

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-4245 of 2023

Date	Order with signature of Judge
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FRESH CASE.

1. For orders on Misc. No.19548/2023.
2. For orders on Office Objection No.1 & 20.
3. For orders on Misc. No.19549/2023.
4. For orders on Misc. No.19550/2023.
5. For hearing of main case.

05.09.2023.

Mr. Nabi Bux Leghari, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order dated 28.04.2023 made by the learned Provincial Ombudsman Sindh, under Section 6 of the Protection against Harassment of Women at the Workplace Act, 2010 (the “**Act**”), dismissing the Appeal filed by the Petitioner against the Order dated 21.09.2022 made by the Respondent No.3 whereby the Petitioner was suspended from Dow University of Health Sciences, Karachi for a period of two years as well as the subsequent email dated 06.10.2022 emanating from that quarter informing him that his Mercy Appeal had been regretted.

Having examined the matter, it appears that the Petitioner did not assail his suspension before the Ombudsman directly, but opted to Appeal within the hierarchy of the University, albeit without raising any challenge on merits. Thereafter, he approached the Ombudsman following the lapse of the statutory time period prescribed for filing of an Appeal under the Act. This aspect is addressed in Paragraphs 12 and 13 of the Order of the learned Ombudsman, which read as follows:-

“12. Moreover, instead of challenging the allegations leveled by the complainant and questioning the proceedings conducted, and recommendations made by the inquiry committee, appellant filed mercy appeal before the competent authority against the impugned order dated 21.09.2022 simply asking for the said authority to show grace, forgive him and allow him to appear in the examinations. Furthermore, appellant had neither agitated the impugned order on merits nor alleged any illegality committed during the inquiry proceedings or requested to recall or modify the impugned order, therefore, it is safe to conclude that he had accepted the findings of the impugned order and was keen only to seek permission to appear in his examinations. For the appropriate conclusion, the averments of mercy appeal are reproduced as follows :-

“To
The Vice Chancellor,
Dow University of Health Sciences

Subject: **Mercy Appeal**

Respected Sir,

I, Abdul Aziz s/o Noor Azam, Roll No. 1701-194. I have received the letter No. DUHS/VC/2022/09-05 of suspension on 21.09.2022. On the reason above mentioned, I wanted to request you to kindly allow me to appear for the up[coming examinations of my final year, I am ready to give undertaking that I will not come to campus except exam’s days and will leave the campus immediately after the examination ends.

Karachi dated 20.09.2022

Regards,

Abdul Aziz
Cell# 0348-
4674750”

The said mercy appeal was rightly dismissed by the competent authority as appellant has failed to mention the grounds if any of the competent authority to consider and forgive him. Even otherwise, there is no provision regarding mercy appeal provided under the Act, 2010, and the same in the instant case can be tantamount as admitting to the allegations leveled by the complainant and recommendations made by the inquiry committee.

13. Admittedly, appellant has preferred instant appeal to this office on 04.11.2022, but he has failed to furnish any plausible explanation for the delay in preferring instant appeal. Considering the facts and circumstances referred supra, I am of the humble view that the impugned order dated 06.10.2022 passed on the mercy appeal by the competent authority is hereby maintained. Furthermore, instant appeal against impugned order dated 21.09.2022 passed by the competent authority is barred by time under section 6 (1) of the Act, 2010, therefore, it deserves no merits for consideration. Consequently, instant appeal stands dismissed being non-maintainable under the law.”

As is apparent, the bare Mercy Appeal was found by the learned Ombudsman to present no real basis for any subsequent Appeal under Section 6 of the Act, whereas the time period in respect thereof had since lapsed when reckoned with reference to the underlying order of suspension, thus the Appeal was dismissed as non-maintainable.

Having considered the matter, we see no perversity or illegality in the finding of the learned Ombudsman. Moreover, a perusal of the Memo of Appeal submitted by the Petitioner reflects that no cogent grounds were even otherwise raised before that forum so as to provide any cause for interference. As such, the Petition is found to be devoid of force. Hence, while granting the application for urgency, we hereby dismiss the Petition *in limine*, along with the other miscellaneous applications.

JUDGE

JUDGE

MUBASHIR