

# OFFICE OF THE FEDERAL OMBUDSPERSON

## FOR PROTECTION AGAINST HARASSMENT OF WOMEN

### AT THE WORKPLACE, ISLAMABAD

#### FORM OF ORDER SHEET

Appeal No. FOH-ONL/000124/2023

Date of Institution: 10-04-2023

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson			
		TITLE:	Mr. Haroon Abdullah	VS	CEO, M/S Sada Tech Pakistan (Pvt) Limited
		DEPARTMENT: Sada Tech Pakistan (Pvt) Ltd			
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18	22-09-2023	<p><b><u>Subject Matter:</u> Final Order on Appeal filed under Section 6 of the Protection against Harassment of Women at the Workplace Act, 2010</b></p> <p><b><u>Factual Background</u></b></p> <p>1. Sada Tech Pakistan (Private) Limited also referred to as “Sada Pay” is a company duly registered and incorporated under the relevant laws of Pakistan, having its Head Office at Islamabad. It offered a position of “Experience Associate” to Mr. Haroon Abdullah (<b>hereinafter called the Appellant</b>) vide Employment Letter Agreement (Annexure-B at pages 14-17 on the file). This letter contains the terms of the employment with Term 5 providing:</p> <p style="padding-left: 40px;">“5. <b>Employment Relationship.</b> Employment with SadaPay is for no specific period of time. <u>Your employment with SadaPay will be “at will,” meaning that either you or SadaPay may terminate your employment at any time and for any reason,</u> with or without cause; provided that, unless otherwise provided herein, either party shall be required to give the other party at least 30 days’ notice...”</p> <p style="text-align: right;"><i>(emphasis supplied)</i></p> <p>The Employment Letter Agreement was issued by Mr. Brandon Timinsky, CEO Sada Pay. The Appellant accepted the offer of</p>			

employment on 08.03.2022 (Annexure-B at page 18 of the file). The Appellant was also provided the Anti-Sexual Harassment Policy (“**Harassment Policy**”) of SadaPay (Annexure-C at pages 32-44 of the file). According to Clause 1.6 of the Harassment Policy the same was adopted pursuant to the provisions of the Protection against Harassment of Women at the Workplace Act, 2010 (“**Act**”). Further, Clause 8.1 of the Harassment Policy notes that a formal complaint of harassment shall be inquired into by the Inquiry Committee which shall:

- i. Communicate to the accused the charges and statement of allegations levelled against him;
- ii. Require the accused to submit a written defence within 7 days from the day that the charge is communicated to him failing which the Inquiry Committee shall proceed ex-parte; and
- iii. Enquire into the charge and may examine oral and/or documentary evidence in support of the charge or in defence of the accused and each party shall be entitled to cross-examine the witnesses against them.

2. Subsequently, the employment of the Appellant was terminated vide Termination Letter dated 10.03.2023, effective from 09.03.2023, for misconduct on the grounds of sexual harassment (Annexure-A at Page 13 of the file). He was also asked to promptly return all company property in his possession by the Termination Letter. This letter was also issued by Mr. Brandon Timinsky.

3. Aggrieved by his termination from service, the Appellant filed the instant appeal under Section 6 of the Act with the prayer, *inter alia*, that the Termination Letter dated 10.03.2023 and the imposition of major penalty on him be declared ‘*void, illegal, nullity in the eyes of law and without any legal effect.*’ The main grounds raised by the Appellant were that:

- i. The Termination Letter and the imposition of major penalty were in complete disregard of the principles/legal framework applicable to the matter;
- ii. The Termination Letter and the termination from service violated the Appellant’s rights guaranteed under Articles

	<p>4, 9, 10 A and 25 of the Constitution of the Islamic Republic of Pakistan, 1973;</p> <ul style="list-style-type: none"><li>iii. The Termination Letter was violative of Section 4 of the Act read with Clauses 7 &amp; 8 of the Harassment Policy;</li><li>iv. The Inquiry Committee did not follow the principles of natural justice with the Appellant never being provided the material nor being given the chance to respond to the allegations of sexual harassment;</li><li>v. The Appellant was not provided either the order of the Competent Authority or the report of the Inquiry committee;</li><li>vi. The actions of SadaPay and the Inquiry Committee were arbitrary, biased, discriminatory and malafide; and</li><li>vii. The burden to prove the charges of sexual harassment was on the complainant as per Articles 117 and 118 of the Qanoon-e-Shahadat Order, 1984.</li></ul> <p>4. During the proceedings of the appeal, an application was filed by SadaPay on 23.06.2023 for deleting the name Ms Sada Tech Pakistan (PVT) Limited and instead impleading MS Sada Pay (Private) Limited as a party because the name of company had been changed and this fact was duly incorporated on 12.10.2022. This application was allowed and the nomenclature of the company was changed accordingly.</p> <p><b><u>Submissions by Counsel</u></b></p> <p>5. During oral arguments learned counsel for the Appellant elaborated upon the grounds recorded in the written appeal filed before this forum whereas the learned counsel for SadaPay submitted that pursuant to the filing of the instant appeal a corrigendum was issued on 18.08.2023 whereby the words '<i>for misconduct on the grounds of sexual harassment</i>' were deleted from the Termination Letter dated 10.03.2023 rendering the latter a termination simpliciter. According to counsel for SadaPay such a course of action i.e., termination simpliciter was available to SadaPay as Clause 5 of the Employment Letter Agreement allowed SadaPay to terminate the Appellant's employment '<i>at any time and for any reason</i>' and this condition had been agreed to by the Appellant himself. Therefore, he prayed that the appeal</p>
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be dismissed for having become infructuous because the allegation of sexual harassment had been expunged from the Termination Letter.

6. I have heard both the sides and have also perused the relevant record along with the case-law.

**Question in Issue**

7. The sole question of law that requires resolution in the instant matter is whether the appeal of the Appellant should be allowed given the factual situation noted above.

**Determination by Ombudsperson**

8. The Appellant's services were terminated by SadaPay vide Termination Letter dated 10.03.2023. It is an admitted fact that no formal inquiry was conducted by the Inquiry Committee prior to terminating the Appellant. This is evident from the jurisdictional objections raised by SadaPay in its written brief dated 31.07.2023 in which it acknowledged that the expulsion of the Appellant was not the result of formalized proceedings as prescribed and dictated by the Act but the outcome of SadaPay's internal HR policy. Nevertheless, counsel for SadaPay later attempted to justify this hasty removal of the Appellant by relying on the corrigendum dated 18.08.2023 and Clause 5 of the Employment Letter Agreement.

9. However, in my considered view this plea and stance of SadaPay cannot be upheld. Having issued the Termination Letter on 10.03.2023 it could not have at a belated stage changed its stance and argued that the termination imposed on the grounds of sexual harassment has been converted into termination simpliciter. Having issued the Termination Letter SadaPay was bound by its initial stance that the Appellant was removed from service because he had engaged in sexual harassment. Reliance in this regard is placed on the decision of the Lahore High Court rendered in **Sajjad Ahmed Vs. Secretary, Government of the**

**Punjab** (2007 CLC 811) wherein the court held in para 6 that if a party takes a stand in a case, it cannot later change the same and must adhere to it. It should also be borne in mind that the corrigendum was issued on 18.08.2023 which is nearly 5 months after the Termination Letter was issued and approximately 4 months after the appeal was filed by the Appellant before this forum. The most obvious reason for this delayed somersault by SadaPay appears to be its desire to avoid a decision by this forum on the merits of the appeal which cannot be allowed for the reasons just listed.

10. Since the termination of the Appellant is now established to have been ordered on the charge of sexual harassment, it needs to be determined whether he could have been removed on this ground without any inquiry being conducted against him. I am aware that the Appellant was a contractual employee of SadaPay and as such he is governed by the principle of Master and Servant. However, it is also an established principle of law that a person who is imposed a penalty by virtue of a Statute can only be burdened with that penalty after the procedure prescribed in the Statute has been followed. Reference is made to the decision of the Islamabad High Court in **Dr. Qazi Tahir Uddin Vs. Secretary, Pakistan Medical Commission, Islamabad** 2022 PLC(CS) 805 wherein it has been observed:

“32. Indeed, it is a master's prerogative to terminate a servant's contractual appointment if the former does not find the latter's performance to be satisfactory. Such termination can take place in accordance with the terms and conditions of the employment contract. A contractual employee cannot insist for a regular inquiry to be held regarding the employer's satisfaction with the employee's performance. The contractual nature of a person's employment makes his relationship with his employer that of master and servant. This Court, in exercise of its jurisdiction under Article 199 of the Constitution, can neither declare the termination of an employee's contractual employment to be unlawful, nor hold that the employment contract continues to subsist. These principles, however, will not apply where a statute, in explicit terms... prescribes a process and grounds for the removal of the appointee...”

*(emphasis supplied)*

I have already noted above in para 1 that the Harassment Policy was adopted pursuant to the Act. In fact, the Harassment Policy makes extensive reference to the Act and has adopted many of its sections. Therefore, in essence the Harassment Policy was formulated to ensure that complaints of harassment, the inquiry into them, the ensuing penalties and the forum for appeal (the Ombudsperson) all followed the structure of the Act. However, it has already been noted in para 8 above that despite the presence of the Harassment Policy and the Act no formal inquiry was ever held against the Appellant before his services were terminated. As a result, the provisions of the Act were violated. In these circumstances, the Termination Letter dated 10.03.2023 cannot be allowed to stand.

**Conclusion**

11. In light of the above discussion, I declare the Termination Letter dated 10.03.2023 void and of no legal effect. It is accordingly set aside. SadaPay is hereby directed to reinstate the Appellant into the same position that he was occupying immediately before 10.03.2023. The claim of back-benefits may be agitated by the Appellant before the competent forum, if he so desires. Following the consistent view of the Superior Courts, SadaPay is at liberty to initiate fresh proceedings against the Appellant but strictly in accordance with the Harassment Policy and the Act [refer **Pakistan Defence Officers Housing Authority Vs. Itrat Sajjad Khan** (2017 SCMR 2010) at para 18].

12. This appeal is allowed in the above terms.

**FEDERAL OMBUDSPERSON**