

Federal Constitutional Court: Pre-2022 Workplace Harassment Act Did Not Cover Every Hostile-Workplace Complaint

The Federal Constitutional Court held that the definition applicable to a 2012-2013 dispute required a sexual or gender-based element and that the High Court could not substitute its factual view in certiorari without a recognized jurisdictional defect.

Federal Constitutional Court constitutional and workplace-law analysis
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Case: CPLA Nos. 1011 and 1113 of 2025

Court and date: Federal Constitutional Court of Pakistan | 16 September 2026

Bench: Chief Justice Amin-ud-Din Khan, Justice Ali Baqar Najafi and Justice Syed Arshad Hussain Shah

Result: Appeals allowed; Islamabad High Court judgment set aside

The ruling in one sentence

The Federal Constitutional Court held that, under the workplace-harassment definition applicable to allegations arising in 2012 and 2013, objectionable or hostile conduct was not actionable before the Ombudsperson unless it carried the required sexual or gender-based character, and the Islamabad High Court could not replace the competent fact-finder's view in certiorari without a recognized jurisdictional error.

The reported judgment is *Usman Shahid v Nadia Sarwar and Aqeel Abbas v Nadia Sarwar and others*, CPLA Nos. 1011 and 1113 of 2025. Justice Ali Baqar Najafi authored the judgment for a bench comprising Chief Justice Amin-ud-Din Khan, Justice Ali Baqar Najafi and Justice Syed Arshad Hussain Shah. The judgment was announced on 16 September 2026.

The complaints at National Bank of Pakistan

Nadia Sarwar had worked at National Bank of Pakistan since 2008. She complained that the petitioners had created an intimidating and hostile work environment, treated her leave and performance matters unfairly, made objectionable remarks and used abusive or harassing language.

She first approached bank officials in 2012 and 2013. After receiving no effective relief, she filed a complaint before the Federal Ombudsman under the Protection against Harassment of Women at the Workplace Act, 2010.

The Ombudsman accepted the complaint and imposed a major penalty. On representations by the petitioners, the President of Pakistan set aside the major penalty and directed NBP to impose censure instead.

The Islamabad High Court later set aside the President's order and restored the Ombudsman's decision. The two employees then approached the Federal Constitutional Court.

Internal proceedings did not necessarily bar the Ombudsman

The FCC reviewed the statutory structure of the 2010 Act, including the inquiry committee, competent authority, appeals to the Ombudsperson and representations to the President or Governor.

It referred to *Qazi Zaheer Ahmad v Federal Ombudsman* (2021 SCMR 839), which recognized that a

complainant dissatisfied with the action or inaction of the inquiry committee or competent authority may approach the Ombudsperson. An ineffective internal process therefore does not automatically defeat the statutory complaint.

The decisive issue was not merely whether the complainant had first approached NBP. It was whether the alleged conduct fell within the actionable statutory definition and whether the High Court had stayed within the limited scope of certiorari.

Not every workplace wrong was actionable under the applicable definition

The FCC distinguished generic harassment from actionable harassment under the statutory text applicable to the dispute. It accepted that abusive, unfair, intimidating or professionally damaging conduct may amount to misconduct and may justify departmental disciplinary action.

But it held that such conduct did not automatically fall within the Ombudsperson's special jurisdiction. The Court read section 2(h), as applicable to the 2012-2013 events, as requiring conduct sexual in origin or possessing the necessary gender-based sexual character.

The judgment stated the distinction directly: every sexual harassment is harassment, but every form of harassment is not sexual harassment. A special statutory forum cannot assume authority over all workplace misconduct merely because the conduct is unpleasant, hostile or injurious.

The Court treated allegations concerning leave, confirmation, promotion, performance reports and administrative unfairness as matters that could attract ordinary departmental discipline, but not necessarily the special jurisdiction created by the 2010 Act.

The FCC declined the broader reading in earlier cases

The judgment discussed *Nadia Naz v President of Pakistan* (PLD 2021 SC 784), *Raja Tanveer Safdar v Tehmina Yasmeen* (PLD 2024 SC 795) and *Muhammad Din v Province of Punjab* (PLD 2025 SC 354).

Raja Tanveer Safdar and Muhammad Din had adopted a broader approach under which gender-based harassment, discrimination and conduct creating an intimidating or hostile workplace could be actionable even without a narrowly sexual act.

The FCC respectfully declined to follow the observation that the sexual component could be disregarded. It reasoned that treating every form of harassment as equivalent to the special statutory definition would read words into the provision and expand the Ombudsperson's jurisdiction beyond the text applicable to the case.

This part of the judgment is legally significant because the Court did not merely apply settled precedent; it expressly identified and rejected a broader interpretive approach.

The important 2022 amendment

The decision concerns allegations from 2012 and 2013 and analyzes the statutory definition governing that dispute. Parliament amended section 2 in 2022 and expanded the definition to include discrimination on the basis of gender, which may or may not be sexual in nature.

The judgment does not analyze the scope or prospective application of that expanded wording. It should therefore not be presented as a complete statement that every current complaint under the amended law must involve a sexual act.

For later disputes, the date of the alleged conduct and the exact statutory text then in force are essential. The pre-amendment interpretation and the current amended definition must not be collapsed into one rule.

Presidential representation and limited certiorari

Section 9 permits a person aggrieved by the Ombudsperson's decision to make a representation to the President or Governor. The FCC held that the resulting quasi-judicial order remains open to limited judicial review, but it is not to be displaced as a routine matter.

The High Court's certiorari jurisdiction is supervisory. Intervention may be justified where a tribunal acts without lawful authority, exceeds or abuses jurisdiction, violates natural justice, proceeds without evidence, misreads or ignores material evidence, misapplies the law or acts arbitrarily.

The High Court is not an ordinary appellate forum for substituting its own factual conclusion merely because another view is possible. The FCC found that the Islamabad High Court had crossed that boundary.

The final order

The Federal Constitutional Court converted the petitions into appeals, allowed them and set aside the Islamabad High Court judgment dated 31 December 2024.

The practical result was that the President's modification of the Ombudsman's order remained operative, replacing the major penalty with censure.

What the judgment does not hold

The judgment does not say that hostile conduct, intimidation or administrative victimization is legally acceptable. Such conduct may constitute service misconduct, discrimination or another legal wrong even where the special Ombudsperson jurisdiction is not attracted.

It does not eliminate the Ombudsperson's authority where an internal committee fails to act. The statutory forum may still be approached in accordance with the Act.

It does not make Presidential orders immune from judicial review. Review remains available for jurisdictional error, illegality, arbitrariness, denial of natural justice and the other recognized grounds of certiorari.

Most importantly, it does not interpret the full reach of the definition inserted by the 2022 amendment. Any analysis of a post-amendment complaint must begin with the amended words, including gender discrimination that may or may not be sexual in nature.

Practical guidance

A complaint should identify the precise statutory ingredient relied upon, connect each allegation to that ingredient and separate actionable harassment from ordinary service grievances. Mixing numerous administrative complaints with a serious statutory charge may obscure the core allegation rather than strengthen it.

Employers should not treat a jurisdictional objection as permission to ignore workplace misconduct. Conduct outside the Ombudsperson's jurisdiction may still require a fair internal inquiry and proportionate disciplinary action.

In constitutional review, counsel should identify the exact jurisdictional defect, misreading, non-reading, legal error or procedural unfairness. A request for the High Court simply to prefer another factual view is not enough.

This commentary is independent legal analysis for research and general information. The complete judgment, the statutory text applicable on the date of the alleged conduct, the 2022 amendment and later judicial treatment should be checked before reliance in proceedings.