



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

J U D G M E N T

1. Appeal Number: 1(286) / 2016-FOS (Reg)
2. Date of Institution: 07-09-2016
3. Date of Decision: 13-10-2016
4. Appellant: Syed Zargham Haider
Resident of House No. 484,
Street No. 34, Sector I-8/2,
Islamabad
5. Respondents:
 - i. Amina Noor,
Executive Officer
Company Registration Office,
SECP Islamabad
 - ii. Inquiry Committee
Head Office,
Security Exchange Commission of Pakistan

(Bilal Rasool, Executive Director, Member Inquiry Committee
Khalid Iqbal, Director, Member Inquiry Committee
Khalida Habib, Director, Member Inquiry Committee
Atiqa Bostani, SPS, Member Inquiry Committee)

Justice (R) Yasmin Abbasey,

Ombudsman:

Appeal No. 1(286)/ 2016-FOS.

1. This appeal has been preferred by appellant against decision of inquiry committee of Security exchange Commission of Pakistan (SECP) on complaint moved by respondent No. 1 to grievance committee of Security Exchange Commission of Pakistan against appellant.
2. Facts of case are that on 08-06-2016 complaint was moved by respondent No. 1 against appellant that he is sexually harassing her through inappropriate text messages. On this complaint inquiry committee was constituted. Both parties were given opportunity to produce evidence on statement of allegation set up by inquiry committee in light of complaint moved to them placed at Page-49 of file. Appellant in reply to this statement of allegation and charge sheet dated 13-07-2016, framed against him, has submitted his reply on 25-07-2016, 29-07-2016 and 02-08-2016. In all his replies submitted before inquiry committee he has admitted that he has some liking / admiration for respondent No. 1 therefore he has sent proposal for marriage through SMS but according to him as states in his defense as well as during course of arguments before Federal Ombudsman that to propose a girl to marry does not come within purview of sexual harassment.
3. According to appellant allegations made against him are false and have been made with malafied intention. Inquiry committee has failed to establish charge of unwelcome advances in form of marriage proposal. Proposal to marry is not an act of harassment within meaning of Act of 2010. From perusal of record it appears that appellant at very first stage in his statements filed before Inquiry Committee has admitted that as he had liking for respondent No. 1 therefore he had just send proposal for marriage, but contents of messages as have been reproduced in Para 5.6 of inquiry report which have been admitted by appellant at different stage during inquiry proceedings as well as during course of arguments in no way can be termed a simple proposal to marry, but contains abusive and hideous language. Admission of appellant of sending these text message is sufficient proof of the fact that complainant was regularly harassed by appellant until and unless she has sent those text messages to wife of appellant which has created unpleasant environment in house of appellant and

in between relation of appellant and his wife. Although appellant's wife in is statement before inquiry committee had tried to support her husband, but fact is that those text messages sent by appellant to respondent No. 1 have also not been expressly denied by appellant's wife.

4. In view of above, persistent act of appellant to attract respondent No. 1 with verbal and written communication during office hours, while such advances were consistently and flatly refused by respondent No. 1, is an act causing fear, tension and creating stress on respondent No. 1 which falls within the meaning of sexual harassment. In view of admission made by appellant in statements referred above no further evidence is required to prove allegations of respondent No. 1.
5. In spite of these admissions referred above during course of arguments, it is contended by appellant while referring to reply submitted by him to grievance inquiry committee that in Para-1 of reply dated 19-07-2016 he has categorically denied that he has sent any text message of sexual advances until unless he see those SMS. He further stated that moreover SMS can be edited by recipients and there is some software available through which one can use cell number of another person without his knowledge, but this statement of appellant in light of his admission made before inquiry committee on 25-07-2016 in Para 5.2 and message sent by him reproduced at Para 5.6 of inquiry report beside other are sufficient to discard statement of appellant made in Para-1 of his reply dated 19-07-2016.
6. It is further contended by appellant that no opportunity of cross examination was provided to him in spite of his request made on 02-08-2016. It is correct that complainant was not called for cross examination on request of appellant and reason thereof as has been given by inquiry committee's report in Para 7.7 and 7.8 is that:

7.7: Pursuant to hearing / written statement by the wife of the accused officer before the committee on July 29, 2016 and certain points mentioned by her during the hearing, the complainant was asked by a member of the inquiry committee verbally as to whether she would like to appear before the committee to give her version on the points i.e. claim of wife of accused officer and also of the accused officer that she (Amina) had shared her personal grief esp. about betrayal by her ex-boyfriend with the accused officer; and about telephone call / request of her sister namely Salma to the accused officer that

he should marry Amina. The complainant however refused to comment on these points and she also did not show willingness to appear before the committee again to give her version on these points.

7.8: Due to the above reservation of the complainant to again appear before the committee, she was not called by the committee for the cross examination requested by the accused officer in his subsequent statement / email, considering the point that both are in the same organization and the aspect of privacy be taken care of especially in case of a female employee.

7. These observations of inquiry committee made in Para 7.7 and 7.8 do find support from different case laws reported as criminal appeal No. 554 of 2012, Vinod Kumar Versus State of Punjab, Appeal No. GB and others Turkey [2004] UKIAT 00143 and Radha Jeebun Moostuffy versus Taramonee Dossee wherein it is unanimously observed that if admissions are clear and unambiguous and there is sufficient testimony on record of accused which impels to accept the testimony, even though cross examination is essential part of evidence cross examination even if done cannot play an active part to disprove the admissions already made. Same is in present case admissions of appellant at different stages are sufficient proof of the fact that those text messages reproduced above were sent by him and when he did not succeed in his object he by filing some FIR said to be lodged by mother of respondent No. 1 has tried to open another round of allegation against respondent No. 1. Therefore when admission of appellant is clear, then such denial of respondent No. 1 to put herself for cross examination in the circumstances of the case will not be so material.
8. In view of above I fully agree with the findings of inquiry committee's report given on 08-08-2016 and uphold the same. Resultantly appeal of appellant is hereby dismissed.
9. Announced in open court.
14. Parties be informed.

JUSTICE (R) YASMIN ABBASEY
Federal Ombudsman