

OFFICE OF THE OMBUDSMAN

Islamabad

FORM OF ORDER SHEET

Complaint No 1(77)/2013-FOS of 2013

Serial No. of Order of Proceedings	Date of order of Proceedings	Judgment
1	2	3
	27-11-2013	Complaint No. <u>1(77)/2013-FOS</u> During proceeding of the case on 03-10-2013 learned counsel for opponent filed statement that he has been recently engaged by the opponent and after going through the contents of defence filed by them he is of the view that the defence as filed is not satisfactory therefore he wants to amend the same. On 28-10-2013 an application with some legal grounds was moved by opponents for rejection of the complaint. Additional reply on behalf of opponent alongwith certain documents was also filed. Matter was heard on legal objection raised by the opponent. According to learned counsel for opponent this very complaint filed by the complainant is not maintainable, barred by time and has no cause of action. While arguing the same learned counsel has referred sub clause L of

		Section 23, Chapter 4) of Wafaqi Mohtasib (investigation and disposed of complaint) Regulation 2013 which provides that the complaint can be fitted within a period of three months from the day when the complainant first came to know of the matter and delay can be condoned in special circumstances only. According to learned counsel as per contents of the complaint just after few months of transfer of opponent No. 1, Aqeel Abbas, he in company of opponent No. 2 started harassing the complainant and was misusing his authority when the complainant had not followed the way of their choice. As such the first complaint was moved by her on 24-09-2012 after a lapse of about two years and is time barred. In contrary learned counsel for complainant argued that Rules and Regulation 2013 of Wafaqi Mohtasib are not applicable in the matter as after enactment of Act IV of 2010 its procedure will prevail and as no limitation is presented under the Act therefore objection has no substance. He further argued that even if any period of filing the complaint is required than reliance can be taken placed on Article 181 of Limitation Act. While arguing the learned counsel for opponent has failed to ignore that office of Wafaqi Mohtsib under
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		establishment of the office of Wafaqi Mohtsib (Ombudsman Order of 1983) and the regulation framed there under in 2003 deals with cases of mal administration whereas the office of protection against harassment of women at workplace run under Act IV of 2010. There are two different institution with separate code of legislation. The procedure to filed and to proceed with the complaint have also been separately prescribed in both the Acts therefore to apply the procedure applicable in one office in a proceeding of case absolutely of different forum is not justifiable. Act IV of 2010 and the rules framed therein either on 15-01-2011 or subsequently made in October, 2013 provides complete code of procedure of filling the complaint and how it is to be dealt with. So far the limitation is concerned such clause 12 of Code of Conduct under the schedule clearly prescribed that "it is strongly recommended that staff should report an offensive behavior immediately to someone they trust, even if they do not wish to make a formal complaint at the time". Although not reporting immediately shal not affect the merits of the case". Even otherwise the limitations prescribed in Wafaqi Mohtasib (Investigation and Disposal of Complaint) Regulation 2003 relates to the cases of corrupt practices and injustice done to a person through mal administration
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		and it was therefore provided that a person can file complaint against corrupt practices and injustice within 03 months from the date of his knowledge, whereas in the case of harassment the issue of knowledge is not there because the victim herself/himself is the effected person therefore the question of knowledge does not fall in the cases harassment. The next issue raised by learned counsel for opponent is that if it is taken that there was disputes in between opponent No. 1 and the complainant then that issue after move of an application by the complaint to President NBP was resolved with her consent by the change her team. Therefore, it is argued that the law of estoppel will play its role in such circumstances and the complainant cannot agitate some issue which has been decide on 01-10-2012 before this forum. To support his argument learned counsel has referred 1995 MLD page 563. But the facts of referred case are not applicable in present matter because in that criminal case after receiving Qsas amount by the complainant from the accused the matter was compromised in accordance with law but when at subsequent stage the complainant wants to back out from the compromise arose in between it was observed that
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		complainant after once having entered into compromise was not competent to withdraw it. Change of team is not a solution of the problem. The purpose of this Act of IV 2010 is to curb the element of harassment from workplace for save and healthy environment. Therefore such like decision as made on 01-10-2012 by President of NBP was not in accordance to the law for protection against harassment of women at workplace. To remove such like issues of harassment from the workplaces a proper procedure has been prescribed in the Act which requires that every management of an organization within 30 days of promulgation of this act is bound to constitute an inquiry committee in accordance to law as enunciated in the section 3 of the Act. It appears from the record that no such committee was constitute by the NBP either after the commencement of this Act nor after moving the complaint by the complainant on 24-9-2012. The summery procedure adopted was not the requirement of the law therefore the law of Estoppel as raised is not applicable in the matter. The definition of Estoppel as referred by learned counsel for opponent in Black Law Dictionary also does not support his argument. The term Estoppel as
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		defined in the referred dictionary is “A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true”. In the present case neither there is question of any claim nor of any right legally established but it is a case of fundamental right to live with dignity and honour as provided in Article 14 of Constitution of Pakistan. In the same way it is also not a case of Collateral estoppel as argued. The definition of collateral estoppel as defined in Black Law Dictionary is “The binding effect of a judgment as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based. While referring this definition of collateral estoppel it is argued by learned counsel for opponent that the President of NBP is competent and administrative authority and any decision made by him cannot be challenged at a later stage. To support his argument he has referred PLD 2004 Supreme Court 178 but again the facts and circumstances of the referred case are not applicable in the present case. Even otherwise as discussed above the President of NBP may be competent authority under the law of NBP but still he has to follow the Federal law legislated on the
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		relevant issue and was bound to decide the complaint in accordance to that law. Therefore to say after settlement of matter on 01-10-2012 complainant has no cause of action to file this complaint does not have any substance therein. Learned counsel for complainant further argued that the section 11 CPC is only applicable in cases of suit and not in the complaint moved under Act IV of 2010. Applicability of Civil Procedure Code in the proceeding before this forum is only to the extent of following the procedure for summon and examining the witnesses and investigation of case not otherwise. So far the cause of action is concerned that has been fully expressed in the complaint moved in 29-4-2012 and can also be examined from the evidence placed on record by the complainant before this forum. The upshot of above discussion is that the preliminary legal objection raised by opponent as to maintainability of complaint does not have any argumentation therein and are hereby overruled. OMBUDSMAN
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