

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/00187/2024

Date of Institution: 21-06-2024

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson			
		TITLE:	Robina Khalid & others	VS	Munir Shah & others
		Department: Jang Daily News			
1	2	3			
26	21-04-2025	<u>Subject: Final Order</u> 1. The present complaint has been filed by five female employees (Complainants) of “Daily Jang Rawalpindi” against Mr. Munir Hussain Shah, General Manager S&D of Sales and Sales (Accused No.1) and Mr. Hanif Khalid, Chairman Editorial Committee (Accused No.2), on account of the discriminatory and arbitrary treatment meted out to them at the hands of the Accused through different tactics, particularly the change in their working hours from morning-evening to evening-night, making their workplace environment hostile and unpleasant. Four of the Complainants, namely, Robina Khalid, Imtiaz Bibi, Saima Ayub and Samina Akhtar are sub-Editors in Daily Jang Rawalpindi while Asifa Aslam is PA to Editor, Daily Jang Rawalpindi. All the Complainants are Master’s Degree holders and have been associated with Daily Jang Rawalpindi for more than 18 years. According to the Complainants, in 2021 they approached the NIRC for the			

		regularization of their service and the ITNE for arrears. This course of action was primarily taken by them because of the favourable treatment enjoyed by the regular employees of Daily Jang Rawalpindi as they were receiving salaries in the hundreds of thousands and were entitled to medical allowances and bonuses. In comparison, the Complainants along with other contractual employees, were only receiving Rs.26,000/- as salary, which was increased to Rs.32,000/- only after the Complainants approached the Labour Authority for minimum wage. However, these steps of the Complainants angered the management and it employed different tactics to harass them. In particular, the management changed the Complainants timings to 4 pm to 12 am, effective 01.05.2024, and their salaries were also deducted arbitrarily. Previously, the Complainants were working from 11 am to 6 pm. It is the Complainants' case that it is not possible for them to travel on local transport at 12 am at night on a basic salary of Rs.32,000/- and that the management does not provide them with any pick and drop service. Even their request to work from home was rejected. The Complainants have stated that they were informed of their new timings through a phone call and to date, no formal office order has been issued in respect of their change in timings. As a result, they still follow the office order issued by Accused No.2 on 12.01.2024 which stipulates 11 am to 6 pm as the working hours. However, to prevent the Complainants from working, the newsroom is locked till 4 pm and they are made to wait in the reception area, without any fan even in excruciating heat. The Complainants have also alleged that the management went so far as to prevent them from offering prayers by first locking their prayer room, then locking the reception area
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		and finally locking the Masjid. As per the Complainants, their salary is also being deducted despite the fact that they finish their assigned work between the time of 4 pm to 6 pm. On questioning Accused No.2 about the deductions, they were informed to approach Accused No.1. He told them that they are only being paid the salary for two hours. To this, the Complainants protested that they always complete their work and follow the proper time, and that in fact it is Accused No.1 who has not issued them any office order regarding the change in timings. The Complainants have asserted that they have complained about the actions of the Accused to the Government of Punjab and to the owners and management of Daily Jang Rawalpindi but to no avail. They have, therefore, requested this Forum to grant them relief, particularly in getting their previous work timings of 11 am to 6 pm restored. 2. After the complaint was admitted for hearing, the Accused submitted their written defense with the stance that the complaint was filed with ulterior motives to harass them as the Complainants have filed a case before the NIRC for their regularization in which they are seeking a favourable outcome. Additionally, they asserted that the complaint does not fulfil the criteria of Section 2(h) of the Protection against Harassment of Women at the Workplace Act, 2010 (Act), and pertains solely to administrative matters. Lastly, they stated that the duty timings of the Complainants are as per standard procedure of the industry. They, therefore, prayed that the complaint be dismissed being false and frivolous and without jurisdiction. 3. Thereafter, both the sides produced their evidence. All the Complainants recorded their statements as PWs 1-3 and
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		5-6. Further, the Complainants produced two witnesses: Imran Farooq and Adnan Naseer, employees at Jang Newspaper as PWs 4 and 7. On the other hand, the Accused recorded their statements as DWs 1 and 2. They produced no witnesses. After the recording of evidence, the learned counsel for the parties advanced their respective arguments. 4. Before this Forum, the Complainants have primarily agitated the change in their office timings and its adverse effect on their work environment. Prima facie, such a grievance falls within the second limb of workplace harassment, as defined in Section 2(h)(ii) of the Act which reads: “(ii) discrimination on basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mind-set or notion, resulting in discriminatory behavior on basis of gender against the complainant;” This perspective is reiterated by the following statements of the Complainants, which have emerged in their cross-examination: ○ Robina Khalid: It is correct I have not mentioned in my complaint or affidavit any sexual harassment. I have no complaint regarding gender discrimination. Volunteered that for the first time our time has been changed. We have filed this complaint because our time has been changed from day to night without written order. ○ Samina Akhtar: We do not allege sexual harassment in this case. Gender discrimination is common in Jang News... ○ Asifa Aslam: There are other females too besides we five Complainants, who are working in other sections. Their timing has not been changed... I have not made any allegation of sexual harassment against the Accused. I have also not charged anyone for gender discrimination.
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		Volunteered that there is no such provision to provide transport facility to any employees... It is incorrect to suggest that the department is committing excesses with the Complainants due to gender discrimination. 5. What becomes clear from the above-quoted excerpts is that the Complainants case is not of sexual harassment. However, there appears to be ambiguity whether the Complainants have alleged gender-based discrimination. In this respect, the testimony of Samina Akhtar is crucial as she has stated during her cross-examination that gender-based discrimination is common in Daily Jang Rawalpindi. Likewise, Imtiaz Bibi has observed that their case is of workplace harassment – albeit she has not specifically alluded to gender-based discrimination. One of the witnesses of the Complainants, Imran Farooq, has asserted that while the complaint may be silent regarding gender-based discrimination, such behaviour did take place. Additionally, Robina Khalid, Asifa Aslam and Saima Ayub, while stating that their complaint is not regarding gender-based discrimination, have explicitly referred to the fact that their timings have been changed, with which they are aggrieved. Even the Accused admitted in their affidavit in evidence, and Accused No.2 in his cross-examination, that no conveyance is (or has ever been) provided to any employee in the Daily Jang Rawalpindi. The Accused were also specifically questioned by the Complainants in cross-examination about the gender-based discrimination that they are subjected to. This proves that the cumulative effect of the statements made by the parties before this Forum is that the Complainants are alleging gender-based discrimination against the Accused. In arriving at this conclusion, I am fortified by the decision of the Hon’ble Supreme Court of Pakistan rendered in <u>Junaaid Wazir Vs.</u>
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		<u>Superintendent of Police, PRU/ Dolphin Police, Lahore</u> (2024 SCMR 181) wherein the Court observed that authorities should focus on the '<i>pith and substance of the grievance</i>' filed by a party, rather than focusing solely on the nomenclature of the grievance (para 8). Resultantly, just because the Complainants did not directly refer to gender-based discrimination in their complaint or realize that their allegations pertained to gender-based discrimination does not mean that their complaint will automatically be rejected by this Forum. Instead, this Forum is bound to examine the same on merits and then give its decision thereon. 6. Coming now to the substance of the complaint, it is admitted by all the parties that the Complainants timings have been changed from 11 am - 6 pm to 4 pm - 12 am. The Complainants have argued that the change in timing is tantamount to gender-based discrimination, whilst the Accused have posited the same as a routine administrative matter which requires no interference by this Forum. Although there is no cavil with the fact that organizations need administrative freedom to function efficiently, it cannot be accepted that administrative freedom gives the management a license to discriminate against women at the workplace. In fact, Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution) guarantees the equality of the sexes by holding that: “(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.
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(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children."

(emphasis supplied)

What is most important for the purposes of this Forum from the afore-noted provision of the law is that the State is allowed to take special measures for the protection of women and children under sub-Article (3). Additionally, as observed in the judgment of the Hon'ble Lahore High Court reported as **Imran Maqbool, President MCB Bank Ltd Vs. Federation of Pakistan** (PLD 2019 Lah 17), *'The right to work is a multifaceted right which is recognized under different international treaties and conventions for creating a safe work environment especially for women. Article 23 of UDHR declares the right to work and the right to favourable conditions of work as a human right. Article 11 of CEDAW specifically requires States to ensure women have equal work opportunity and safe working conditions. As Pakistan has ratified these treaties and conventions it is obligated to protect the right to work and to ensure a favourable work environment'* (para 10). Whilst the Daily Jang Rawalpindi itself is a private organization and has no obligation either under Article 25(3) of the Constitution or international treaties and conventions, it is still bound to uphold constitutional guarantees and implement the laws of the country, including those which are beneficial to women, in letter and spirit. In this regard, it is now settled that newspaper companies fall within the category of factories, as defined in the Factories Act, 1934 (**1934 Act**). Reliance is placed on the Hon'ble Lahore High Court's decision in **Zia Shahid Vs. Authority under the Payment of Wages Act, 1936** (2011 PLC 300) wherein

		the Court held that a newspaper establishment is a factory because <i>'it cannot be denied that the printing of a newspaper involves a manufacturing process whereby news print is converted into newspaper'</i> (para 6). Moreover, the Accused conceded this fact during final arguments and acknowledged that the Daily Jang Rawalpindi is a factory. Therefore, since newspapers are regulated by the 1934 Act, they are under compulsion to strictly follow its provisions. The relevant section of the 1934 Act for this case is Section 45 which provides certain restrictions on the employment of women. In particular, sub-Section (b) is most crucial: “(b) no woman shall be allowed to work in a factory except between 6 A.M. and 7 P.M.: <u>Provided that if the employer arranges for the transport facilities, a woman with her consent may work up to 10.00 p.m. in two shifts.”</u> (emphasis supplied) 7. The above-mentioned provision reveals two important pieces of information: firstly, that women can be made to work in factories beyond 7 pm but only if transport facilities are provided to them and secondly, even then women cannot be forced to work after 10 pm. On both these legal requirements, the Daily Jang Rawalpindi falls seriously short. In fact, in their affidavit in evidence and cross-examination (reproduced above in para 4) the Accused have admitted that the management of Daily Jang Rawalpindi does not extend any conveyance facility to the Complainants and that there is no provision in the law which mandates it to do so. Accused No.2 even went so far as to state that it is not his responsibility to figure out how the Complainants will arrange for their transport/conveyance at 2 am at night. These statements
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		of the Accused show not only their complete ignorance and disregard of the law but also their callous attitude towards the Complainants' well-being. When the law itself is very clear that women who are being made to work late at night need to be provided transport facilities, the Accused and the management of Daily Jang cannot take the stance that arranging for such transportation is not their legal obligation. More so, when Article 34 of the Constitution provides that <i>'Steps shall be taken to ensure full participation of women in all spheres of national life.'</i> Accordingly, by failing to facilitate the Complainants in arranging for proper transport for travelling to their homes at night and for directing them to work after 10 pm, in complete contravention of Section 45(b) of the 1934 Act, the Accused have engaged in gender-based discrimination. In this violation of the Complainants' constitutional and legal rights, the management of Daily Jang Rawalpindi is also complicit, as it was primarily its responsibility to provide a safe working environment for all employees and to comply with the law of the land. However, their unsympathetic approach towards the plight of the Complainants, who rightly feel uncomfortable travelling alone from work late at night, reveals their discriminatory and prejudicial mind-set towards women. The Accused and the management of Daily Jang Rawalpindi have demonstrated through their stance before this Forum that they are either unaware of the current state of women in this country or simply do not care. As per the Global Gender Gap Report 2024, Pakistan ranks 145 out of 146 countries, making it the second worst country in the world in terms of gender equality. Resultantly, when women in the country are faring poorly compared to their
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		male counterparts, organizations are obligated under the Constitution and the relevant laws to aid the State in improving and enhancing the status of women in society. Accordingly, for what has been discussed above, I direct the management of Daily Jang Rawalpindi to immediately make arrangements for providing the Complainants proper transport for their travel back home at night. Additionally, the management must not make the Complainants work beyond 10 pm in the organization. Lastly, I impose the minor penalty of compensation on the Accused under Section 4(4)(i)(d) of the Act. Both shall pay Rs. 25,000/- each to every Complainant individually as compensation (in total, each Accused will pay Rs. 125,000/). A compliance report in this respect shall be furnished to this Forum by 29.04.2025. 8. Before parting with this order, I shall also briefly touch upon the allegations levelled by the Complainants that they are being paid a salary of Rs.32,000/- and that the Accused have been arbitrarily deducting their salaries. Insofar as the first contention is concerned, suffice to say that vide Notification No. ADLW 8(20)-ICT/2024-225 dated 08.08.2024, issued by the Office of the Chief Commissioner, Directorate of Industries & Labour Welfare ICT, Islamabad, the minimum monthly wage for unskilled workers has been fixed at Rs.37,000/-. The Complainants before this Forum are all Master's Degree holders yet they are receiving salaries which are below the minimum wage set for even unskilled workers. Such a situation is extremely unsatisfactory and it is this Forum's expectation that the management of Daily Jang Rawalpindi will look into the matter with the seriousness that it deserves. Regarding
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		the Complainants second assertion, it is established on record that since the change in their timings the Complainants have only been working from 4 pm to 6 pm – a total of two hours daily. In these circumstances, the organization was well within its right to deduct the Complainants' salaries as they were not completing their working hours. However, going forward it is expected that once the management provides the Complainants with transport facilities, the Complainants will stay till the end of their shift and complete their working hours. 9. The complaint is allowed in the stated terms. FEDERAL OMBUDSPERSON
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