

P L D 2024 Supreme Court 795**Present: Munib Akhtar, Ayesha A. Malik and Shahid Waheed, JJ****Raja TANVEER SAFDAR---Petitioner****Versus****Mrs. TEHMINA YASMEEN and others---Respondents**

Civil Petition No.3644 of 2020, decided on 24th April, 2024.

(Against order dated 27.10.2020 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in W.P. No.3764 of 2019).

(a) Constitution of Pakistan---

---Art. 13(a)---Protection against double punishment---Double jeopardy---Scope--- Protection given under Article 13(a) of the Constitution is against prosecution and punishment, which means the trial and its proceedings followed by a conviction---If the first prosecution results in an acquittal, so far as Article 13(a) of the Constitution is concerned, the second prosecution is not prohibited---Concept of double jeopardy essentially means that a person cannot be tried multiple times for the same offence on which there is a conviction based on the same set of facts as they should not be put in peril twice---It is based on the rule of conclusiveness and finality which requires that once a court has taken cognizance of an offence, tried a person and convicted them, then for the same offence that person cannot be tried again---So, the basic question is that in the case of double jeopardy, the second trial should be on the same set of facts of the first trial which resulted in a conviction for the same offence, which would require the same evidence before the court--- Basically, this means that the case has to be the same as the one that has already resulted in a conviction but if the proceedings are different in substance and law then it will not be a case of double jeopardy.

Muhammad Ashraf v. The State 1995 SCMR 626; Sohail Ahmad v. Government of Pakistan 2022 SCMR 1387; Muhammad Tufail v. Assistant Commissioner/Collector 1989 SCMR 316 and Lord Hailsham, 9 Halsbury's Laws of England (2nd ed. 1931), 152-153, Para [212] ref.

(b) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---S.8---Punjab Employees Efficiency, Discipline and Accountability Act (XII of 2006), S. 4---Defamation Ordinance (LVI of 2002), S. 9---Constitution of Pakistan, Art. 13(a)---Protection against double punishment---Double jeopardy---Non-applicability of---Petitioner wrote a letter addressed to the concerned authorities wherein he made certain allegations against the respondent (lady)---On the basis of the said Letter, an inquiry was initiated against the respondent, who was exonerated from the complaint---In the meantime, respondent filed a suit for recovery of damages against the petitioner under the Defamation Ordinance, 2002 (2002 Ordinance) on the grounds that the petitioner defamed and damaged her reputation on the basis of the letter---Said suit was decreed in favour of respondent---

Meanwhile, respondent also filed a complaint against the petitioner under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (PEEDA), which was inquired into and the petitioner was found guilty of misconduct as he had levelled false and fabricated allegations against respondent in the letter, and, major penalty of forfeiture of past service for a period of two years was imposed upon him---During this time, respondent also filed a complaint against the petitioner under the Protection against Harassment of Women at the Workplace Act, 2010 ("2010 Act") on the grounds of sexual harassment before the Ombudsperson alleging therein that the petitioner came to her office unnecessarily on one pretext or the other---Petitioner was found guilty of harassment and major penalty of compulsory retirement from service was imposed upon him---Contention of the petitioner was that the orders under PEEDA, the 2010 Act and the 2002 Ordinance were hit by the principle of double jeopardy---Validity---There were three different decisions under three separate laws against the petitioner---Each of these laws are special laws which operate within their given jurisdiction and can result in penal consequences if the requirements of the law are fulfilled---Hence, a conviction under any of these laws will not prevent or bar a conviction under the other two laws which operate within their own domain for a specific purpose---Respondent initiated a claim of sexual harassment at the workplace against the petitioner based on instances and evidence of harassment, which was considered by the Ombudsperson, who concluded that he caused harassment to respondent---In the suit for defamation, the court determined that the contents of the petitioner's letter fell within the definition of defamation---So the court awarded her damages---Finally, so far as action under PEEDA was concerned, the inquiry was conducted against the petitioner on the basis of the letter, which he had specifically written in his official capacity and the said inquiry discovered that the same was false and incorrect, hence, punishment for his misconduct was awarded in the form of forfeiture of past service for a period of two years---Even though the parties were the same, the cause of action was separate in each case before different forums with distinct penal consequences emanating out of its respective statutory laws---Argument of double jeopardy was misplaced and without any basis---Petition was dismissed and leave was refused.

(c) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---S. 2(h)---Harassment---Scope and meaning---Harassment means gender-based harassment and discrimination, which can be sexual in nature---Any action that causes interference with work performance or creates an intimidating, hostile or offensive work environment falls within the definition of harassment under Section 2(h) of the Protection against Harassment of Women at the Workplace Act, 2010.

Nadia Naz v. The President of Islamic Republic of Pakistan PLD 2023 SC 588 ref.

(d) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---Ss. 2(h) & 8---Constitution of Pakistan, Art. 14---Right to work with respect and dignity---Scope---Protection against Harassment of Women at the Workplace Act,

2010 ("2010 Act"), objective of---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---Dignity is 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.

(e) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---Ss. 8 & 9---Constitution of Pakistan, Art. 199---Ombudsperson and Governor---Final forums on factual side---Interference in orders of Ombudsperson or Governor by the High Court in its constitutional jurisdiction---Scope---Ombudsperson and the Governor both are forums of fact where parties can lead their evidence for a factual determination---Therefore, the Order of the Governor will be the final order on the factual side, which cannot be then challenged before the High Court in constitutional jurisdiction in the form and substance of a second appeal on the facts of the case---High Court cannot interfere in its constitutional jurisdiction on findings of fact recorded by the competent court, tribunal or authority unless the findings of fact are so perverse and not based on the evidence which would result in an error of law and thus, justified interference---Therefore, for all intents and purposes, the factual controversy comes to an end after the Order of the Governor, and if, there is any jurisdictional defect or error and procedural improprieties of the fact-finding forum only then the High Court can interfere.

Uzma Naveed Chaudhary v. Federation of Pakistan PLD 2022 SC 783; Fida Hussain Javed v. Director Food, Punjab 2004 SCMR 62; M. Hammad Hassan v. Mst. Isma Bukhari 2023 SCMR 1434; Qurat-ul-Ain v. Station House Officer 2024 SCMR 486; Commissioner of Inland Revenue v. Sargodha Spinning Mills (Pvt.) Ltd. 2022 SCMR 1082 and Assistant Collector, Central Excise and Sales

Tax Division, Mardan v. Al-Razak Synthetic (Pvt.) Ltd. 1998 SCMR 2514 ref.

Agha Muhammad Ali, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Petitioner.

Respondent No.1: (In person).

Sanaullah Zahid, Additional Advocate General Punjab with Muhammad Shahid Rana, Director (S.W.) Rawalpindi for Respondents Nos. 2-4.

Date of hearing: 24th April, 2024.

JUDGMENT

AYESHA A. MALIK, J.---This Civil Petition impugns Order dated 27.10.2020 (Impugned Order) of the Lahore High Court, Rawalpindi Bench, Rawalpindi (High

Court), which dismissed the writ petition filed by the Petitioner by upholding Order dated 18.11.2019 passed by the Governor Punjab as well as Order dated 04.09.2018 passed by the Ombudsperson (Mohtasib), Punjab (Ombudsperson) appointed under Section 7 of the Protection against Harassment of Women at the Workplace Act, 2010 (2010 Act).

2. The basic facts in this case are that Respondent No.1 is a Senior Special Education Teacher at the Special Education Centre, Taxila, District Rawalpindi, whereas the Petitioner was the District Officer, Social Welfare and Bait-ul-Maal, Chakwal. The Petitioner wrote Letter dated 03.06.2016 addressed to the District Officer (Coordination), Chakwal (Letter) wherein he filed a complaint against Respondent No.1, where he alleged she, being the Headmistress of the Government Institute for Blind, Chakwal, had sexually abused one Khuram Shehzad (blind teacher on daily wages) in school. On the basis of the said Letter, an inquiry was initiated against Respondent No. 1, who was exonerated from this complaint on 21.08.2017. In the meantime, on 24.06.2016, Respondent No. 1 filed a suit for recovery of damages under Section 9 of the Defamation Ordinance, 2002 (2002 Ordinance) on the grounds that the Petitioner defamed and damaged her reputation on the basis of the Letter. The suit was decreed in favour of Respondent No.1 vide judgment dated 10.04.2019, where she was entitled to Rs.1,000,000/- as damages. Meanwhile, Respondent No.1 also filed a complaint against the Petitioner before the Secretary, Social Welfare Department, Punjab on 14.03.2017 under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (PEEDA). On 22.12.2017, the departmental proceedings under PEEDA against the Petitioner found him guilty on account of misconduct as he had levelled false and fabricated allegations against Respondent No. 1 in the Letter, therefore, major penalty of forfeiture of past service for a period of two years was imposed upon him. On 22.03.2017, Respondent No.1 filed a complaint under the 2010 Act on the grounds of sexual harassment before the Ombudsperson alleging therein that the Petitioner came to her office unnecessarily on one pretext or the other, being the focal person for disabled persons. The matter was ultimately decided on 04.09.2018 whereby the Petitioner was found guilty of harassment and major penalty of compulsory retirement from service was imposed upon him. The Petitioner challenged this Order before the Governor Punjab wherein his representation was dismissed vide Order dated 18.11.2019 by upholding the Order of the Ombudsperson.

3. On 19.12.2019, the Petitioner challenged both these Orders (i.e. the Order of the Ombudsperson as well as the Governor) before the High Court in its constitutional jurisdiction raising several grounds essentially claiming that the allegations levelled against him were incorrect and that Respondent No.1 was unable to establish that he had caused any harassment to her. The writ petition was dismissed vide the Impugned Order thereby upholding the Orders of the Ombudsperson and the Governor maintaining his compulsory retirement from service and, at the same time, maintaining the penalty of forfeiture of past service for a period of two years issued on 22.12.2017.

4. The Petitioner's basic grounds before this Court are that this is a classic case of double jeopardy as the Petitioner on the same set of allegations was proceeded departmentally under PEEDA and was awarded a penalty of forfeiture of past

service for a period of two years. While, at the same time, under the 2010 Act, he has been compulsorily retired from service, hence, he claims that these Orders are illegal and without jurisdiction as they violate the principle of double jeopardy under Article 13(a) of the Constitution.¹ Counsel also argued that Respondent No.1 had simultaneously filed a suit for defamation on the same set of facts and that the suit was decreed in her favour on the same cause of action. So, the thrust of his arguments was that the orders under PEEDA, the 2010 Act and the 2002 Ordinance are hit by the principle of double jeopardy. He further argued that no case of harassment was made out and that it was an exaggerated claim by Respondent No. 1, which she was unable to prove through her evidence.

5. We have heard the parties and examined the available record. The issue of double jeopardy has been argued vociferously by the counsel for the Petitioner claiming therein that no person can be convicted for the same offence twice nor be liable to be tried for the same offence on the same set of facts as it falls within the mischief of double jeopardy. This argument requires some attention to clarify the concept of double jeopardy, a term often misunderstood.

6. Protection against double punishment is provided in Article 13(a) of the Constitution which specifically prescribes that no person shall be prosecuted or punished for the same offence more than once. This Court in the Muhammad Ashraf case has extensively elaborated the principle of double jeopardy to be that a person shall not be exposed twice to hazards of punishment and conviction for one and the same offence.² The rule is based on the Latin maxim 'nemo bis punitur pro eodem delicto,' which means nobody is to be punished twice for the same crime.³ The Fifth Amendment to the US Constitution states that 'no person shall be .. subject for the same offense to be twice put in jeopardy of life or limb'. Article 20(2) of the Indian Constitution is also pari materia with Article 13(a) of our Constitution. The protection against double jeopardy is also part of due process of law.⁴ The principle is also recognized in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 4 of Protocol No.7 to the European Convention on Human Rights (ECHR). Even Article 86 of the Geneva Convention (III) on the Prisoners of War, 1949 imposes prohibition against double jeopardy. Hence, this principle is recognized both under the national and international law.

7. The protection given under Article 13 (a) of the Constitution is against prosecution and punishment, which means the trial and its proceedings followed by a conviction. The Muhammad Ashraf case clarified that if the first prosecution results in an acquittal, so far as Article 13(a) of the Constitution is concerned, the second prosecution is not prohibited.⁵ The concept of double jeopardy essentially means that a person cannot be tried multiple times for the same offence on which there is a conviction based on the same set of facts as they should not be put in peril twice.⁶ It is based on the rule of conclusiveness and finality which requires that once a court has taken cognizance of an offence, tried a person and convicted them, then for the same offence that person cannot be tried again.⁷ So, the basic question is that in the case of double jeopardy, the second trial should be on the same set of facts of the first trial which resulted in a conviction for the same offence, which

would require the same evidence before the court. Basically, this means that the case has to be the same as the one that has already resulted in a conviction but if the proceedings are different in substance and law then it will not be a case of double jeopardy.⁸ While relying on Halsbury's Laws of England,⁹ this Court in the Muhammad Ashraf case has ruled as:

[T]he test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient to justify a conviction of the other and not that the facts relied on by the Crown are the same in the two trials.¹⁰

8. Now, we need to apply the above test to this case. The Petitioner was sued under the 2002 Ordinance which primarily covers any wrongful act or false statement, orally or in writing, that may harm or damage the reputation of a person as a defamatory action.¹¹ Once the defamation is proved, Section 9 of the said Ordinance provides a remedy to the victim that may include an apology and/or compensatory damages by the defendant as prescribed in the said provision. In this case, a decree in the suit for defamation was rendered on 10.04.2019 in favour of Respondent No.1 as the harm or damage on account of defamatory action was established. Under Section 8 of the 2010 Act, a complainant can file a complaint before the Ombudsperson, who will have to determine whether harassment at the workplace is made out under the law, and if so then minor or major penalty can be imposed against the accused in terms of Section 4 of the 2010 Act. Harassment is defined under Section 2(h) of the 2010 Act, and it needs to be established through evidence. In this case, the harassment was proved against the Petitioner in terms of the said Act. Lastly, PEEDA prescribes for proceedings against the employees in government and corporation service in relation to their efficiency, discipline and accountability. Section 3 of PEEDA provides grounds for proceedings and the penalty that may be imposed against the employee if they are found guilty of inefficiency, misconduct, corruption, engaged in subversive activities, etc. Major penalty of forfeiture of past service for two years under Section 4 of PEEDA was imposed against the Petitioner on the ground of misconduct by the competent authority.

9. As per the aforementioned orders, there are three different decisions under three separate laws against the Petitioner. Each of these laws are special laws which operate within their given jurisdiction and can result in penal consequences if the requirements of the law are fulfilled. The cause of action accrues to the party only when the ingredients of defamation under Section 3 of the 2002 Ordinance are established. Once these essential components of defamation are proved, through the evidence, then the aggrieved party is entitled to a remedy. In terms of the 2010 Act, harassment means gender-based harassment and discrimination, which can be sexual in nature.¹² 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. Lastly, as far as PEEDA is concerned, it is for misconduct by levelling false and fabricated

allegations against Respondent No. 1, which is a separate and distinct cause of action against the Petitioner. Hence, a conviction under any of these laws will not prevent or bar a conviction under the other two laws which operate within their own domain for a specific purpose.

10. We also find that the comparison of the decree of defamation and orders under the 2010 Act, causing harassment to Respondent No.1, is totally misconstrued. 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.¹³ 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,¹⁴ 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. Hence, the argument that the defamation suit and its decree will oust the jurisdiction of the 2010 Act is misconceived and without basis.

11. This case can be best illustrated as follows: Respondent No.1 initiated a claim of sexual harassment at the workplace by the Petitioner based on instances and evidence of harassment, which was considered by the Ombudsperson, who concluded that he caused harassment to Respondent No.1. In the suit for defamation, the court determined that the contents of the Petitioner's Letter fall within the definition of defamation as prescribed by Section 3 of the 2002 Ordinance as the evidence established defaming of Respondent No.1. So, the court awarded her damages. Finally, so far as action under PEEDA is concerned, the inquiry was conducted on the basis of the Letter, which he had specifically written in his official capacity and the said inquiry discovered that the same was false and incorrect, hence, punishment for his misconduct was awarded in the form of forfeiture of past service for a period of two years. Even though the parties are the same, the cause of action is separate in each case before different forums with distinct penal consequences emanating out of its respective statutory laws. In view of the aforesaid, we find that the argument of double jeopardy is misplaced and without any basis.

12. There is another important issue in the instant case. We note with reference to this case that Respondent No.1 filed her complaint before the Ombudsperson which was then challenged by the Petitioner before the Governor Punjab. Both these forums are forums of fact where parties can lead their evidence for a factual determination. Therefore, the Order of the Governor will be the final order on the factual side, which cannot be then challenged before the High Court in

constitutional jurisdiction in the form and substance of a second appeal on the facts of the case. The High Court cannot interfere in its constitutional jurisdiction on findings of fact recorded by the competent court, tribunal or authority unless the findings of fact are so perverse and not based on the evidence which would result in an error of law and thus, justified interference.¹⁵ Therefore, for all intents and purposes, the factual controversy comes to an end after the Order of the Governor, and if, there is any jurisdictional defect or error and procedural improprieties of the fact-finding forum only then the High Court can interfere. In various matters such as service,¹⁶ family,¹⁷ tax,¹⁸ and customs,¹⁹ this Court has consistently restricted the High Court's powers exercised in the constitutional jurisdiction in terms of determining the factual controversy while simultaneously enhancing the domain of the fact-finding forums.

13. In this case, we have examined the writ petition filed by the Petitioner wherein the grounds raised are factual in nature and similar to the grounds raised before this Court, which are also factual in nature. The question urged by the Petitioner before this Court and High Court is whether a case of sexual harassment was made out, which, in our opinion, is based on appreciation of the evidence. So, the factual findings of both fora below cannot be challenged before the High Court. This Court has also held that the closure of litigation is a fundamental principle for fair trial and due process in terms of Article 10A of the Constitution by creating an effective and efficient legal order, and the courts should not unnecessarily make room for further relitigating issues that may lead to misuse of the law and travesty of justice.²⁰

14. In light of the above, we hold that the findings rendered by the High Court in the Impugned Order do not suffer from any flaw or error, hence, this Civil Petition is dismissed. Leave is refused.

MWA/T-5/SC Petition dismissed.

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