplace and 2 others* **(2020 PLC (C.S.) 186)**, the Court had stated that the definition under Section 2(h) is exhaustive and not extensive. The Islamabad High Court held in the following words:-

> *"It explicitly refers to various phrases such as "unwelcome sexual advance", "request for sexual favours", "physical conduct of a sexual nature", "sexually demeaning attitudes". The later portion of the definition i.e. "other verbal or written communications causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply with such a request" cannot be read in isolation. It inevitably has a nexus with the nature of acts referred to in the earlier part of the exhaustive definition.* ***The act, conduct or attitude essentially has to be sexual in nature to be covered under the definition of 'harassment' for the purposes of the Act of 2010.*** *As an adjective, the expression sexual is related to 'the instincts, physiological processes and with physical attraction or intimate physical contact between two individuals'. It is, therefore, obvious that a gesture made towards another person with the intention of gaining sexual gratification would fall within the definition of 'harassment' in the context of the Act of 2010. For physical conduct to attract the consequences described in the Act of 2010 it has to be of a sexual nature.* ***The legislature, through unambiguous language, has defined the expression 'harassment' and its exhaustive meaning has been confined to acts, advances, requests, attitudes, conduct etc which are of a sexual nature.*** *Depending on the facts and circumstances, harassment for the purposes of the Act of 2010 can be of different forms, verbal, non-verbal or physical.* ***The most crucial ingredient for determining jurisdiction of the Ombudsman is that the conduct, attitude or act etc complained of must be of sexual nature and the other factors mentioned in section 2(h) are also in existence. The legislature has obviously not intended to extend the scope of the Act of 2010 to the expression 'harassment' as it is understood in its ordinary sense explained in the dictionaries.*** *"*

26. Harassment, when manifested through sexually demeaning attitudes, however, is fundamentally aimed at degrading and dehumanizing an individual

by subjecting them to exploitation, humiliation, and hostility grounded in their gender. Such conduct constitutes a form of gender-based discrimination. When these attitudes are exhibited within the workplace, they cross the threshold into actionable harassment, as they interfere with the victim's ability to perform professional duties and create an environment that is intimidating, hostile, or offensive. The resultant atmosphere not only undermines individual dignity, but also corrodes the institutional culture meant to uphold equality and respect. Reliance in this regard is placed upon *Nadia Naz and another Versus the President of Islamic Republic of Pakistan, Islamabad and others* (**PLD 2023 Supreme Court 588)**, wherein the august Supreme Court held that:-

> *"The word 'demeaning', which ordinarily means belittling and depreciating, is instructive in this regard. If the word 'sexually' is not understood in the context of 'relating to gender' in that expression, it will not produce any comprehensible meaning, as demeaning attitudes on the basis of physical attraction makes no rational sense. It is only when the second meaning of the word 'sexually' in the expression 'sexually demeaning attitudes' is applied that the expression conveys logic and understandable meaning.*
>
> *3.* ***'Harassment' in form of 'sexually demeaning attitudes', as very rightly observed by my learned colleague, is motivated to degrade and demean a person by exploitation, humiliation and hostility on the basis of his or her gender, and such harassment is rooted in gender-based discrimination. 'Sexually demeaning attitude' becomes harassment at the workplace, as it causes interference with work performance or creates an intimidating, hostile or offensive work environment for the victim of such attitude."*** *(Emphasis added)*

27. The august Supreme Court of Pakistan, through judgement cited *supra*, has finally settled the interpretation around the meaning of harassment under Section 2(h) of Act, 2010 by enlarging its scope. The apex Court recalled its previous interpretation of the term by stating the following:-

> *"On review of the afore-noted paragraphs, we find that the emphasis of the judgment on defining harassment under the Act has been such that the word sexual has been considered as an act of a sexual nature which becomes actionable due to its sexualized nature and form, and sexual overtones. In other words, the judgment specifically states that the nature or the kind of harassment covered under the Act is limited to sexual forms of behavior or conduct meaning that harassment is limited to actions having sexual intent or overture, which is evident from behaviour and conduct.*

Furthermore, harassment in this form has to affect the victim's work or performance at the workplace for it to be actionable under the Act. On considering the AGP's arguments, we find that the Act does not define the word sexual and the judgment under review did not examine the meaning of sexual even though this word has been used four times in the definition of harassment, which deficiency must be made up to do complete justice.

As per the dictionaries consulted, there are two meanings to the word sexual, which becomes relevant to the interpretation of the term harassment. The judgment under review did not consider these meanings, rather assumed that sexual only means relating to the act of sexual nature. As a result, the meaning relating to the gender was never considered and entirely excluded gender-based discrimination and harassment faced at the workplace. If the definition of the word sexual is taken to also include the gender, the impact is significant when reading Section 2(h) of the Act as harassment means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes. So, in the context of harassment, the word sexual and sexually are relevant and give meaning to the word harassment, which in this context becomes actionable when it relates to the gender, being sex-based discrimination as opposed to only meaning coital relations and advances. Reading further into the definition of harassment, it appears sex-based discrimination does not have to be limited to sexual activity, rather it is behaviour which is promoted on account of the gender as a result of gender-based power dynamics, which behaviour is harmful and not necessarily a product of sexual desire or sexual activity. Such harassment is motivated to degrade and demean a person by exploitation, humiliation and hostility which amounts to gender-based harassment and can include unwanted sexual alleviation and sexual coercion. Such behaviour in law becomes harassment at the workplace when it causes interference with work performance or creates an intimidating, hostile or offensive work environment and has the effect of punishing the complainant for refusal to comply with a request or is made a condition for employment. Accordingly, the definition of harassment includes sex-based discrimination that is based on the conduct of the harasser which affects the workplace environment in a negative manner as it interferes with the work and performance of the victim. If the conduct of the harasser is given a restricted meaning to being of sexual nature or form, it takes away the essence of the meaning of harassment, its purpose and reduces its impact and scope and ignores that sexual harassment is oftentimes less about sexual interest and more about reinforcing existing power dynamics.[4] Such an application of the law limits the protection offered under the Act and effectively excludes many instances

> *where the victim may be harassed but cannot bring action against the harasser since the conduct was not sexual in nature."*

In the light of the above observations, the definition has been expanded by the august Supreme Court of Pakistan to include physical and discriminatory behaviour which also testifies to the purposive meaning of Section 2(h) of the Act, 2010.

28. The Respondent No. 1, rather than investigating the Complaint dated 17-08-2016 through evidence, resorted to moralizing generalities about the motives of female complainants and invoked anecdotal references to other institutions as if to create a presumption of falsehood. This approach not only defeats the protective object and purpose of the Act, 2010, but also contributes to a chilling effect on future complainants who may feel silenced by institutional retaliation disguised as inquiry. It bears reminding that the Act, 2010 is not a tool of convenience, rather it is a legal safeguard born of hard-earned recognition of structural inequalities at the workplace. Therefore, the Respondent No. 1 to suggest, without any cogent evidence or judicial scrutiny, that the Complaint is a disguise for personal vendetta is both legally untenable and ethically reprehensible**.** Such assertions undermine the rule of law, the principle of due process, and the Constitutional guarantee of gender equality. Sexual harassment at the workplace, therefore, triggers the gender-based harassment, which in turn undermines a women's right to public life, her right to dignity and most importantly, her basic right to be treated equally. Thus, the purpose of harassment laws is to address gender-based discrimination at the workplace and not to limit it to sexual forms of harassment, which includes a broad range of conduct and behavior, resulting in workplace problems with serious consequences, one of the main being gender inequality. The august Supreme Court of Pakistan in the judgement passed in the case of *Nadia Naz supra* further aptly observed that:-

> *"Being an issue grounded in equal opportunity and equal treatment of men and women in matters of employment, sexual harassment in any form violates the dignity of a person as it is a demeaning practice that aims to reduce the dignity of an employee who has been forced to endure such conduct.* ***Sexual harassment as gender-based discrimination is gender-based hostility, which creates a hostile work environment. It is a reflection of the***

> ***unequal power relations between men and women which translates into a form of abuse exploitation and intimidation at the workplace which makes it a violation of a basic human right."*** *(Emphasis added)*

29. Furthermore, the august Supreme Court of Pakistan, in a recent judgement cited as *Raja Tanveer Safdar Versus Mrs. Tehmina Yasmeen and others* **(2024 PLC (C.S.) 957**), has again defined the term harassment under the Act, 2010. The relevant portion is reproduced hereunder:-

> *"In terms of the 2010 Act, harassment means gender-based harassment and discrimination, which can be sexual in nature. Any action that causes interference with work performance or creating an intimidating, hostile or offensive work environment falls within the definition of harassment under Section 2(h) of the 2010 Act. The said Act operates for a very specific purpose which is to determine whether there has been any harassment at the workplace by an employer against an employee.*
>
> *Harassment under the 2010 Act goes to the basic and most fundamental of rights, that being the right to dignity, where a citizen must be able to live and work with respect and value. The preamble of the 2010 Act begins by recognizing the constitutional command of the inviolability of human dignity as envisioned in Article 14 of the Constitution. Dignity is, thus, an inherent right well-accepted in the international legal order, which ensures that everyone who works has the right to just and favourable remuneration ensuring an existence worthy of human dignity, which is supplemented by social protection. Respectability, acceptability, inclusivity, safety and equitability are the prerequisites for a safe and dignified workspace. This is a crucial objective of the 2010 Act being to uphold and protect the right of dignity of employees at the workplace by ensuring fair treatment, non-discrimination, mutuality of respect, and socio-economic justice. These statutory objectives are also in conformity with the Principles of Policy set out under Articles 37 and 38 of the Constitution, which promotes social justice and the social and economic well-being of the people."*

30. The record further reveals that the Respondent No. 1, whilst writing the Impugned Order dated 17-07-2017, did not appreciate the police Report dated 03-01-2017 submitted by the SHO, Shinkiyari before the learned Federal Ombudsman/Respondent No. 2, wherein the SHO, Shinkyari had unequivocally stated that although there were witnesses who had recounted the incident, they declined to come forward due to fear, being subordinates of the Vice

Chancellor/Respondent No. 3 as well as the institution. It is also an admitted position that the matter *inter se* the parties is not a new one and police was called by the Petitioner on the date of accident, thus, matters relating to physical abuse, humiliation, threats, intimidation at the workplace must be dealt in accordance with the Act, 2010, especially in the light of the definition interpreted by the august Supreme Court of Pakistan. The Respondent No. 1 adjudicated the Petitioner's case based on a narrow interpretation of harassment, stating that the incident does not fall within the conduct of a sexual nature. However, the Respondent No. 1 failed to assess the incident from the Petitioner's perspective and her interpretation of the events. In matters of harassment, the victim's viewpoint holds particular significance when evaluating whether the conduct in question deviates from acceptable standards of behaviour. The appropriate standard is that of a reasonable woman, which must be applied to determine whether the behaviour constitutes harassment that creates a hostile work environment. Reliance in this regard is further placed upon the judgement passed in the case of *Nadia Naz supra*, wherein the august Supreme Court held that:-

> *"However, both the President and the Islamabad High Court decided the case of Nadia Naz on the understanding that harassment means sexual harassment having a sexual nature and form and did not examine the facts in the context of Nadia Naz's perspective and her understanding of the injury caused.* ***In cases of harassment, the victim's perspective is relevant as against the notion of acceptable behaviour. The standard of a reasonable woman should be considered to determine whether there was harassment, which rendered the workplace hostile and all relevant factors should be viewed objectively and subjectively.*** *In doing so, the order of the President and the judgment of the High Court failed to give due emphasis on the injury claimed and the harmful nature of the events to Nadia Naz. Under the circumstances, since harassment was understood in a limited context, both the order as well as the judgment decided the cases on a mistaken understanding of the law."*

JURISDICTION OF THE FEDERAL OMBUDSMAN

31. The Federal Act was promulgated on 11.03.2010 with jurisdiction extending to the whole of Pakistan under Section 1(2) of Act, 2010, whereas the Constitution (Eighteenth Amendment) Act, 2010 (hereinafter referred to as the "18th Amendment) was introduced on 20.04.2010. Therefore, another important question before this Court is where does the jurisdiction to adjudicate

upon a harassment Complaint dated 17-08-2016 lie in the wake of the 18th Amendment to the Constitution. Prior to the establishment of a Provincial Ombudsperson under the Khyber Pakhtunkhwa Protection against Harassment of Women at Workplace (Amendment) Act, 2018 (hereinafter referred to as the **"Amendment Act, 2018"**), was the jurisdiction vested with the Federal Ombudsman under the Act, 2010?

32. The incident of harassment occurred on 17-08-2016 in Mansehra, Khyber Pakhtunkhwa. At the material time, the Province had not enacted a functional mechanism for redressal of workplace harassment Complaints. It was not until the promulgation of the Amendment Act, 2018 that the office of the Provincial Ombudsperson was formally instituted. Therefore, the Act, 2010, enacted by the Federal Legislature, remained operative for addressing the governing workplace harassment across Pakistan. The Petitioner approached the Federal Ombudsman under the Act, 2010 who had assumed jurisdiction and rendered a decision dated 20.03.2017. The Respondents contend that, pursuant to the 18th Amendment, the subject matter of workplace harassment devolved upon the Provinces, thereby ousting the jurisdiction of the Federal Ombudsman outside the Islamabad Capital Territory. In this regard, the Respondents have relied upon *Salim Javed Baig and others v. Federal Ombudsman and others* **(PLD 2016 Lahore 433)** in order to solidify their contention. However, the judgement relied upon by the Respondents was discussed by the Division Bench in a judgement cited as *Imran Maqbool, President MCB Bank Ltd. v. Federation of Pakistan through Secretary Law, Justice and Human Rights Division, Islamabad and others* (**PLD 2019 Lahore 17)**, wherein the Lahore High Court held that:-

> *"10. The findings of the Court are based on the understanding that the subject of harassment against women has devolved onto the Provincial Government post 18th Amendment. The Court considered the subject matter of harassment against women to be covered under Item No.25 of the Concurrent Legislative List ("CLL") being Population, Planning and Social Welfare. As the CLL was abolished by way of the 18th Amendment on 20.4.2010 all areas provided for under the CLL devolved on to the Provinces. Consequently the Court concluded that jurisdiction vests with the Provincial Ombudsman and only to the extent of the federal capital territory, jurisdiction vests with the Federal*

> *Ombudsman.* ***We have considered the reasoning advanced in the Salim Javed Case, however we are not persuaded by the same. Harassment, whether verbal or physical is a behavioral issue that adversely affects the work environment. It manifests itself in many different forms of unethical and unwelcomed behaviour which renders the workplace hostile or offensive. Hence it violates the right to a safe and healthy work environment. The right to work is a multifaceted right which is recognized under different international treaties and conventions for creating a safe work environment especially for women. Article 23 of UDHR declares the right to work and the right to favourable conditions of work as a human right. Article 11 of CEDAW specifically requires States to ensure women have equal work opportunity and safe working conditions. As Pakistan has ratified these treaties and conventions it is obligated to protect the right to work and to ensure a favourable work environment. Since the 2010 Act was promulgated pursuant to Pakistan obligations under the international treaties and conventions, the subject matter of protection of the workplace for women falls under Item 3 read with Item 32 of the Federal Legislative List of the Constitution which includes implementing international treaties and conventions.*** *It is also noted that harassment laws aim to regulate behaviour and attitudes which can be subjected to criminal punishment as well as civil liability. Section 509 of the Pakistan Penal Code, 1860 ("P.P.C.") criminalizes behaviour conduced with the intention of unreasonably interfering with an individual's work performance or behaviour which creates an intimidating hostile or offensive work environment. Therefore the subject of harassment at the workplace being a crime under the P.P.C. means that Parliament and the Provinces both are competent to make laws with respect to the crime, procedure or evidence.* ***Hence we find that the subject of protection of women from harassment does not fall under 'population, planning and welfare' of the CLL, rather it falls under the federal domain consequent to its international obligations and to the extent that the subject relates to criminal law.****" (Emphasis added)*

33. In light of the above rationale, this Court accordingly holds that the Federal Ombudsman validly exercised jurisdiction in respect of the Complaint dated 17-08-2016 as there was no Provincial Ombudsperson appointed in the Province before the Act, 2018. Furthermore, the principle of acquiescence and waiver is not without relevance. The Federal Ombudsman/Respondent No. 2 assumed jurisdiction and the proceedings were contested, however, at no stage the matter qua jurisdiction was raised by either party. Thereafter, the Respondent No. 1 also assumed jurisdiction whilst rendering the Impugned Order dated 17-07-2017 without divulging into the

maintainability. To raise it now amounts to a procedural ambush and cannot be permitted to vitiate otherwise valid proceedings, particularly when no alternate remedy was available at the time of filing the Complaint in 2016, as the Provincial Ombudsperson was only formally appointed after the promulgation of the Amendment Act, 2018.

34. In view of the preceding discussion, consequently by construing sexual harassment in an unduly restricted manner, the instant Writ Petition is **allowed**, the Impugned Order dated 17-07-2017 is hereby **set aside**, and the matter is remanded to the Respondent No. 1/President of Pakistan to decide the Representation against the Respondent No. 2/Federal Ombudsman's Order dated 20-03-2017 in the light of interpretation of the term sexual harassment rendered by the august Supreme Court of Pakistan.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____day of July 2025.

JUDGE

Approved for Reporting
Blue Slip added.

//Sajid//