

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000496/2022

Date of Institution: 06-12-2022

Serial No. of Order of Proceedings	Date of order of Proceedings	THE PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE ACT, 2010 Order of other proceedings with Signature of Federal Ombudsperson Nargis Bano Vs Ubaidullah Department: Utility Stores Corporation, Head Office, Karachi Company, Islamabad
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40	29-02-2024	<p><u>Subject: Final order on Complaint</u></p> <p>1. The instant complaint has been filed by Ms. Nargis Bano, Superintendent Finance Section (Complainant) against Mr. Ubaidullah Barki, Account Assistant (Accused). Initially the complaint was filed by Mr. Shahzad Rafiq, husband of the Complainant, however, vide order of this forum dated 02.01.2023 Mr. Shahzad Rafiq was directed to file an amended complaint and the same was duly complied with on 10.02.2023 when the Complainant submitted an amended complaint in her own name.</p> <p>2. In her complaint and affidavit in evidence the Complainant has stated that on 16.12.2021 when she confronted the Accused regarding his use of her personal heater, he shouted at her and used vulgar language. In particular she felt aggrieved by the following words '<i>tum har waqt mere oper charhi rehti ho. Tum jesi ghatiya aurat to har kisi ke oper charh jati hai.</i>' Further, that on previous occasions he had commented on her lipstick colour; had complimented her; had engaged in personal and indecent conversations with her; and would follow her when she would leave the office. The Complainant has also alleged that the Accused would try to block her path when she would use the stairs or go to the bathroom. She has prayed that this forum intervene in the matter and resolve it at the earliest.</p>

		<p>3. At this stage it is pertinent to mention that after the incident of 16.12.2021 the Complainant lodged a harassment complaint with the General Manager (HR&A). However, her complaint was dealt with by a Grievance Redressal Committee instead which held a hearing in the matter on 18.04.2022 in which both the Complainant and the Accused participated. On questioning by the Grievance Redressal Committee the Accused admitted that he had commented on the lipstick of the Complainant (albeit a year prior to the incident of 16.12.2021); that he did follow the Complainant when she would go out to meet her husband (although only so that he could discuss his issues with her husband); that he did tell the Complainant that she is looking good; that he did ask the Audit Section to trace her number (but only for official purposes); and that he may have followed the Complainant when she went to the bathroom (but the same was by chance and not intentional). Ultimately, before any witnesses could be called to give evidence in the matter the Accused stated that he wishes to excuse about any of his mistakes, which offer was rejected by the Complainant. Nonetheless, despite the Complainant's refusal no witnesses were summoned by the Grievance Redressal Committee. Subsequently, as a result of its own inquiry and the statements of the Complainant and the Accused, the Grievance Redressal Committee arrived at the unanimous conclusion that there was no evidence regarding harassment and that the matter pertained to a quarrel between both the parties for which the Accused could be blamed as he used the personal belongings of the Complainant. For these actions of the Accused the Grievance Redressal Committee directed that he be issued a letter of Advice to be more careful in the future and that he be transferred from his present place of duty. The letter of Advice was given to the Accused on 09.06.2022 but whether he has been transferred from his place of duty is still a matter of contention because although office order dated 03.03.2023 directs that he be transferred to the Rawalpindi region the Complainant before us has claimed that the Accused is still working in the same place as her.</p>
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| | | <p>4. In his reply the Accused has denied all the allegations of the Complainant and has referred to the Grievance Redressal Committee's inquiry which found no evidence regarding harassment. He has further stated that after receiving the letter of Advice he refrained from engaging with the Complainant and that the complaint is barred by time as it has been filed a year after the incident of 16.12.2021. He has therefore prayed that the complaint be dismissed with costs.</p> <p>5. Thereafter proceedings in the complaint progressed with the Complainant producing herself as PW-2; Khayam Shabbir and Zafar Iqbal, her co-workers, as PW-1 and PW-3; and her husband, Shahzad Rafiq, as PW-4. The Accused produced himself as DW-5; and Dilshad Ahmed, Raja Adeel Ahmed, Naveed Ahmed, Abu Baker Siddique and Nasir Khan, his co-workers, as DWs-1 to 4 and DW-6. Final arguments in the matter were made by the parties on 13.02.2024.</p> <p>6. I have heard the submissions of both the sides and have also perused the record.</p> <p>7. An examination of the Complainant's complaint and affidavit reveals that the allegations raised by her relate to both sexual harassment and gender-based discrimination. By virtue of Section 2(h) of the Protection against Harassment of Women at the Workplace Act, 2010 (Act) these two kinds of harassment have been made actionable by this forum. Consequently the only question before me is whether the Complainant has been able to establish her claim of harassment. In this respect, the Complainant has tendered her own evidence as well as that of her co-workers and husband. The following crucial points have emerged from the Complainant's and Zafar Iqbal's cross-examination:</p> <ol style="list-style-type: none">i. It is incorrect to suggest that I used to inform Khayam Shabbir because I was in relation with him. It is incorrect to suggest that Khayam Shabbir and Zafar have come to depose in my favour because I remained in relation with them (Complainant's cross); |
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- ii. It is correct that after 16th Dec 2021 no altercation took place between us (Complainant's cross);
- iii. It is correct that this complaint has been filed over one year of the incident took place which was 15.12.2021, the delay caused due to the fact my department did not respond to my complaint on time (Complainant's cross);
- iv. In my presence the Accused used the following words to the Complainant: '*tumhare baap ka heater hai? Main istemaal keroon ga. Tum jesi ghatiya aurat aaj tak nahin dekhi. Tum har waqt mujh per charhi rehti ho*' (Zafar Iqbal's cross).

On the other hand, in their affidavits Dilshad Ahmed, Raja Adeel Ahmed, Naveed Ahmed and Abu Baker Siddique and in his cross-examination Nasir Khan have admitted that they were not eye-witnesses of the incident that took place between the Complainant and the Accused on 16.12.2021. The afore-noted evidence therefore makes it clear that whilst the Complainant has produced independent evidence in the form of Zafar Iqbal to corroborate her allegation of harassment, the Accused has only relied on the evidence of those persons who did not even witness the altercation between him and the Complainant and merely found out about it later from their co-workers. To shatter the confidence inspiring evidence presented by the Complainant, the Accused took the defense that both Khayam Shabbir and Zafar Iqbal were in a relation with her. However, such a bold allegation without any cogent proof to substantiate it cannot adversely affect these witnesses' testimony, more so when in his own defense the Accused has failed to furnish credible evidence. Indeed, this suggestion of the Accused that Khayam Shabbir and Zafar Iqbal have only testified in favour of the Complainant because she is in a relation with them lends credence to her stance that the Accused has a habit of targeting the dignity and modesty of women which in itself is an act of harassment under the Act.

8. Further, as noted above in para 3 before the Grievance Redressal Committee the Accused made certain admissions regarding commenting on the lipstick of the Complainant; complimenting her; following her; and tracing her number. In fact, in front of the Committee he expressed his desire to excuse for

his mistakes but his offer was not accepted by the Complainant. Such conduct on the part of the Accused is tantamount to ‘*an apology and an admission of sorts... that his conduct may have intentionally or unintentionally caused harassment*’ to the Complainant [refer **Zaheer Ahmed Vs. Federal Ombudsman Secretariat for Protection against Harassment at Workplace, Islamabad** (2021 PLC(CS) 839) at para 7]. Consequently, it cannot now be argued by the Accused that he has not harassed the Complainant when he has as a matter of fact admitted his wrongdoing before the Grievance Redressal Committee.

9. In the above circumstances the objection of the Accused that the complaint is time-barred is misplaced for two reasons: firstly, because the Complainant has explained the delay in filing the complaint in her cross-examination (she was awaiting the decision of her departmental complaint) and secondly, because the Supreme Court in **Uzma Naveed Chaudhary Vs. Federation of Pakistan** (PLD 2022 SC 783) has held that delay is not fatal to a complaint because of our ‘*cultural and social setting where prevailing notions of family honour and taboos play a dominant role.*’

10. Here it is also important to note that although the Complainant initially approached her department for redressal of her grievances, the department did not constitute an Inquiry Committee to probe the matter and instead formed a Grievance Redressal Committee which did not follow the provisions of the Act whilst conducting its inquiry and imposing the penalty. This is evident from the fact that no witnesses were called by the Committee after the Accused stated that he wished to get excused for his mistakes even though the Complainant explicitly rejected his offer. This deprived the Complainant of her valuable right to produce evidence in support of her claim [refer Section 4(1)(c) of the Act]. Further, the Grievance Redressal Committee issued a Letter of Advice to the Accused for his actions and ordered his transfer from his then place of duty. However, neither of these penalties are provided under the Act as punishments for harassing a person [refer Section 4(4) of the Act]. Therefore, the

inquiry that took place at the departmental level was not an inquiry under the Act but rather a disciplinary proceeding and so the Complainant's direct complaint before this forum is competent.

11. In light of the foregoing, I find the Accused guilty of harassing the Complainant. Nevertheless, since the Complainant has admitted in her cross-examination (produced above in para 7) that the Accused has not harassed her since 16.12.2021 I find there to be sufficient mitigating circumstances which necessitate a lower penalty. Resultantly, I impose upon the Accused the minor penalties of censure under Section 4(4)(i)(a) and compensation to the tune of Rs.500,000, payable to the Complainant, under Section 4(4)(i)(d). Additionally, the department is directed to positively inform this forum by **08.03.2024** whether the Accused has been transferred from the Complainant's place of duty in line with the recommendation of the Grievance Redressal Committee. The Department is also directed to provide the notification of their standing Harassment Inquiry Committee and a schedule of training of the members and staff by **28.03.2024**. The instant complaint is allowed in the said terms.

FEDERAL OMBUDSPERSON