

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Appeal No. FOH-HQR/0000092/2023

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson			
		TITLE:	Hajra Alamgir Sales Manager	VS	Zeeshan Ali Khan & others CEO
		DEPARTMENT: Zameen.Com			
1	2	3			
15	16-10-2023	<p>Appeal No. <u>FOH-HQR/0000092/2023</u></p> <p>Subject: Decision on Appeal filed under Section 6 of the Protection against Harassment of Women at the Workplace Act, 2010</p> <p><u>Factual Background</u></p> <p>1. The instant appeal has been filed under Section 6 of the Protection against Harassment of Women at the Workplace Act 2010 (“Act”) by Ms. Hajra Alamgir (<i>hereinafter called the Appellant</i>) against Mr. Zeeshan Ali & others (<i>hereinafter called the Respondents</i>). The appeal assails the impugned inquiry report dated 18-02-2023 in which the complaint filed by the Appellant against Zeeshan Ali (<i>hereinafter called Respondent No. 1</i>) was rejected on the ground that no harassment as alleged by the Appellant had taken place.</p> <p>2. The facts of the case are that the Appellant had sent an email dated 17-01-2023 to Ms. Bushra Iftikhar (<i>Respondent No. 5</i>) who worked in the HR department of Zameen Media (Private) Limited (<i>hereinafter called Zameen</i>). In the said email the Appellant alleged harassment at the hands of Respondent No. 1. The Appellant requested that her complaint be formally addressed as per Zameen’s workplace harassment policy. She alleged that she was</p>			

asked to meet Respondent No. 1 in his office and when she entered the office the Respondent No. 1 started shouting and yelling at her saying that she had been in contact with an ex-employee, Mr. Hasan Danish, and had been leaking inside information to him. She denied the said allegation but Respondent No. 1 continued shouting at her. She further stated that Respondent No. 1 was not only hostile but also abusive in his behaviour. On this complaint an Inquiry Committee was constituted and the Appellant was asked to appear before the said Committee on 18-01-2023. After her initial appearance before the Inquiry Committee the Appellant expressed dissatisfaction on its constitution through email dated 19-01-2023. She requested for the formation of an impartial committee. In particular, she insisted on the inclusion of a member from the Statutory Board of Directors. Consequently, another committee was constituted and the Appellant was informed of this on 23-01-2023. The Appellant expressed her gratitude on the constitution of an impartial Inquiry Committee vide email dated 25-01-2023. The Inquiry Committee started its proceedings and contacted the Appellant to furnish her reply and other supporting material. The Appellant confirmed the names of three persons, namely, Mr. Ahmed Bhatti, Mr. Adil Ahmad Kamal and Mr. Haseeb Malik as eye-witnesses of the incident, however, she did not submit her own affidavit in evidence. The Appellant also sent an email to the Inquiry Committee on 02-02-2023 alleging retaliation at the hands of the management of Zameen, namely, unlawful deductions from her salary for the month of January, 2023.

3. In the meanwhile the Inquiry Committee continued with the proceedings and summoned the Appellant and her three eye-witnesses. Whilst the three witnesses submitted their affidavits in evidence and recorded their statements before the Inquiry Committee the Appellant did not do the same. On an examination of the eye-witnesses evidence, the Inquiry Committee did not find the same favourable to the Appellant's stance. Likewise, the Inquiry Committee took the view that the relevant CCTV footage from the day of the incident i.e., 16-01-2023 did not support the Appellant's claim of harassment. Her complaint about the act of retaliation was

also not accepted by the Inquiry Committee because it found that the deductions from the Appellant's salary had been made on account of her unauthorized leave from office. As a result, the Inquiry Committee unanimously held that no harassment as alleged by the Appellant had occurred and so no further action was required in the matter by Zameen.

4. Aggrieved by the decision of the Inquiry Committee, the Appellant filed the instant appeal on the grounds, *inter alia*, that the Inquiry Committee was subordinate to the Respondent No. 1, that the Committee was not constituted in accordance with the requirements of the Act and that the findings of the Committee were arbitrary, improper, unjust and partial. Therefore, the Appellant prayed that the impugned inquiry report dated 18-02-2023 be set aside and stern action be initiated against Respondent No. 1 and others for perpetrating an environment prejudicial to working women.

Submissions by Counsel

5. In her oral arguments before this forum, learned counsel for the Appellant reiterated her written submissions. She mainly asserted that the Inquiry Committee was biased and did not conduct a fair inquiry against Respondent No. 1; that the evidence of the Appellant was not considered by the Committee in arriving at its decision and that the conduct of Respondent No. 1 with the Appellant on 16-01-2023 was clearly tantamount to gender discrimination as she was the only ESM reprimanded by Respondent No. 1 whereas the other six male ESMs were not confronted. On the other hand, counsel for Respondent No. 1 denied all the allegations levelled against his client by the Appellant. He stated that the CCTV footage of 16-01-2023 categorically disproves the harassment claim of the Appellant; that Respondent No. 1 did in fact hold meetings with the other six male ESMs on administrative matters on 16-01-2023 and 17-01-2023; that the Appellant has made dishonest improvements and additions in the content of her appeal filed before this forum; that the Respondent No. 1's meeting with the Appellant on 16-01-2023 was his sole interaction with the latter and that Zameen has a sizeable female workforce with around 630 women working in the

organization and around 40% of senior positions occupied by women. He therefore prayed that the appeal be dismissed.

6. I have heard the arguments of the learned counsel for the parties and have also perused the attached record.

Determination by Ombudsperson

7. On a perusal of the record it transpires that the Appellant raised an objection on the impartiality of the first Inquiry Committee and asked for its replacement. This demand of hers was met and a new committee was formed in which the Appellant expressed her satisfaction. During the course of the inquiry proceedings, however, the Appellant did not remain cooperative. The persons who she cited as witnesses recorded their evidence before the Inquiry Committee but that evidence proved contrary to the stance of the Appellant. Even the CCTV footage, that was played before this forum during oral arguments, did not corroborate the Appellant's version as it did not disclose any loud or heated conversation between the Appellant and Respondent No. 1. Instead, the footage showed a routine short-lived meeting between the two. The footage also revealed that after the meeting the Appellant was in a pleasant and calm demeanour. Further, no proof or material was provided by the Appellant to this forum to establish that the conduct of the Inquiry Committee was biased or partisan. Therefore, after considering the relevant record in totality, it appears to me that the findings of the Committee are unbiased, impartial and strictly based on the evidence. Resultantly, no cavil can be taken with them.

8. It may also be relevant to mention here that previously the Appellant filed complaint No. FOH-HQR/0000042/2023 before this forum on the same set of facts but that complaint was dismissed vide order dated 28-02-2023, *inter alia*, on the ground that the matter was administrative in nature and so did not fall within the definition of harassment as given in Section 2(h) of the Act. This observation has attained finality because it has not been challenged by the Appellant before any higher forum. Therefore, in the presence of this order and in the absence of any cogent evidence to the contrary the

remarks/observations of this forum made on 28-02-2023 cannot be set aside casually.

9. In any event, the Appellant's claim that she was discriminated against on the basis of her gender is not made out. She has alleged that she was the only ESM questioned by Respondent No. 1 whereas the other six male ESMs were not targeted. However, the CCTV footage shows that soon after his meeting with the Appellant the Respondent No. 1 held a meeting with Mr. Yusuf Durrani, ESM – Project Sales (North). But even if I ignore the meeting of Respondent No. 1 with Mr. Yusuf Durrani it is pertinent to mention here that according to Section 2(h)(ii) of the Act gender-based discrimination means:

“2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—

(h) “harassment” means-

...

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;”

(emphasis supplied)

It may be noticed from the above-cited provision that for a complainant to show that she has been discriminated on the basis of her gender she would need to prove that the accused embodies a discriminatory and prejudicial mind-set or notion against women. A common example of such mind-set or notion is gender stereotyping. The United Nations Human Rights Office of the High Commissioner defines gender stereotyping as follows [refer Gender stereotypes and Stereotyping and women's rights (2014)]:

“Gender stereotyping is the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men.”

Case-law from the US Supreme Court and the European Court of Human Rights reveals that gender stereotyping is a facet of gender discrimination and therefore unlawful [refer **Price Waterhouse v Hopkins** 490 US 228 (1989) & **Konstantin Markin v Russia** (Application No. 30078/06)]. However, on the facts of the instant

case the Appellant has not been able to establish gender discrimination within the meaning of Section 2(h)(ii) of the Act. The one incident of 16-01-2023 cited by the Appellant does not indicate that Respondent No. 1 harboured a discriminatory and prejudicial mind-set or notion against women in general or the Appellant specifically or that he held the meeting with the Appellant on account of any perceived gender stereotypes, more so when as noted above in para 5 around 40% of the senior positions in Zameen are held by women. The situation could have been different had the Appellant alleged other incidents of harassment at the hands of Respondent No. 1 that disclosed that the latter was biased against women or regarded them as inferior to men due to his outdated/traditional beliefs about the attributes, characteristics, or roles of women in society. Nevertheless, since that is not the case the appeal of the Appellant cannot be accepted.

Conclusion

10. In light of what has been discussed above the appeal of the Appellant is dismissed because the findings of the Inquiry Committee are well-reasoned and based on compelling evidence. These, therefore, warrant no interference.

FEDERAL OMBUDSPERSON