

Form No.HCJD/C-121  
**ORDER SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

Case No. W.P. No.28791 of 2019

**Asif Saleem**  
**VS**  
**Chairman BOG University of Lahore etc.**

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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13.05.2019 Mr. Shahbaz Ali Bhatti, Advocate for the Petitioner.  
Rai Shahid Saleem Khan, Assistant Advocate-General.  
Sadia Malik, Assistant Attorney-General.  
Assisted by M/s. Waqas Ali Mazhar, Rana Shaher Yar, Research Officers/ Civil Judges, Lahore High Court Research Centre (LHCRC).

Through the instant petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”), the Petitioner has challenged the legality of impugned orders dated 14.04.2017, 19.04.2017 and 03.12.2018 passed by the Respondents.

**I. BRIEF FACTS**

2. Brief facts of the case are that the Petitioner was serving as Assistant Professor in the University of Lahore (the “University”)/the Respondent No.2 and

was also a student of Doctorate (Ph.D.) at the Institute of Molecular Biology and Bio Technology in the University. On the complaint of the Respondent No.7 (Mst. Warda Shakeel), an inquiry was initiated and the Petitioner was dismissed from service under the Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012 and was also expelled from the University of Lahore as a student of Doctor of Philosophy in Biotechnology, Reg. No.DBT02131001, Institute of Molecular Biology and Biotechnology.

3. Feeling aggrieved thereby the Petitioner filed W.P. No.31900/2017 which was disposed of vide order dated 14.06.2017 with the direction to the Petitioner to avail alternate remedy. In pursuance of which the Petitioner preferred an Appeal before the Respondent No.5-Ombudsperson who modified the order of the competent authority with certain modifications vide order dated 03.12.2018. Being dissatisfied from the same, the Petitioner filed another W.P. No.6040/19 which was disposed of on 01.02.2019 with the direction to the Petitioner to avail appropriate remedy. In pursuance of which the

Petitioner preferred an Appeal before the Governor, Punjab who disposed of the same vide order dated 20.02.2019 being not maintainable before him. Hence, this petition.

## **II. SUBMISSIONS OF THE PETITIONER**

4. Learned counsel for the Petitioner *inter alia* submitted that the impugned orders are illegal and against the law and facts; that no opportunity of personal hearing has been afforded to the Petitioner, as such he has been condemned unheard; that the Act was not applicable to the case of the Petitioner; that the Petitioner was entangled on the basis of jealousy by the Respondent No.7 and others; that vide the impugned orders dated 14.04.2017 and 19.04.2017 the Petitioner has been subjected to double jeopardy.

## **III. SUBMISSIONS OF THE RESPONDENTS**

5. On the other hand learned Law Officer vehemently opposed the arguments advanced by the learned counsel for the Petitioner and prayed for dismissal of the petition at *limine* stage by stating that after proper inquiry the Petitioner has been found guilty of sexual harassment as such has rightly been awarded major penalty; that the Petitioner is an

Assistant Professor and the victim is his student and if such like acts/conducts are not curbed with iron hands the dignity and prestige of the female students would become toy at the hands of the teachers; that the act of sexual harassment is a great stigma on the relationship of teacher and a student; that the major punishment to the delinquents by the Departments in such like offences would create an atmosphere of safety of respect amongst the female students.

6. I have heard the arguments of both the sides and perused the record.

#### **IV. MOOT POINTS**

7. Keeping in view the prayer of the Petitioner, arguments on his behalf as well as the available record, following moot points are here framed:

- I. Whether the Respondents were justified to impose penalty of removal from service against the Petitioner, under the Act?*
- II. Whether the Respondents were justified to expel the Petitioner from Ph.D. programme of the University?*
- III. Whether this petition can be dismissed in limine?*

## V. NUB OF THE MATTER

8. The Petitioner was serving as Assistant Professor in the Respondent No.2's University and was also a student of Doctorate in Institute of Molecular Biology and Bio Technology in the University of Lahore. A complaint of sexual harassment was lodged against the Petitioner by the Respondent No.7 who is his student alleging therein that *the Petitioner harassed her sexually by way of sending her vulgar text messages on Whatsapp while she was asking about subject cell and tissue culture; he forced her to visit his bachelor accommodation and cook food for him; she also alleged that being a G.R. when she was inquiring from him about the status of class result, he starting conversation relating to sex and showed his intention of having sex with her; that some other girls also faced sexual harassment by the Petitioner.* An inquiry was initiated and the Petitioner was dismissed from service under the Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012 and was also expelled from the University of Lahore as a student of Doctor of Philosophy in Biotechnology, Reg.

No.DBT02131001, Institute of Molecular Biology and Biotechnology. The Petitioner preferred an Appeal before the Respondent No.5-Ombudsperson who modified the order of the competent authority with certain modifications vide order dated 03.12.2018 and converted the penalty from “dismissal from service” to “removal from service”.

**Moot Point-I**

**Whether the respondents were justified to impose penalty of removal from service against the petitioner, under the act?**

9. The work environment for women, in a male-dominated society like Pakistan, is often hostile and antagonistic hindering their contribution to their country’s development as well as their right to employment. Various studies have found that social constraints and an aggressive work environment discourage women from seeking employment. Therefore, the Protection against Harassment of Women at Workplace Act, 2010 (as amended by the Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012) (the “Act”) was passed in

March 2010 to make provisions for the protection against harassment of women at the workplace. The objective of this act is to create a safe working environment for women, which is free from harassment, abuse and intimidation to facilitate their right to work with dignity. It will also enable higher productivity and a better quality of life at work. Under section 2(h) the term 'harassment' is defined 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, 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 such a request or is made a condition for employment”.

10. It is also our constitutional duty to protect women to ensure their full participation in all spheres of national life. The relevant provisions of the Constitution, 1973 are reproduced hereunder for ready reference: -

*“25. Equality of citizens.-- (1) All citizens are equal before law and are entitled to equal protection of law.*

*(2) There shall be no discrimination on the basis of sex.*

*(3) Nothing in this article to prevent the state from making any special provisions for protection of women and children.*

***34. Full participation of women in national life.—***

*Steps shall be taken to ensure full participation of women in all sphere of national life.”*

11. The above referred Articles of the Constitution alongwith Article 14 provides every citizen male or female the right of self-respect, dignity and prestige and the Constitution has also guaranteed that steps shall be taken to ensure full participation of women in all spheres of national life. Under the Act, the protection to the women from being exploited and harassed at work place has been provided. The preamble of the Act clearly states that it has been made for the protection against harassment of women at the workplace. It also reflects that the Constitution recognizes the fundamental right of citizens to dignity of person. It is the right of every woman in Pakistan to be recognized and has equal protection of law. This

Court in case titled **Subay Khan v. Secretary, Labour Government of the Punjab** (PLD 2019 Lahore 253)

has held as under:

*“24. A Right is a power, privilege, faculty, or demand, inherent in one person and incident upon another. Rights can be moral or legal. Along with legal rights there exist moral rights as well, which in general have subjective support while legal rights have the objective support of the State. Legal right is an interest, which is recognized and protected by the rule of legal justice. Every right has interests but all interests cannot be rights. Statues made by the State doesn't really give rights but in contrary deprives citizens from certain rights because all citizens are born with rights, Governments through such statues control the behaviors of individuals by drawing perimeters around those rights citizens possess by birth. The law may provide mechanism for enforcement of right but the existence of the right does not depend upon the creation of such mechanism. The right exists prior to and independent of the mechanism of enforcement. It is quite obvious that unless a right is recognized by the State it would not have any validity or weight to be imposed upon others. Hence, this right has just been*

*recognized by the Government and will be protected by the Government and the Judiciary.”*

12. In view of the above, the protection of women from being harassed at the workplace is already enshrined under the Constitution and was given under the Act and protected by the Executive and Judiciary. Moreover, this Act is not confined only to the relationship of an employer and employee; but it extends to all acts of sexual harassment committed by employer or employee with any women (at the workplace) by misusing/exploiting his/her official position/capacity. As in the instant case, the Petitioner/teacher/employee used his official position to sexually exploit his female student. The intention of the legislature for enacting the Act to protect all employees from being harassed or exploited during employment which can be at the workplace or any environment as specified in their terms and conditions of the employment. Section 2 (f) clearly states that employee means a regular or contractual employee whether employed on daily, weekly, monthly or hourly basis, and includes an intern or an

apprentice. The employer includes all persons who employees workers under contract or any manner. The workplace defines under Section 2 (n) which clearly states that any place of work which includes any situation that is linked to official work or official activity outside the office. This means that any worker whoever is employed in any manner or capacity with the employer is protected from being harassed. The definition of harassment is exhaustive which has already been discussed above which also linked within the condition of employment. Therefore, in the case in hand the Petitioner was the employee as well as the student of the University and in his employment as teacher he exploited and harassed the Respondent No.7 by sending vulgar messages on *Whatsapp* for illicit purpose.

## **VI. JURISPRUDENCE ON SEXUAL HARASSMENT ACROSS THE WORLD**

13. It is a matter of fact that sexual harassment, and harassment on non-gender discriminatory grounds, pollute the working environment and can have a devastating effect on the health, confidence,

morale and performance of those affected by it. Commonly, the anxiety and stress produced by sexual harassment and harassment may lead to those subjected to it taking time off work due to sickness and stress, being less efficient at work or leaving their job to seek work elsewhere. Under the jurisprudence developed in this matter, the employees often suffer the adverse consequences of the harassment itself and, in addition, the short and long term damage to their employment prospects if they are forced to forego promotion or to change jobs. Henceforth, the sexual harassment and harassment may also have a damaging impact on employees not themselves the object of unwanted behaviour but who is witness to it or has knowledge of the unwanted behaviour. Therefore, for deciding the instant petition, it would be advantageous to make a survey of case law of different jurisdictions dealing with the issue of harassment of women at workplace.

14. Sexual harassment of working-women was first conceived as a '**special type of wrong**' entitled to legal remedy in the United States, thirty years ago by Catharine MacKinnon in an article, Sexual

Harassment of Working Women (New Haven: Yale University Press, 1979). She made a perceptive argument that sexual harassment constitutes sex discrimination under Title VII of the 1964 Civil Rights Act. Congress had enacted Section 703, Title VI of the Civil Rights Act, 1964, to address the issue of sexual harassment at the workplace. This provided the basis for civil action, and was rapidly assimilated into the wider discourse of discrimination, in the US (*Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57). The US Supreme Court in *Harris v. Forklift Systems, Inc.* (1993), 510 U.S. 17, held that:

*"When the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, Title VII is violated."*

15. The US Supreme Court in *Joseph Oncale v. Sundowner Offshore Services, Inc.* 523 U.S. 75 (1998), (judgment delivered by Justice Scalia) even held that behavior deemed offensive could cover same sex intimidation, ridicules, or other abusive conduct. While on the subject, it would be interesting to note

that the general perspective, which the courts often adopt, in the United States is not the standard of a "reasonable man" but the standard of a "reasonable woman" (Ref. Ellison v. Brady, (1991) 9th Circuit, 924 F.2d, 872). The relevant paras of the judgment are reproduced hereunder for ease of reference: -

*"we believe that in evaluating the severity and pervasiveness of sexual harassment, we should focus on the perspective of the victim. Courts "should consider the victim's perspective and not stereotyped notions of acceptable behavior". Conduct that many men consider unobjectionable may offend many women. Men tend to view some forms of sexual harassment as "harmless social interactions to which only overly-sensitive women would object"; the characteristically male view depicts sexual harassment as comparatively harmless amusement.*

*We realise that there is a broad range of viewpoints among women as a group but we believe that many women share common concerns which men do not necessarily share. For example, because women are disproportionately victims of rape and sexual assault, women have a stronger incentive to be concerned with sexual behavior. Women who are victims of mild forms of sexual harassment may understandably worry whether a harasser's conduct is merely a prelude to violent sexual assault. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the*

*social setting or the underlying threat of violence that a woman may perceive. One writer explains:*

*"Their greater physical and social vulnerability to sexual coercion can make women wary of sexual encounters. Moreover, American women have been raised in a society where rape and sex-related violence have reached unprecedented levels, and a vast pornography industry creates continuous images of sexual coercion, objectification and violence. Because of the inequality and coercion with which it is so frequently associated in the minds of women, the appearance of sexuality in an unexpected context or a setting of ostensible equality can be an anguishing experience."*

*In order to shield employers from having to accommodate the idiosyncratic concerns of the rare hyper-sensitive employee, we hold that a female plaintiff states a prima facie case of hostile environment sexual harassment when she alleges conduct which a reasonable women would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. Of course, where male employees allege that coworkers engage in conduct which creates a hostile environment, the appropriate victim's perspective would be that of a reasonable man. We note that the reasonable victim standard we adopt today classifies conduct as unlawful sexual harassment even when harassers do not realise that their conduct creates a hostile working environment. To avoid liability under Title VII, employers*

*may have to educate and sensitise their workforce to eliminate conduct which a reasonable victim would consider unlawful sexual harassment. If sexual comments or sexual advances are in fact welcomed by their sapient, they, of course, do not constitute sexual harassment. Title VII's prohibition of sex discrimination in employment does not require a totally desexualized work place.*

*We cannot say a matter of law that Ellison's reaction was idiosyncratic or hypersensitive.*

*We believe that a reasonable woman could have had a similar action. A reasonable woman could consider Gray's conduct, as alleged by Ellison, sufficiently severe and pervasive to alter a condition of employment and create an abusive working environment."*

**[Emphasis Supplied]**

16. Lord Denning while deciding an employment appeal in case "Western Excavation (EEC) Ltd v Darby" [[1978] IRLR 27] remarked "the persistent and unwanted amorous advances by an employer to a female member of staff would amount to a fundamental breach of the implied term of mutual trust and confidence."

17. Several other countries have drawn up laws against sexual harassment, oftentimes based on substantially different models of unwelcome and

objectionable sexual behavior, the United Kingdom enacted the Sex Discrimination Act, 1975, and also framed the Sexual Discrimination and Employment Protection (Remedies) Regulations, 1993).

18. In 2016, the Experts at the **International Labour Conference**, through their extensive and wide range discussions, observed that the violence and harassment in the **world of work** is unacceptable and, indeed, incompatible with decent work and that it must be addressed. They, therefore, concluded as follow: -

*“the violence and harassment is a human right issue and affects workplace relations, worker engagement, health, productivity, quality of public and private services, and enterprise reputation. It affects labour market participation and, in particular, may prevent women from entering the labour market, especially in male-dominated sector and jobs, and remain therein. It may undermine democratic decision-making and the rule of law”*

19. The Supreme Court of India in *Vishaka's case* (**AIR 1997 SC 3011**) laid down certain guidelines and norms for due observation at all workplace or other institutions and until a legislation

is enacted for the purpose. The guidelines on norms prescribed in the said judgment are as under:

*“Having regard to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993. Taking Note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time. It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women: -*

**1. Duty of the Employer or other responsible persons in work places and other institutions**

*It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.*

**2. Definition**

*For this purpose, sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as: -*

- (a) *physical contact and advances;*
- (b) *a demand or request for sexual favours;*
- (c) *sexually coloured remarks;*
- (d) *showing pornography;*
- (e) *any other unwelcome physical, verbal or non-verbal conduct of sexual nature.*

*Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.*

### **3. Preventive Steps:**

*All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps: -*

- (a) *Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.*
- (b) *The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide*

*for appropriate penalties in such rules against the offender.*

- (c) *As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.*
- (d) *Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.*

#### **4. Criminal Proceedings**

*Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.*

*In particular, it should ensure that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.*

#### **5. Disciplinary Action**

*Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.*

#### **6. Complaint Mechanism**

*Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organisation for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.*

## **7. Complaints Committee**

*The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.*

*The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.*

*The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.*

*The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.*

## **8. Workers' Initiative**

*Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.*

### 9. *Awareness*

*Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.*

### 10. *Third Party Harassment*

*Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.”*

20. The Supreme Court of India in **Rupan Deol**

**Bajaj’s case ((1995)6 SCC 194)** held as follow: -

*“More and more girl students, women etc. go to educational institutions, work places etc. and their protection is of extreme importance to a civilised and cultured society. The experiences of women and girl children in over-crowded buses, metros, trains etc. are horrendous and a painful ordeal.”*

21. The Supreme Court of India in S.Samuthiram’s case (2013 AIR (SC) 14) observed

that the Provisions of the Protection of Woman against Sexual Harassment at Workplace Bill, 2010 (under consideration of Parliament), which is intended to protect female workers in most workplaces are not sufficient to curb eve-teasing and to protect the female

at work place; therefore, the Supreme Court issued the following directions to Government, in the public interest: -

- “(1) All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship etc. so as to monitor and supervise incidents of eve-teasing.*
- (2) There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.*
- (3) Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.*
- (4) Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.*
- (5) State Governments and Union Territories are directed to establish Women' Helpline in*

*various cities and towns, so as to curb eve-teasing within three months.*

- (6) *Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parks, beaches, public service vehicles, places of worship etc.*
- (7) *Responsibility is also on the passers-by and on noticing such incident; they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.*
- (8) *The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.”*

22. A Division Bench of the Delhi High Court in *Manisha Sharma's case* (2014(12) **R.C.R.(Criminal) 1091**) while dealing with the question of harassment of women at workplace held as follow: -

*“17....The victims of sexual harassment faces **psychological and health effects like stress, depression, anxiety, shame, guilt and so on.** Sexual harassment of a woman in workplace is of serious concern to humanity on the whole.....”*

23. The Gujrat High Court in Shardaben Murlibhai Gurjar's case (**2015(2) GLR 1620**) while relying upon the Vishaka's case supra held as follow:-

*“7.....Sexual harassment is a form of discrimination against women and violates the **Constitutional right to equality**”.*

### **Determination by the Court**

24. Now coming to the merits of the instant petition. The careful scanning of the record, it reveals that the Petitioner alleges in paragraph 5 of the petition that some staff members/colleagues were feeling jealousy from the fame of the Petitioner in the University and they planted a plan in league with the Respondent No.7 to defame/trap him and consequently filed concocted complaint against him. It is a matter of common sense and even a man of prudent mind cannot think that just to defame a person/colleague student, a lady can ruin her modesty/dignity/respect herself by making false complaint of sexual harassment. The Act has been promulgated for the safety of persons who feel unsecure at the workplace and to teach a lesson to the transgressors for their act of sexual harassment, abuse

or assault. Such like acts should be condemned and discouraged, especially in the educational institutions. Furthermore, admittedly the Petitioner was awarded major penalty after an inquiry into the matter by the competent authority. By taking a lenient view the Respondent No.5 has already modified his major punishment from “dismissal from service” to “removal from service”. The learned counsel for the Petitioner has failed to point out any illegality or legal perversity in the impugned orders 14.04.2017 (order of dismissal from service) & 03.12.2018 (order of Ombudsperson altering punishment of the petitioner from ‘dismissal’ to ‘removal’) which otherwise have been passed aptly.

### **Moot Point-II**

***Whether the Respondents were justified to expel the Petitioner from Ph.D. programme of the University?***

25. The Petitioner also challenged the order dated 19.04.2017, whereby he was expelled from University of Lahore as a student of Doctor of Philosophy in Bio Technology. Earlier, the

petitioner's matter, in this regard, was referred to the Higher Education Commission, vide order dated 14.06.2017 passed by this Court in Writ Petition No.31900/2017 with the direction to the Commission to treat the matter as representation by the petitioner and to decide the same within seven days. The Commission/respondent No.3 submitted its compliance report on 30.08.2018. The relevant paras of the report and decision of HEC/respondent No.3 are reproduced hereunder for ready reference: -

*“The Registrar further explained that as per inquiry, after examination of record it revealed that accused Asif Saleem has exhibited morally degraded behavior and has betrayed the confidence of the students. A perusal of Whatsapp chat shows that conversation replete with double entendre (expression that can be understood in two different ways with one way usually referring it to sex). The chat clearly exposes depraved moral character of the accused. The petitioner sounds more like a sexual maniac or to say the least a mentally ill person. He further stated that Asif Saleem Ex-Assistant Professor IMBB has indulged himself in act of moral turpitude and is unfit to be faculty member and student of this University. Keeping in view, the welfare and well-being of students of the University, he was not only dismissed as a faculty member, but also expelled from the University as a Ph.D student and he was barred from entering any campus of University of Lahore...*

...  
...  
...

**Decision:**

*The HEC above Committee after hectic deliberation has recommended the University of Lahore decision particularly with w.r.t discontinuation of prosecution of his Ph.D studies as well as policy guidelines prepared by the HEC regarding the sexual harassment in institutions of higher learning and the relevant class as reproduced above does not allow a student to continue his studies in the same institution where he has been found guilty of sexual harassment.”*

26. In the wake of afore-mentioned circumstances as well as detailed inquiry report & decision of HEC, the petitioner has been found guilty of committing sexual harassment at the workplace. It would not be out of place to mention here that the persistent and unwanted amorous advanced by the petitioner to a female student would amount to a fundamental breach of the implied term of mutual trust and confidence. No doubt, more and more girl students, women etc. go to educational institutions, work places etc., their protection is of extreme importance to a civilised and cultured society. Moreover, **The International Labour Organization Declaration of Philadelphia (1944)**, states that *“all*

*human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.*” As earlier discussed, it is also our constitutional duty to protect women to ensure their full participation in all spheres of national life, under Article 25 read with 34 of the Constitution.

27. Thus, I am of the view that if the Petitioner is allowed to continue his Ph.D. program in the said University, he will remain a constant threat to the victim/Respondent No.7 as well as other female students. Therefore, in order to create a safe and healthy educational environment for all the female students, the presence of the petitioner in the said University is unwarranted and unjustified. Moreover, the learned counsel for the petitioner failed to point out any infirmity, perversity and illegality in the inquiry conducted by the University as well as in the decision of the HEC.

### **Moot Point-III**

**Whether this petition can be dismissed in limine?**

## VII. DOCTRINE OF LIMINE CONTROL

28. It is a general practice of Courts that in such like petitions, the Courts, instead of dismissing the petition at limine stage, issue notices to the respondents who not only face inconvenience but also suffer monetary loss. Thus, for early and expeditious disposal of such like petitions and other cases pending in the Courts all over the country and in order to strengthen the perception of general public about the rule of law; there is urgent need to adopt "**Limine Control Doctrine.**" According to *Cassell's* Latin Dictionary, the word "Limine" comes from the latin noun "Limen", meaning "the threshold". Hence, the phrase "In Limine" means "at the threshold". In Black's Law Dictionary (5<sup>th</sup> ed. 1979) the phrase is defined as "on or at the threshold; at the very beginning; preliminary". In *The Bank Of Nova Scotia V. Edward M. Del Grande* the court of appeal for ontariogrango j.A. (in chambers) defined motion in limine as:-

*"In limine is not an expression in common current use. It means simply preliminary."*

29. In **Billy Blanks ET AL. Vs. Seyfarth Shaw LLP et al.** reported at **171 Cal.App.4th 336 (2009)** **89 Cal.Rptr.3d 710** it was observed as:

*“In limine motions are designed to facilitate the management of a case, generally by deciding difficult evidentiary issues in advance of trial. The usual purpose of motions in limine is to preclude the presentation of evidence deemed inadmissible and prejudicial by the moving party. A typical order in limine excludes the challenged evidence and directs counsel, parties, and witnesses not to refer to the excluded matters during trial. The advantage of such motions is to avoid the obviously futile attempt to unring the bell in the event a motion to strike is granted in the proceedings before the jury...”*

30. In **Hawthorne Partners, an Illinois General Partnership Vs. AT & T Technologies, Inc., a New York Corporation, and ENSR Corporation, a Delaware Corporation** reported at **831 F.Supp. 1398 (1993)** defined Motions In Limine as:

*“This court has the power to exclude evidence in limine only when evidence is clearly inadmissible on all potential grounds. Federal district courts have authority to make in limine rulings pursuant to their authority to manage trials. Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be*

*resolved in proper context. Denial of a motion in limine does not necessarily mean that all evidence contemplated by the motion will be admitted at trial. Denial merely means that without the context of trial, the court is unable to determine whether the evidence in question should be excluded.”*

31. In Muhammad Mustafa’s case (PLD 1992 SC 62), the Hon’ble Supreme Court observed as:

*“At a limine hearing the High Court is not only competent but also bound to make preliminary enquiry for reaching a preliminary satisfaction about the factual basis of a writ petition. Ignoring this part in the writ petitions sometimes leads to unnecessary admission of writ petitions which ultimately, after considerable time and expense, are dismissed.”*

32. In **Malik Gul Hassan’s case (1995 CLC 1662)**, the Hon’ble Court observed as:

*“Generally when the High Court does not find it appropriate to admit for regular hearing a petition and before issuing a notice to the respondent-party, dismisses the petition after summary hearing it is said to be dismissed in limine.”*

33. In **National Judicial Policy 2009** it is candidly stated as under:

*“Writ petitions under Article 199 of the Constitution should be fixed for 'Katchi Peshi' on the next day of institution and be disposed of as quickly as possible.”*

34. The concept of limine control is not a new one; in number of constitutional petitions filed under Article 199 of the Constitution, the Hon'ble Superior Courts dismissed the petitions in limine. Following are certain instances:-

- i. *The Hon'ble Supreme Court of Pakistan in judgments reported at 2016 SCMR 842, 2011 SCMR 1813 and PLD 2010 SC 969 has held that in the wake of availability of an alternate efficacious remedy, jurisdiction of this Court under Article 199 of the Constitution cannot be invoked. The constitutional petition was dismissed in limine. (2017 P L C (C.S.) 304);*
- ii. *Inordinate delay in invoking Constitutional jurisdiction of High Court. Writ petition was dismissed in limine. (1988 S C M R 1680);*
- iii. *Petitioner had failed to show himself to be an aggrieved person to agitate any bona fide grievance as pro bono public. High Court dismissed constitutional petition in limine. (2014 C L C 1348);*
- iv. *Where there is no mis-reading or non-reading of material evidence in the concurrent judgments and decrees of both the courts below. The writ petition was dismissed in limine. (2011 MLD 373);*
- v. *Impugned order was interim in nature and did not reflect characteristic of final adjudication of the dispute. Constitutional petition was dismissed in limine. (2010 M L D 692);*

- vi. *In PLD 2007 SC 298, 1968 SCMR 1136 and PLD 1962 SC 108 it is held that contractual rights and obligations have to be enforced through Courts of ordinary jurisdiction. The High Court cannot interfere in its constitutional jurisdiction. The petition was dismissed in limine. (2010 MLD 315);*
- vii. *Order passed by the Trial Court was interlocutory in nature. Impugned order of Trial Court could be challenged in appeal on final disposal of ejectment petition. Constitutional petition was dismissed in limine. (2010 Y L R 1143);*
- viii. *Remedy of appeal being available, constitutional petition could not be allowed as remedy. Constitutional petition was not a substitute of appeal. Constitutional petition being without merit was dismissed in limine. (2010 Y L R 2691);*
- ix. *High Court in exercise of its jurisdiction under Art.199 of the Constitution can neither enter into factual controversies nor decide disputed questions of fact. Reliance is placed on 1986 CLC 1123, 1994 SCMR 572 and PLD 2001 SC 415. Writ petition was dismissed in limine. (1987 S C M R 1910 & 2008 C L C 593);*
- x. *Mere oral assertions cannot be made basis for interference in writ jurisdiction. Writ petition was dismissed in limine. (PLD 2008 Lahore 364);*
- xi. *Disputed factual controversy requiring determination through detailed inquiry involving recording of evidence, cannot be resolved in exercise of Constitutional*

- jurisdiction. Reliance is placed on **PLD 1964 SC 636 & 1993 SCMR 618**. Writ petition was dismissed in limine. (2007 P Cr. L J 985);*
- xii. *Finding of facts recorded by two Courts below cannot be disturbed in constitutional jurisdiction. Writ petition was dismissed in limine. (2007 M L D 1096);*
- xiii. *Where power to frame Regulations is given to corporation established under a statute, then such Regulations are not to be treated as Statutory Rules, the breach whereof can be enforced by filing a suit and not by constitutional petition. Writ petition was dismissed in limine. (2007 P L C (C.S.) 138);*
- xiv. *Service Tribunal had exclusive jurisdiction in the matter to look into and decide the question relating to terms and conditions of service. Constitutional petition was dismissed in limine. (2017 P L C (C.S.) 304 & 2017 P L C (C.S.) Note 24);*
- xv. *Concurrent findings of law and fact based upon due appraisal of evidence. Constitutional petition was dismissed in limine. (2017 Y L R 1684);*
- xvi. *Fixation of interim maintenance allowance was neither found excessive nor arbitrary. Reliance is placed on **PLD 1971 SC 242 & 1996 MLD 1057**. Constitutional petition was dismissed in limine. (2004 M L D 1834)*
35. In appellate domain the Honorable Superior Courts have also applied doctrine of 'Limine control'

and have dismissed appeals in limine. Following are certain instances:-

- i. *Regular First Appeal could be dismissed in limine without summoning the record. (2008 SCMR 635);*
- ii. *Order XLI, rule 11 of the Civil Procedure Code, 1908 empowers the Appellate Court to dismiss the appeal without sending notice to the lower Court for transmission of record and without notice to the respondent. (2006 SCMR 895);*
- iii. *Where facts narrated in impugned judgment were not disputed and appeal could be decided on basis of available record, then summoning of record from Trial Court would not be necessary.(PLD 2004 SC 10);*
- iv. *Court may dismiss appeal in limine where the same on the face of it is barred by time, barred by any law and disputed questions of law and facts are not involved. (2003 SCMR 1790);*
- v. *It is not an inflexible rule of practice that the first appeal from an order should be invariably admitted which in no case can be dismissed in limine. Depending upon the facts and circumstances of each case and the statute under which an appeal is filed it is difficult to lay down an absolute rule of practice for all cases.(PLD 2002 SC 720);*
- vi. *Time barred appeal was dismissed in limine on ground of limitation. The order was upheld by Honorable Supreme Court. (2001 SCMR 2016);*
- vii. *Court can dismiss appeal in limine where case is of a simple nature and no question of law or fact is involved for determination. (1998 S C M R 1970)*

36. Similarly, it is advisable that due to huge pendency of false, frivolous and malicious claims and to curtail undue harassment of defendants and to generate public confidence in the judicial system, the trial Courts/lower appellate Courts should judiciously and equitably apply doctrine of limine control through effective use of provisions of Civil Procedure Code, 1908 i.e. Order 7 Rule 11, Order 7 Rule 10, Order 15 Rule 1 to 4, Order 41 Rule 11 and Section 56 of Specific Relief Act, 1877. Under the wisdom that the court could always, nip a frivolous suit in the bud, in order to retain its docket and time for more serious claims. Such exercise of discretion is grounded on good public policy and case management plan.

### **VIII. CONCLUSION**

37. In view of the above facts and circumstance and by applying the doctrine of **'Limine Control'** this petition, being devoid of merits, is dismissed *in limine*.

38. Before parting with the judgment I wish to acknowledge with gratitude the assistance rendered

by M/s. Waqas Ali Mazhar and Rana Shaher Yar,  
Civil Judges/ Research Officers of this Court.

**(JAWAD HASSAN)**  
**JUDGE**

*Approved for reporting*

JUDGE

\*M.NAVEED\*