



**FEDERAL OMBUDSMAN
For Protection against Harassment of Women at Workplace
Islamabad**

J U D G M E N T

1. Appeal Number: 1(94) / 2014-FOS (Reg)
2. Date of Institution: 16.10.2014
3. Date of Decision: 08.01.2015
4. Appellant: Dr. Nisar Ahmed
5. Respondent: Vice Chancellor and Others,
Kohat University of Science and
Technology (KUST)

Justice (R) Yasmin Abbasey,

Ombudsman:

1. This appeal has been preferred by appellant Dr. Nisar Ahmad, Lecturer of Kohat University of Science and Technology (KUST).
2. Brief facts of the case are that on 06-02-2014 a complaint was received by Deen Faculty of Biological Science of KUST from a student namely Mst. Razia Hameed Marwat alleging serious nature of allegation against the character of appellant and has prayed that strict action be taken against appellant. On this complaint an inquiry committee was constituted by KUST in March 2012. On 05-03-2014 inquiry committee reported that appellant was found guilty of un-welcome sexual advances with physical contact of sexual nature causing injury to the personal honor and dignity of the female students and then left it to the competent authority to take necessary action as deemed fit. In view of the observation of inquiry committee constituted in March 2012, Registrar of KUST on the recommendation of syndicate has issued a removal letter to appellant from service of the University.
3. That order of removal dated 28-04-2014 was challenged before Federal Ombudsman Secretariat on 26-05-2014 after hearing both the parties it was observed in that appeal that the members

of the inquiry committee were continuously guiding the complainant / respondent No. 07 before move of her complaint which was a partial conduct on their part and further that no proper opportunity was provided to both the parties to defend their case. This order of removal from service was set aside with direction to University authorities to reconstitute an inquiry committee and provide opportunity to both the parties to defend their case. On this recommendation second inquiry committee was reconstituted on 28-08-2014. That started its proceedings as per inquiry report on 10-09-2014. Again as per observation of second inquiry committee appellant was found guilty and recommendations were made for a major penalty. And finally vide letter dated 26-09-2014 appellant was removed from service.

4. According to appellant even second inquiry committee without holding any regular inquiry, has imposed a major penalty of removal from service. Even in this second inquiry no proper opportunity of hearing was provided to appellant and partial conduct can be seen from the fact that a member of previous inquiry committee namely Mst. Shazia Sakhi was called on by the complainant as her witness in this second inquiry. Materials facts have not been considered by the members of the inquiry committee. Inquiry report also failed to point out the authenticity of alleged incident. Order of removal from service was not issued by competent authority because as per University Act in case of appellant, syndicate is the only competent authority to

act upon the recommendation of Harassment Committee. No proper recommendations were made by the inquiry committee and have just determined removal from service without considering that which major penalty is to be imposed on the appellant. That was left at the discretion of Vice Chancellor. Statement of appellant's witnesses was altogether ignored.

5. Respondent No. 1 to 6 in their defense have totally denied the allegations made by the appellant. According to them full opportunity was provided to appellant. Appellant has brought his case with unclean hand and has disgrace the name of University as well as his profession.

Appeal is liable to dismissed.

6. Respondent No. 7 Mst. Razia Hameed Marwat, the complainant has stated that appellant harassed and tried to develop illicit relationship and offered her for friendship. When she refused his offer, appellant suddenly hold her hand and kissed on it. She was very shocked by the act committed by appellant and had immediately moved a written complaint against him. The inquiry committee conducted case in a very proper manner in accordance with law. Appellant wants to change the decision given against him by buying and threatening the respondent No. 7's witnesses with the help of his near relatives posted on high post in KUST. Appellant tried his best to patch up the matter by offering complainant / respondent No. 07 a large amount of money which was refused by her.

Appeal is liable to dismissed.

Heard parties, representatives and perused the record, my findings are as under :-

First ground of the appellant, again, after observation of the first inquiry committee and removal from his service is that even in the second inquiry conducted against him, no proper opportunity was provided to him to defend his case. Although the same has been denied by respondent No. 1 to 6, the office bearers and members of inquiry committee but somehow I found that the stand taken by appellant do appears to be correct, because as per inquiry report placed on record date wise it appears that on 16-09-2014 complainant was called to give her statement but at that time neither appellant was in attendance nor he was informed of the said hearing of 16-09-2014. For the first time notice was issued to appellant on 12-09-2014 for his appearance before inquiry committee on 23-09-2014. In the same way five witnesses produced by complainant / respondent No. 7 were examined on 22-09-2014 that is even before the date when appellant was called for hearing. This conduct of inquiry committee clearly supports case of appellant that no opportunity was provided to him to defend his case and cross examine respondent No. 07 and her witnesses on the day when they appeared before inquiry committee. Their cross-examination were recorded on 24-09-2014 and 25-09-2014 after sufficient gaps. In inspite of this irregularity committed by inquiry committee in conducting proceedings against appellant, i found

that neither Dr. Waheed Murad nor Dr. Aziz Ullah had specifically stated anything against appellant nor had expressed any negative opinion as to the behavior and conduct of appellant neither had supported allegation made by respondent No. 7. Statement of Dr. Waheed Murad is based on the information provided by Dr. Amna Khatoon, Lecturer in Botany department, KUST University with whom respondent No. 7, the complainant had discussed the matter. Second witness Dr. Aziz Ullah has also stated that he had heard few time of the incident happened but he is not an eye witness. In his cross examination he has further stated that complainant did not come to him to seek advice for file a written complaint. Statement of Mst. Amna Khatoon somehow supports the case of respondent No. 07 that complainant told her that when she had gone to get the signature of appellant on PM loan scheme form, appellant hold her hand and offered her for friendship but in cross examination, with reference to a statement made by respondent No. 07 on 17-09-2014 on her behalf, it is stated by Mst. Amna Khatoon that "She has never mentioned to complainant or anyone that Dr. Nisar Ahmad is a character failure". She further added that complainant is a liar and she would see her in person for the lies she stated about her. Dr. Adnan has specifically stated that he has no evidence related to the issue in case. Fifth witness Mst. Shazia Sakhi also in her statement has depose that Dr. Nisar Ahmad - the appellant is a very nice person and she had not seen anything about the incident which is the subject matter of the inquiry but had only heard about it from other students and

friends. Last witness Dr. Shameem Saliha who was also member of the previous inquiry committee had deposed that complainant on the direction of Madam Aamna came to talk her, she verbally told the whole story and on her asking that whether she is prepared to give the same statement before inquiry committee , complainant accepted it. Dr. Shameem Saliha further stated that complainant was under severe pressure and psychologically disturbed because she was repeatedly been called by appellant through her class fellows to contact him. According to Mst. Shameem Saliha she advised complainant to attend office of appellant but should not say anything regarding her harassment application as it was submitted by her confidentiality and secretly. Even in cross examination Dr. Shameem Saliha admitted that she and rest of the members of previous inquiry committee advised respondent No. 7 / complainant not to disclose or talk about the complaint or the inquiry to anyone including Dr. Nisar Ahmad. According to witness this was done to maintain secrecy and sanctity / honor of both the complainant and Dr. Nisar Ahmad.

7. It is correct that Act of 2010 of protection against harassment of women at workplace provides that after receiving complaint an informal approach can be made to resolve a complaint of harassment through mediation between the parties involved and by providing advice and counseling on a strict confidential basis but this confidentiality does not mean that the person against whom allegations have been made and the proceedings are

going to be initiated should be kept in dark. Even in her statement made on 17-09-2014 respondent No. 7 / complainant at number of times has stated that after move of complaint by her, appellant called her number of times and other class fellows also inquired about it. But all the time she refused to move such application. This conduct of complainant / respondent No. 7 seems to be doubtful because as per her first statement made on 06-02-2014 she seems to be bold enough to place her grievances and wanted a serious action against appellant to save herself and other girls, but her subsequent conduct of hiding it is very strange. If according to her, she was truthful in her attempt then she should be truthful at every stage and should not play this hide and seek game which creates a doubt as to her statement. In this scenario, if statements of complainant / respondent No. 7 are examined then it is found that in her first statement moved on 06-02-2014 just few days after the alleged incident, she has not disclosed that whole episode which appears in her second application of 17-09-2014. In her first application she has simply stated that "I feel myself unsecure and disgraceful due to miss behavior and wrong moral action of my teacher Sir Nisar Ahmad" in this statement she with herself had also involved some other students without naming them that appellant also miss behave with them and he is morally a sick person. This application of 06-02-2014 is said to have been drafted by complainant's friend Mst. Sidra Andleeb. That Mst. Sidra Andaleeb in first inquiry conducted against appellant had given her statement on 20-02-2014 that on the

day of incident that is 03-01-2014 complainant had gone to appellant to get his signatures on youth loan form while she after setting her "hijab" had gone to cafeteria, soon thereafter complainant also came there, she was weeping. On her asking she narrated the whole story, thereafter she and complainant at about 01:00 pm had gone to Madam Amna and disclosed her the incident who told her that she will talk to the chairman on this issue but neither in first inquiry Mst. Sidra Andaleeb was cross examined by the appellant whereas in the second inquiry although notice was issued to her on 17-09-2014 for her appearance on 22-09-2014 but this notice was received by respondent No. 7, the complainant. And again on 18-09-2014 a statement was moved by complainant herself stating that her friend Mst. Sidra Andaleeb because of her family problems is unable to give her statement before inquiry committee and her first statement be considered in this inquiry. It is surprising that Mst. Sidra Andaleeb who according to complainant / respondent No. 7 was very helpful to her from beginning of the incident and her drafted that first complaint moved on 06-02-2014 on her behalf. All of sudden is trying to keep herself away or purposely she is being kept away from proceedings. Because it is only the complainant who is receiving her notice on her behalf and also making statement on her behalf.

8. Appellant Dr. Nisar Ahmad has pointed out an application at page No. 166, of one Shaheed Khan a student of MSc Botanny wherein he has requested to inquiry committee to allow him to

appear before the inquiry committee to give his statement as he has important information regarding the matter. This application was received by chairman inquiry committee but no reason has been given by members of inquiry committee that when a person voluntary trying to appear before inquiry committee then why he was not heard in the circumstances when no definite evidence was there on record in against to the appellant.

9. The case of appellant also is, that complainant has been used by some of the faculty members who were against him as being chairman of department of Botany he had called explanation of Dr. Aziz Ullah, Mst. Amna Khatoon and Mst. Gazala Nawaz for late coming and had written a letter to Vice Chacellor that Dr. Aziz who has been recruited in Botany department is not fit in this department and he should be replaced / adjusted to some other department where his qualification and experience matches, but this stand taken by appellant does not appeal to reason as none of these persons had deposed anything against him. It is further stated that respondent No. 7 was unnecessarily favored by faculty members and officials of the University allowing her to take research in second semester which is only allowed after 3rd semester result. And that she did not posses that required GPA as is necessary for research, which is as undue favor to her for some ulterior purpose which is nothing but complaint against him.
10. Above discussion shows that no positive evidence has been brought on record by respondents in against to the appellant

because there are lot of contradiction in the statements made by complainant on 06-02-2014, 20-02-2014 and 17-09-2014. All the time in three statements their seems an improvement one after another which seems to be suspicious in the light of above discussion and even those female students to whom she named as the victims of appellant have not been produced to support her statement while rest students who appeared have not supported her. Upshot of above discussion is that even in the second inquiry committee members of inquiry committee holds the proper inquiry in improper way. Complainant and her witnesses were examined in isolation even before the date when appellant was called to produce his defense on the charge against him. Apart there of none of the witness produced either of the parties had given any direct evidence challenging the moral authority of appellant.

11. Hence impugned order dated 26-09-2014 is here by set aside and the appeal of the appellant is here by allowed.