

OFFICE OF THE FEDERAL OMBUDSPERSON
FOR PROTECTION AGAINST HARASSMENT OF WOMEN
AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000173/2023

Date of Institution: 20-06-2023

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson Dr. Danish Munir versus Mr. Bilal Amjad and others
1	2	3
10	24-10-2023	<p><u>Subject:</u> Maintainability of Complaint filed under the Protection against Harassment of Women at the Workplace Act, 2010</p> <p><u>Factual Background</u></p> <p>1. The facts of the case are that Dr. Danish Munir (“Complainant”), currently working at the Gynae department in Pakistan Institute of Medical Sciences, Islamabad (“PIMS”), filed the instant complaint against three officials of the Federal Investigation Agency (“FIA”), namely, Mr. Bilal Amjad, Sub-Inspector Cyber Crime Wing (“Accused No. 1”); Mr. Badar Shahzad Niazi, Inspector Cyber Crime Wing (“Accused No. 2”); Mr. Muhammad Salman, Assistant Director Cyber Crime Wing (“Accused No. 3”) alleging, <i>inter alia</i>, sexual harassment at their hands. She stated in her complaint that when she went to the FIA office to join an inquiry her mobile phone was seized by Accused Nos. 1 and 2 who accessed her private photos and videos and thereafter threatened to leak the same unless she engaged in sexual activities with them. Insofar as the Accused No. 3 is concerned, he instead of taking action against Accused Nos. 1 and 2 for their behaviour started pestering the Complainant for sexual intercourse. The Complainant therefore, <i>inter alia</i>, prayed that a comprehensive investigation be conducted against the Accused regarding the allegation of sexual harassment and that severe action be taken against them.</p> <p><u>Submissions by Counsel</u></p> <p>2. In response Accused Nos. 1 and 2 filed their written replies on 13.07.2023 denying the allegations levelled against them as false and baseless. Additionally, on 24.08.2023 Accused No. 3 filed two</p>

applications: one praying for the dismissal of the complaint on the ground that the Complainant and the Accused work for different organizations whereas the Protection against Harassment of Women at the Workplace Act, 2010 (“**Act**”) applies only when an employee and employer have a common organization, and the second for the Complainant to submit her cell phone before this forum for a forensic examination. The Complainant resisted the first application and filed her reply on 15.09.2023 wherein she submitted that following the 2022 Amendments to the Act the term ‘workplace’ has been given a broader meaning with the result that cross-organizational harassment cases can now be investigated by the Ombudsperson. In respect of the second application she agreed to the same with the condition that the forensic be conducted by an independent body other than FIA.

3. I have examined the arguments of the learned counsel for both sides and have also perused the record.

Question in Issue

4. The singular question that has arisen for determination in the instant matter is whether the protection provided by the Act to persons from workplace harassment extends only to those who work within the same organization or does it also cover instances where a person is harassed at a workplace where he /she is not employed.

Determination by the Ombudsperson

5. The preamble of the Act states that ‘*it is expedient to make this provision for the protection of women from harassment at the workplace*’ reveals that the Act was intended to be of a wider import applying also to situations where women visited a workplace for purposes other than seeking employment or performing their employment duties. This approach has been affirmed by the Lahore High Court in **Asif Saleem Vs. Chairman BOG University of Lahore** (PLD 2019 Lah 407):

“12. ...Moreover, this Act is not confined only to the relationship of an employer and employee; but it extends to all acts of sexual harassment committed by employer or employee with any women (at the workplace) by misusing/exploiting his/her official position/capacity...”
(*emphasis supplied*)

6. Additionally, the 2022 Amendments have also cemented the broad scope of the Act. Prior to the amendments only an employee could lodge a harassment complaint with either the Inquiry Committee or the Ombudsperson under Section 8(1) of the Act. However, after the 2022 Amendments the word ‘employee’ has been substituted by the term ‘complainant.’ These two terms are defined in the Act as follows:

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

...

(e) “complainant” means any person who has made a complaint to the Ombudsman or to the Inquiry Committee on being aggrieved by an act of harassment and shall include a former employee who has been removed or dismissed from service or has resigned, and a parent or guardian where the complainant is a minor;

(f) “employee” includes a regular, contractual, piece-rate, gig, temporary, part-time, freelance employee whether employed through express or implied contract on daily, weekly, monthly or hourly basis, and shall include a student, a performer, an artist, a sportsperson, an intern, trainee, a domestic worker, a home-based worker or an apprentice whether working for remuneration or not, or whether working on a voluntary basis or otherwise;”

(emphasis supplied)

Straightaway it becomes clear from the afore-cited provisions that the term 'complainant' is wider than the term 'employee' as the latter only includes categories of working persons whereas the former encompasses any person, whether an employee or not. Therefore, after the 2022 Amendments any person can approach the Inquiry Committee or the Ombudsperson for redressal of his/her grievances pertaining to harassment. It is acknowledged that it will be difficult, if not impossible, for a non-employee to file a complaint of harassment before an organization's Inquiry Committee, however, Section 8 of the Act caters for this eventuality by giving non-employees the option to lodge a harassment complaint directly with the Ombudsperson. As a result, non-employees are not left remediless under the Act. In these circumstances, I do not find Accused No. 3's objection to the instant complaint forceful.

7. Insofar as the second application filed by Accused No. 3 is concerned, suffice to say that the Complainant is willing to hand over her phone to this forum for forensic examination if the same will be conducted by an independent body other than the FIA. Since the Complainant is aggrieved by the actions of FIA officials her request appears reasonable and is allowed.

Conclusion

8. In view of the foregoing, the application filed by Accused No. 3 challenging the maintainability of the present complaint is dismissed. However, his second application is allowed. Accordingly, the Complainant is directed to submit her cell phone at this forum on the next date of hearing. Additionally, both the Complainant and the Accused No. 3 shall file the name of their preferred independent body,

		<p>other than the FIA, which may carry out the forensic examination of the Complainant's cell phone at the next date of hearing.</p>
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