



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

**TITLE: MADIHA JAMSHED VS DR. MUHAMMAD IFTIKHAR**

**J U D G M E N T**

1. Complaint Number: 1(461)/2018-FOS (Reg)
2. Date of Institution: 26-04-2018
3. Date of Decision: 07-02-2019
4. Complainant: Ms. Madiha Jamshed  
Naseem Akhter Awan  
Teacher  
Government Girls High Secondary  
School, Attock City
5. Opponent: Dr. Javed Mehmood Malik  
Principal  
Government Boys High School  
Huzru, District Attock

**Kashmala Tariq  
Federal Ombudsman**

**TITLE: MADIHA JAMSHED VS. DR. MUHAMMAD IFTIKHAR**

Vide this Order, this forum will decide the Application on behalf of Respondents for Rejection of Complaint

The learned counsels for the respondents submitted that the complainant failed to prove the allegation of “harassment” as defined in Section 2(h) of the Protection Against Harassment of Women at Workplace Act 2010 (hereafter referred as “the Act of 2010”). It was also argued that this forum lacks the jurisdiction to entertain the instant complaint as it falls within the jurisdiction of Provincial Ombudsperson of Punjab. The Attock Hospital is located in Punjab and is governed by The Punjab Protection Against Harassment of Woman at Work Place (Amendment) Act 2012 (III of 2013) and it was submitted that honorable ombudsman possess lack of jurisdiction in this regard. In addition, the complainant was terminated lawfully on various grounds i.e. on the account of harassment complaints against her, gross misconduct; misbehavior with seniors, inefficiency, for creating a non-conducive workplace environment and absence without prior approval. Hence, the instant complaint is an attempt to blackmail the department i.e. Attock Hospital (PVT) Limited . Reliance was placed upon “*Salim Javed Baig and Others versus Federal Ombudsman and others*” PLD 2016 Lahore 433.

On the other hand, the learned counsel for the opponent submitted that this forum has the jurisdiction to entertain the instant complaint as under Section 1 of the Act of 2010 as it extends to the whole of Pakistan. Moreover, the said legislation is gender neutral and provides a progressive level playing field for all genders. The instant complaint is a result of victimization of the complainant. With regard to the issue of jurisdiction, this forum has the constitutional jurisdiction to entertain the instant complaint. Lastly, Honourable Division Bench Lahore High Courts Lahore in writ petition No 71556/2017 in case title Imran Maqbool MCB Vs Federation of Pakistan etc. held that Federation is competent to such matters because trans-

provincial establishment transcend Provincial boundaries. The Federal Ombudsperson jurisdiction is not limited to the Federal Capital Area but where the organizations are clearly trans-provincial organizations, thus the Federal Ombudsmen has the jurisdiction in relation to all employers, organizations, institutions and work places which have federal character or are established under federal law or are directly consequent to an international obligations under an international treaty or convention. Attock Refinery Limited (ARL) is a pioneer crude oil refining company and a major supplier of refined petroleum products in Pakistan. Attock Hospital PVT Limited is a wholly owned subsidiary of Attock Refinery Company Limited.

Arguments were heard. Without going into deeper appreciation of facts and circumstances of the instant complaint at this stage, the complainant has preferred the instant complaint before this office.

The question whether harassment under the Act of 2010 can only be sexual in nature and if the Act of 2010 provides remedies for women only requires an examination of the legislation.

Definition of complainant u/s 2(e) of the Act of 2010 is reproduced below: -

*“Complainant” means a woman or man who has made a complaint to the Ombudsman or to the Inquiry Committee on being aggrieved by an act of harassment.*

Whereas harassment is defined u/s 2(h) of the Act of 2010 as:-

*“Harassment” means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, **causing interference with work performance or creating an intimidating, hostile or offensive work environment**, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment;*

Similarly, according to the Schedule of the Act of 2010 called “Code of Conduct For Protection Against Harassment Of Women At The Workplace”, creating a hostile environment is described as:-

*“Any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature, which interferes with an individual’s work performance or creates an intimidating, hostile, abusive or offensive work*

environment.

**The typical “hostile environment” claim, in general, requires finding of a pattern of offensive conduct,** however, in cases where the harassment is particularly severe, such as in cases involving physical contact, a single offensive incident will constitute a violation.”

It is apparent that the Act of 2010 is intended to cater to all genders and the definition of harassment includes causing interference with work performance or creating hostile environment whereas hostile environment requires finding of a general pattern of offensive conduct and not just sexually offensive conduct; given the evolving notion of gender justice and discrimination, if the intent of legislature was otherwise, then the same would have been clear from the language used in the Act of 2010.

It is important to reiterate that the office of provincial ombudsperson in Punjab was entertaining the case of provincial Tertiary. None of the parties have shown lack of faith on this forum otherwise. Any kind of proceedings by provincial ombudsperson from here onwards will be hit by Section 18 of FOIRA. Even otherwise, in order to meet the ends of justice and particularly where prestige and honour of individuals are at stake, such technicalities should be avoided in the best interest of justice.

In light of the above mentioned discussion, I am not inclined to accept the instant application for rejection of complaint filed by the respondents. Therefore, the same hereby stands dismissed.

**KASHMALA TARIQ  
Federal Ombudsman**