

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory Jurisdiction)

PRESENT:

Justice Amin-ud-Din Khan, Chief Justice.
Justice Ali Baqar Najafi
Justice Syed Arshad Hussain Shah

CPLA No. 1011 & 1113 of 2025

[against the impugned judgment dated
31.12.2024 passed by Islamabad High Court,
Islamabad in W.P.No.105/2025]

Usman Shahid	Petitioner (s)
	 In CPLA No. 1011 of 2025
Aqeel Abbas	 In CPLA No.1113 of 2025

Versus

Nadia Sarwar	Respondent (s)
	 In CPLA No. 1011 of 2025
Nadia Sarwar & 04 others	 In CPLA No. 1113 of 2025

For the Petitioner (s)	:	Syed Muhammad Hasnain Ibrahim Kazmi, ASC in CPLA No.1011/2025 Mr. Zahid Nawaz Cheema, ASC (in CPLA No.1113/2025)
For the Respondent(s)	:	Raja Rizwan Shabbir, ASC Syed Rifaqat Hussain Shah AOR
Date of Hearing	:	23.07.2026

JUDGMENT

ALI BAQAR NAJAFI, J. Through these petitions under Article 175-F(1)(c) of the Constitution of Islamic Republic of Pakistan, 1973 [**the Constitution, 1973**] a leave to appeal is sought against the impugned judgment dated 31.12.2025 passed by Islamabad High Court whereby the order of the President of Pakistan modifying the order of Federal Ombudsman, was set-aside.

2. **Brief facts** giving rise to the filing of these petitions are that the complainant/respondent No.1 Nadia Sarwar was employed in

National Bank of Pakistan (**NBP**) since 2008. On 24.09.2012 she complained to the President of (**NBP**) against the petitioners on the allegation of sexual harassment at the workplace thereby victimizing the complainant/respondent No.1 by creating an intimidating and a hostile environment. The complainant/respondent No.1 approached the Divisional Head of the **NBP** both on telephone and email on 26.03.2013 but of no avail. She then filed another complaint on 02.07.2013 (about 13 weeks) before the President of **NBP** by specifically mentioning the instances of harassment but still of no avail. Ultimately, she had to file a complaint before Federal Ombudsman/respondent No.4 on 03.09.2013 under the Protection against Harassment of Women at the Workplace Act, 2010 (**Act of 2010**) which was allowed and the petitioners were awarded major penalty of compulsory retirement under section 4(4)(ii)(b) of the **Act, 2010**. The petitioners then filed representations before the President of Pakistan/respondent No.3 on 14.02.2014 which was allowed to the extent of setting-aside the compulsory retirement order, however the Bank was directed to award censure in terms of section 4(4)(i)(a) of the **Act, 2010** which was challenged before the Islamabad High Court by complainant/respondent No.1 where the order of the President of Pakistan/respondent No.3 was set-aside and the order of the Ombudsman was restored in toto hence these petitions.

3. Mr. Zahid Nawaz Cheema, ASC, learned counsel for Aqeel Abbas/petitioner argues that his name was not reflected in the first complaint and that the complainant had improved her case

against him by introducing additional facts and without making him a party in the first complaint.

4. **After hearing** the learned counsel for the parties and perusing the file, it is noted that Nadia Sarwar complainant/respondent No.1 was working in **NBP**, Corporate Centre, Islamabad since 2008. Aqeel Abbas/petitioner was also hired in **NBP** as Senior Relationship Manager about the same time in November, 2008. Initially, the attitude of Aqeel Abbas and Usman Shahid (other petitioner) was good with the complainant/respondent No.1 but after sometime when the complainant/respondent No.1 had not followed their directions, they started harassing her by misusing their authority; forced her to stay inside the office after office hours; if she applied for leave on domestic issues, the respondents would ask her to disclose it and if she had applied for leave on medical/sickness grounds, its nature was required to be disclosed which would made her uncomfortable. Besides causing interference in her work and creating the hostile and offensive work environment, the petitioners had also been giving adverse remarks against her performance and also uttered shameful, unethical, scandalous, immoral and un-Islamic words/comments against her. Once Usman Shahid/petitioner abused/harass her with his

obnoxious words. Aqeel Abbas, petitioner also once used the similar shameful words.

According to the complainant she tried her best to avoid respondents as she belongs to a respectable family and she also requested the respondents that she was not that kind of girl they were looking for but upon her flat refusal, Usman Shahid replied as under:-

“I will say such statements/words and if you have any problem with it you may leave the job”.

According to the complainant she approached the EVP-Divisional Head Corporate & Banking Division (North) to report about her harassment via telephone and also through e-mail but in vain. The complainant finally filed a complaint before the President **NBP** but even after a lapse of about two months no action was taken. The complainant tried her level best to obtain relief from her department but failed and finally she filed the complaint under the Act, 2010 before the Ombudsman with the following prayer:-

“In the above circumstances it is respectfully prayed that the complainant may kindly be protected from the above said persons and they may also be punished strictly in accordance with law and the adverse remarks given after the complaint by the respondents about the work of the complainant may kindly be withdrawn in the best interest of justice.”

5. The Ombudsperson/respondent No.4 decided the complaint against the petitioners by observing that despite filing different complaints to the Higher Authorities of **NBP**, no action was taken. However, the petitioners took the stance

that after announcement of adverse “Annual Performance Appraisal Report” on 01.09.2013 against the complainant/respondent No.1, instant complaint was filed in retaliation. But the statements of witnesses from petitioners’ side were discarded on the ground that their presence before the Ombudsperson/respondent No.4 for evidence was without having any permission from concerned authorities established that they were under the influence of both the petitioners. It had also been admitted by most of the petitioners witnesses that confirmation, further promotion, and preparation of ACRs were all in the hand of both petitioners. However, the Ombudsman/respondent No.4 did not find any contradiction in the statements of the complainant/respondent No.1, Saqib Saleem and Mehmood Rafiq; the allegations levelled against the petitioners have not been refuted specifically by the accused persons. The petitioners were consequently, dismissed from service.

6. The petitioners representations before the President of Pakistan/respondent No.3 were accepted by observing that the objectionable words allegedly uttered by the petitioners were not proved; the allegation regarding drawing a sketch of a woman has been raised for the first time in affidavit tendered in evidence by the complainant on 28.10.2013, missing in the three complaints moved before higher authorities as well as before Ombudsperson/respondent No.4; the statements of complainant/ respondent No.1

and her witnesses were sufficiently rebutted by the accused through their evidence on oath and supporting testimony by defence witnesses; the **NBP** in its comments submitted that the departmental proceedings were conducted wherein the allegation of harassment were not proved, however, the petitioners were warned to remain careful in inter personal communication with the staff members. The President/respondent No.3 therefore, has been pleased to accept the representations of the petitioners and set aside the impugned judgment of Ombudsperson/respondent No.4 and **NBP** was directed to issue Censure against the petitioners.

7. The respondent No.1 challenged the decision of the President/respondent No.3 by invoking the constitutional jurisdiction of the High Court by filing writ petition which was allowed on the grounds that stance of the complainant/respondent No.1 that she was not aware of any proceedings initiated by the department/Bank on her complaints is duly fortified by the petitioners/accused persons who stated that the Bank conducted a fact finding inquiry but even they were not aware about the final report prepared by the Bank or any penalty imposed upon them or any warning issued against them; the Investigating Committee was not constituted in accordance with requirement of Section 3(2) of the **Act, 2010** and the Bank had failed to act within the timeline provided under Section 4(1) of the **Act, 2010**; there is no provision in the **Act, 2010** that precludes the Ombudsman from conducting the proceedings or inquiry by adopting the broad principles under Code of Criminal Procedure, 1898, deems fit according to the

circumstances of the case in order to arrive at a just conclusion and for recommendations. The President, it was held, had incorrectly rejected the evidence produced by the complainant/respondent No.1 regarding making of “sketch” by holding that it was made first time in her evidence/affidavit; that the first complaint cannot be equated with an FIR; evidence produced by the complainant before the Ombudsperson in support of her complaint cannot be outright discarded or rejected as inadmissible simply because it was not mentioned in the First Complaint made by her; neither the first nor the second complaint constitutes pleadings i.e. plaint or written statement; the President incorrectly rejected the evidence produced by the complainant on the ground that a new plea was erroneously equated with the first complaint; the President overlooked all such evidence and discarded the same simply by mischaracterizing it as new pleas; the poor performance denied as the motive behind the complaint was not supported by record. However, the order of the President/respondent No.3 was set-aside. Before discussing as to which view is correct it would be important to understand the nature and objective of the **Act, 2010**.

What is the Protection against Harassment of Women at the Workplace Act, 2010¹

8. This Act was promulgated on 11th March 2010 after when it was assented by the President on 9th March, 2010 and called Act No.IV of 2010, with the **sole purpose** of protection of women against harassment at the workplace. **An accused** means an

¹ Protection Against Harassment of Women Work at Workplace Act, 2010

employee or an employer of an organization against whom complaint was made under this Act [Section 2(a)].

9. **A code of conduct** for protection against harassment of women at the workplace has been given in schedule attached thereto and made under section 2(c) and section 11 of the **Act, 2010** in order to provide guidelines for good behaviour of all employees according to which three ingredients have been manifested to constitute harassment at the work environment i.e. (a) abuse of authority, (b) creating hostile environment and (c) retaliation. Under the said code, **an informal approach** through mediation and counseling on a strictly confidential basis has been preferred and permitted. The investigation into such allegations is to be conducted by some senior managerial staff and in case the harassment of a higher degree is found, the disciplinary action can be taken on a formal complaint. However, the complainant can lodge the formal complaint at any time to her in-charge, superior, CBA nominee or a representation made directly to any member of the inquiry committee. **An offensive behaviour must be reported** to the trust worthy person but mere non-reporting immediately would not effect the merits of the case. The retaliation from either party should be strictly monitored. **The complainant** means a woman or a man who has made complaint to the Ombudsman or to the inquiry committee being aggrieved of an act of harassment hence drawing no gender distinction. **An employee** means a regular or a contractual employee, whether employed on daily, weekly, monthly or hourly basis and includes an intern or an apprentice [Section 2(f)]. **An employer** means a person of an

organization under an employment contract or any other person has been defined in the same categories. The **harassment** means any unwelcome sexual advance, request for sexual favours or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply with such request or is made a condition for employment under section 2(h) of the **Act, 2010**. **Ombudsperson** is the one appointed under section 7. Inquiry committee is required to be constituted in each organization to inquire into complaint under the **Act, 2010** which must consists of three members including one woman and one from senior management and one senior representative of the employees. One more member can be co-opted from outside the organization (section 3). **A competent authority** is to be designated under section 3. **A procedure** for holding an inquiry is prescribed under section 4 which includes communication of charges and statements of allegations leveled against the accused, calling of written defense within seven days from the date of communication of charges, in the absence of which he was to be proceeded *ex-parte*. A committee is empowered to inquire and to examine oral or documentary evidence in support of the charges or against the complaint with a right to cross-examination of the witnesses (Section 4). However, the inquiry committee is empowered to regulate its own procedure in terms of place and time of sitting (Section 4). The statements etc. shall be confidential, an officer may be nominated to advise

and assist each party, each party can also be represented through friend or a colleague, no adverse action is to be taken against the complainant or the witnesses. No hostile environment will be created for the complainant to pressurize her from freely pursuing her complaint. The inquiry committee shall give its findings and record reasons and make the recommendation to the competent authority within thirty days and in the event of finding accused guilty, would also recommend one or more penalties (minor penalties or major penalties) against him. Under section 5, the inquiry committee is empowered to summon and enforce the attendance of person and to examine him on oath, for discovery and production of any document, to receive evidence or affidavits and to record evidence. It can get medically examined the complainant by an authorized doctor, if necessary. Such inquiry committee can also recommend to the Ombudsperson for appropriate action against the complainant if the allegations are found false and can instruct to treat the proceedings as confidential. The decision of competent authority imposing the minor or major penalty is **challenge-able before the Ombudsperson** within thirty days in the form of an appeal. A complainant can also file an appeal within stipulated time before the Ombudsperson. The Ombudsperson can uphold or modify or set aside the decision (Section 6).

10. **An Ombudsperson** can be appointed under section 7 by the Federal as well as Provincial Government from persons, who has been a Judge of the High Court or qualified to be appointed as a Judge of the High Court. The finances and other staff is to be

provided by the concerned Government. An aggrieved employee has the option to prefer the complaint either to the Ombudsperson or the inquiry committee (Section 8). The Ombudsperson shall issue a show cause notice to the accused within three days who shall submit written defence within five days otherwise, he can be proceeded against *ex-parte*. The parties can represent themselves and the Ombudsperson can conduct the proceedings as it deems proper. But when he has to investigate under the **Act, 2010** the Ombudsperson can require any officer or member of an organization to furnish any information, to produce any document which were helpful for the said purpose. The decision recorded by the Ombudsperson shall be communicated to both the parties and the management of the organization for implementation. The decision of Ombudsman may be challenged before the President or Governor as the case may be within thirty days (Section 9). The Ombudsperson is empowered to summon, enforce the attendance, compel the production of evidence, receive the affidavits, issue commission for examination of the witnesses and enter any premises for inspection/investigation to receive any information relevant to the case. The Ombudsperson has been empowered to punish person for contempt as the powers of the High Court (Section 10). Under Section 12 of the **Act, 2010** is passed in addition and not in derogation of any other law for the time being in force which means that it has not repealed the other existing laws on the subject.

11. Under Protection against Harassment of Women at the Workplace (Filing and Disposal of Complaints) **Rules, 2013,**

specific information is required from the complainant. However, the Ombudsperson is entitled to adopt a procedure but for deciding the case expeditiously on the basis of the logical arguments substantiated by available evidence.

LEGAL TERMS INTERPRETED

12. The word harassment has been defined in Section 2(h) of the **Act, 2010** which definition is exhaustive and not extensive. An act, conduct or attitude has to be sexual in nature, if it is to be covered under the definition of harassment for the purpose of this act. The word “sex” an adjective and the word “sexual” is related to the instinct, physiological processes and with physical attraction or intimate physical contact between two individuals. A gesture, therefore, made to another person for gaining sexual gratification would fall within the definition of harassment under the **Act, 2010** but may have different forms; i.e. verbal, non-verbal or physical but the expression harassment is understood in its ordinary sense explained in the dictionaries.² To prove a sexual harassment, a bare minimum requirement is the impartial, credible material, capable of surviving the test of reasonableness and it must be reinforced with convincing/independent evidence. Multifariousness of the allegations mostly containing of administrative failure actually intends to compromise the credible, serious and efficacy of the charges.³ The meaning of harassment under section 2(h) of the **Act, 2010** is only restricted to conduct which is sexual in nature and all other acts of harassment fell beyond such restricted

² Shahina Masood & 9 others Vs. Federal Ombudsman Secretariate through Federation Ombudsman and 2 others (**2020 PLC (C.S) 186**).

³ Maimoona Rajab Vs. Province of Punjab through Section Officer of Governor of Punjab, Lahore and another (**PLD 2021 Lahore 598**)

definition of actionable harassment. It thus includes orientation of unwanted or unwelcome behaviour or conduct by the accused persons towards such victim in any organization. It can, therefore, be safely said that any misdemeanor, behaviour or conduct unbecoming of an employee at the workplace towards other employee or an employer, or from an employer to an employee or an employee to an employer in an organization may be generically classified as harassment but is not an actionable act per-se under the **Act, 2010** unless such behavior or conduct is inherently demonstrated or demonstrable of its sexual nature. Any grave or devastating conduct or behaviour is not actionable as contemplated in the definition of harassment unless it is sexual in origin. Undoubtedly, the **Act, 2010** was legislated to protect not only working women but also working men but only against harassment having a sexual dimension at the workplace. Therefore, any conduct amounting to harassment which may have a distasteful effect and injurious consequences is not made cognizable before the Ombudsperson unless it is characterized as sexual. In the preamble of the **Act, 2010** the word harassment is used but under section 2(h) to make such conduct actionable, the element of sexual harassment is provided the basis. A gender-based discrimination of a sexual nature by a prejudicial mind resulting into discriminatory behaviour may be actionable and in the absence of the said key factor of being sexual in nature the departmental disciplinary proceedings may be attracted. It is for this reason that Ombudsperson has no jurisdiction to inquire into

the disciplinary proceedings which was beyond his scope.⁴ However, the view of Nadia Naz Case⁴ has been adopted with modification in the judgment of Raja Tanveer Safdar⁵ when the word harassment was held to be a gender-based harassment and discrimination which was sexual in nature and any action that causes interference with the work performance and creating intimidating, hostile work place environment falls within the definition of harassment under Section 2(h) of the **Act 2010**. It was held that the said Act operates for the very specific purpose to determine whether there has been any harassment at the workplace by employer against employee. It was also held that right to dignity is a basic right essential for citizens to live and work with respect and values. Thus the element of sexual component has been disregarded in the said judgment. According to the view any act of harassment even if it is not sexual in nature, would be actionable and cognizable under the **Act, 2010**.

13. This view was further upheld in a recent judgment of Muhammad Din's case.⁶ With due respect to the view of Supreme Court we do not agree with this observation well within our powers under Article 189⁷ of the Constitution on the basis of the very definition of sexual harassment under Section 2(h). Any other interpretation would be amounting to reading into the said provision of the **Act, 2010**. Had the legislature intended to make the definition of sexual harassment exhaustive or equivalent to mere harassment this would have been very much manifest in the

⁴ Nadia Naz Vs. The President of Islamic Republic of Pakistan and others (**PLD 2021 SC 784**)

⁵ Raja Tanveer Safdar Vs. Mrs. Tehmina Yasmeen and others (**PLD 2024 SC 795**)

⁶ Muhammad Din Vs. Province of Punjab through Secretary Population Welfare, Lahore and others (**PLD 2025 SC 354**)

⁷ Article 189 of the Constitution of Islamic Republic of Pakistan, 1973

Act, 2010 itself. Undoubtedly, every sexual harassment is a harassment but every harassment is not a sexual harassment. The later provides certain ingredients having different causes and effects. **The Act of 2010**, has intended to provide smooth working environment for the women by protecting their honour, modesty and respect by virtue of their gender. **The Act, 2010** does not provide a special or a preferred treatment so as to undermine the dignity of their counter-part. A special law is for special situations if attracted and cannot be applied in the general context.

14. Learned counsel for the respondent has relied upon the judgment of “Qazi Zaheer Ahmad Vs. Federal Ombudsman” 2021 SCMR 839 in which it was held that if the complainant was dissatisfied with the action or inaction of the inquiry committee or competent authority, he was to approach Ombudsperson by filing a complaint for the redressal of grievance. Ombudsperson is also the appellate authority against the order of the departmental competent authority in the matters of harassment (as defined under section 2(h)) against women and therefore, taking cognizance of the matter by the departmental committee may be futile or inadequate.

15. We have specifically put a query to the learned counsel for the petitioner as to whether the order of the President passed in the exercise of the powers vested in him under Article 45 of the **Constitution** is not duly protected under Article 48(2) thereof and whether such order is amenable to the constitutional jurisdiction (certiorari) of the High Court, to which he straightaway answered that his power to hear an appeal against the order of

Ombudsperson is under section 9 of the Act, 2010. To seek the correct answer, it will be expedient to reproduce Article 45, 48(2) of the **Constitution** and section 9 of the Protection Against Harassment of Women at the Workplace Act, 2010 as under:-

“45. President’s power to grant pardon, etc. *The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.*

“48. President to act on advice, etc. (1).....

(2) *Notwithstanding anything contained in clause (1) the President shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so [and the validity of anything done by the President in his discretion shall not be called in question on any ground whatsoever.]*

(3)

(4)

(5)

(6)

(7)

(The underlining is for emphasis)

Section 9 of the Act, 2010.

“9. Representation to President or Governor.- *Any person aggrieved by a decision of [Ombudsperson] under subsection (5) of section 8, may, within thirty days of decision, make a representation to the President or Governor as the case may be, who may pass such order thereon as he may deem fit [the President or the Governor, as the case may be, shall decide such representation within ninety days.]”*

16. The judgment in **Muhammad Tariq Pirzada’s** case⁸ and **Nawaz Sharif’s** case⁹ are relevant here in which the powers of the President have been discussed and it was rightly held that while exercising the quasi powers the order of the President is subject to some judicial review. However, in the later case, it has been settled that the President has no powers except the one expressly conferred upon him by the Constitution, therefore, any distinction between the Presidential power under the Constitution and the powers and function in statute would be contrary to law. It has not been denied before us that the President has jurisdiction to hear

⁸ Federation of Pakistan Vs. Muhammad Tariq Pirzada (1999 SCMR 2189)

⁹ Nawaz Sharif Vs. President of Pakistan (PLD 1993 SC 473)

the appeal against the order of the Ombudsman under the powers conferred upon him by the Constitution though can be invoked under the ordinary law of course with some reason and rhyme. Obviously, the order of the President passed without the recommendation of the Prime Minister, is not be interfered as a run-of-the-mill in the writ jurisdiction by the High Court under the category of Certiorari. This view has already been taken by this Court in CPLA No.560 of 2024 decided on 21.07.2026.

17. The scope of the High Court to interfere under the constitutional jurisdiction is only where the orders were passed without reappraisal of evidence, findings are based upon non-reading and misreading of evidence, an erroneous assumption of facts, misapplication of law, exercise of excess or abuse of jurisdiction and arbitrary exercise of powers. On the question of jurisdiction under Certiorari, the court exercises a supervisory control to ensure that the Tribunal observed law but the High Court will not substitute its findings on facts and it will only interfere if a Tribunal exercises an unlawful authority, i.e. decided without evidence or failed to follow the judicial norms like violation of the principle of natural justice as rightly held in Rahim Shah¹⁰ and Muhammad Lehrasab Khan¹¹ cases.

18. In view of above discussion, the above petitions are converted into appeal(s) and **allowed**. The impugned judgment

¹⁰ "Rahim Shah Vs. The Chief Election Commissioner of Pakistan and another" (PLD 1973 SC 24)

¹¹ "Muhammad Lehrasab Khan Vs. Mst. Aqeel-un-Nisa and 5 other" (2001 SCMR 338)

dated 31.12.2024 passed by the Islamabad High Court, Islamabad
is set aside.

CHIEF JUSTICE

JUDGE

Islamabad
'APPROVED FOR REPORTING'
A.Qadoos*

JUDGE

Announced in open court on _____

JUDGE