

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Appeal No. FOH-HQR/0000115/2023

Date of Institution: 12-04-2023

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson			
		TITLE:	Samia Rehman Dogar OG-I	VS	Waseem Ajmal Chaudhry & others
1	2	3			
20	08-12-2023	<p><u>Subject:</u> Final Order on Appeal filed under Section 6 of the Protection against Harassment of Women at the Workplace Act, 2010</p> <p>1. Ms. Samia Rehman Dogar (Appellant) was an Associate Professor (BS-19) who was given the charge of Professor/Director (BS-20), Federal College of Education, Islamabad (FCE) vide notification dated 19.08.2020 for three months or till her regular promotion to BS-20. Thereafter, by notification dated 02.03.2021 she was promoted to the post of Professor (BS-20) FCE. On 24.02.2023 the Appellant filed a complaint of harassment against Mr. Waseem Ajmal Chaudhry, the Additional Secretary (Incharge) of the Federal Ministry of Education and Professional Training (Respondent No. 1) at the departmental level. In her complaint she made particular reference to an incident of harassment that allegedly occurred on 23.02.2023 at 9:30 am during a Zoom call. It is the Appellant's case that during that call, in the presence of other witnesses, Respondent No.1 behaved very rudely with her on account of her reluctance to house around 70 persons in the premises of FCE due to capacity issues. In fact, that on the refusal of the Appellant to comply with Respondent No.1's request he allegedly said the following to her:</p> <p style="text-align: center;">“Tum ney mujhay inkaar kiya hai? Tum mujhay kaisay inkaar kar saktee hoon? I will see you. Mein FCE key tamaam program band kerdoonga. Mein FCE ko hee bund kerdoonga. Yeh Ministry ka idaara hai, tum kaun hotee ho? International conferences phirtee hoon, yeh kaam tumse nahee hota hai. Mein tumhay dekh loonga.”</p>			

The Appellant also pointed out that she attended the Zoom call while she was in a hospital at Lahore because of her mother who was admitted for cancer treatment. In light of this incident she requested the then Secretary, Federal Ministry of Education and Professional Training to inquire into the matter on merit.

2. On 27.02.2023 the Appellant filed a formal complaint of harassment at the departmental level wherein she also alleged previous malpractices on the part of the Accused, and on 28.02.2023 she requested the constitution of an Inquiry Committee under Section 3 of the Protection against Harassment of Women at the Workplace Act, 2010 (**Act**). However, soon after reporting the harassment the Appellant claims that she was subjected to reprisals, namely, that on 27.02.2023 a clarification was sought from her on how she is exercising the powers of Head of Department/Director FCE since the post of Professor (BS-20) has not been declared as such; that on 01.03.2023 the FCE was placed under the control of the Federal Directorate of Education; and that on 03.04.2023 her services were transferred to Allama Iqbal Open University, Islamabad for which she reported on duty on 07.04.2023 but was informed that the notification of 03.04.2023 had been withdrawn and that the Appellant should approach the Federal Ministry of Education and Professional Training for further action. According to the Appellant ever since then she is unsure of her employment status.

3. In the meanwhile on the Appellant's complaint an Inquiry Committee was constituted under the Act which comprised the following persons: Dr. Shaista Sohail, Chairperson; Dr. Ghulam Ali Mallah, Member; Dr. Fozia Tanvir Sheikh, Member; and Mr. Zafar Mahmood Malik, Member/Secretary. The Appellant was issued a notice on 13.03.2023 to appear before the committee on 14.03.2023. On this date the committee asked the Appellant whether she wishes to resolve the complaint through mediation, an offer which she declined. On 16.03.2023 the Inquiry Committee sought, *inter alia*, the following information from the Appellant: whether her allegation is of sexual harassment or otherwise and the names of her witnesses. The Appellant was given one day's time to provide this information. Thereafter, on 17.03.2023 the Appellant wrote to the members of the

Inquiry Committee wherein she expressed a lack of confidence in the committee on account of three of its members being subordinates of Respondent No.1. She also sought the video recording of the Zoom call held on 23.02.2023 to ascertain the identity of all the participants who were present during the call. Since the Appellant did not receive any response to her letter dated 17.03.2023 she provided a list of her witnesses to the Inquiry Committee on 30.03.2023 with the caveat that she could not arrange all of the witnesses because most of them are subordinates of Respondent No.1 and so there is a genuine fear of reprisals. On this same date the Appellant also sent a grievance letter to the members of the Inquiry Committee inquiring about, *inter alia*, the exact stage at which the committee's proceedings are and the reason for clarifying from her whether her allegation is of a sexual nature when the definition of harassment has been expanded to include gender-based discrimination. A grievance letter on similar lines was also sent to the then Secretary and then Federal Minister of the Federal Ministry of Education and Professional Training on 05.04.2023. However, the Appellant alleges that after she sent the grievance letter on 05.04.2023 she received an office order dated 04.04.2023 which exonerated Respondent No.1 from the charges of harassment.

4. On account of the above-listed facts the Appellant has prayed that this forum may:

- i. Declare that the Appellant has been subjected to discriminatory, hostile and unreasonable behaviour at the hands of Respondent No.1;
- ii. Take appropriate action against Respondent No.1 as envisaged under Section 4(4) of the Act;
- iii. Hold that Respondent Nos.2-6 (members of the Inquiry Committee and the Federal Minister) are also personally and vicariously responsible for the harassment suffered by the Appellant; and
- iv. Hold that the Respondents breached their obligations under the Act in disposing of the Appellant's complaint without adhering to due process requirements and without providing any reasoning within the order.

5. In response, Respondent No.1 initially challenged the maintainability of the appeal before this forum on the grounds that the allegations raised by the Appellant do not fall within the ambit of harassment as defined in the Act and because the alleged cause of action accrued to

the Appellant in Lahore as a result of which the Provincial Ombudsperson has jurisdiction to entertain the appeal. These objections of Respondent No.1 were rejected by this forum on 21.06.2023 and also by the Hon'ble President of Pakistan on 17.08.2023. Thereafter, on 18.09.2023 Respondent No.1 filed his reply to the appeal wherein he urged the same grounds that he had raised in his application on maintainability. Additionally, he submitted that the Inquiry Committee conducted its proceedings in accordance with the law and principles of natural justice and that all the incidents cited by the Appellant as acts of retaliation were in fact administrative orders passed by the Federal Ministry of Education and Professional Training without his involvement.

6. I have extensively heard the learned counsel for the parties and have also perused the record.

7. Before dilating upon the merits of the appeal, I consider it appropriate to produce certain provisions of the Act:

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

...

(h) “harassment” means-

- i. any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation 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; or
- 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;

...

3. Inquiry Committee.— ...

(2) The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA.

...

4. Procedure for holding inquiry.— (1) The Inquiry Committee, within three days of receipt of a written complaint, shall—

(a) communicate to the accused the charges and statement of allegations leveled against him, the formal written receipt of which will be given;

(b) require the accused within seven days from the day the charge is communicated to him to submit a written defense and on his failure to do so without reasonable cause, the Committee shall proceed *ex parte*; and

(c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross-examine the witnesses against him.

(2) Subject to the provisions of this Act and any rules made thereunder the Inquiry Committee shall have the power to regulate its own procedure for conducting inquiry and for the fixing place and time of its sitting and, where applicable, apply appropriate child-sensitive procedures.

(3) The following provisions *inter alia* shall be followed by the Committee in relation to inquiry:

...

(d) adverse action shall not be taken against the complainant or the witnesses;"

(emphasis supplied)

8. Four things become very clear from the afore-noted provisions, namely, that:

- i. Harassment under the Act is now no longer limited to only sexual harassment but encompasses also discrimination on the basis of gender, which may not be sexual in nature, but may encompass a discriminatory and prejudicial mind-set/notion against a particular gender;
- ii. The Inquiry Committee must only be comprised of three members;
- iii. Although it is the discretion of the Inquiry Committee to examine oral evidence, once it decides to take such evidence it has to give the parties a chance to cross-examine the witnesses against them; and
- iv. During the inquiry proceedings the committee must ensure that no adverse action is taken against a complainant.

However, if one examines the composition of the Inquiry Committee and its report dated 22.03.2023 on the touchstone of the above-mentioned legal criteria it will be noticed straightaway that the same are severely deficient. The Inquiry Committee's report is signed by four persons of whom one is listed as the Chairperson while the other three are acknowledged as members. This is not only a direct violation of

Section 3(2) of the Act which is couched in mandatory language but also of the settled proposition that when the law requires a thing to be done in a particular manner then it must be done in that prescribed manner otherwise it will be a nullity in the eyes of the law [refer: **Muhammad Akram Vs. Zainab Bibi** (2007 SCMR 1086) at para 11]. Therefore, on this ground alone the report of the Inquiry Committee dated 22.03.2023 is liable to be set aside.

9. Be that as it may, even the Inquiry Committee's report reflects its poor understanding of the provisions of the Act. The committee has noted in paras 21 and 22 that only sexual harassment is cognizable under the Act and for this purpose it has relied on the unamended definition of harassment given in the Act and on the judgment of the Supreme Court rendered in **Nadia Naz Vs. President of Islamic Republic of Pakistan** (PLD 2021 SC 784) (**2021 Judgment**). However, what the committee has failed to notice is that after the 2022 Amendments to the Act harassment now also includes gender-based discrimination which does not necessarily have to be of a sexual nature. It has also escaped the attention of the committee that the 2021 Judgment of the Supreme Court has already been set aside by the Supreme Court itself in **Nadia Naz Vs. President of Islamic Republic of Pakistan** (PLD 2023 SC 588) (**2023 Judgment**). In the 2023 Judgment the Supreme Court recognised that it had adopted a restrictive meaning of the term harassment in the 2021 Judgment and had ignored that most harassment is committed not due to some sexual interest but to reinforce existing power dynamics. Consequently, for proceeding with the inquiry on the basis of an incorrect understanding of the law the Inquiry Committee's report cannot be sustained.

10. Nevertheless, this is not the only flaw in the committee's proceedings. Section 4(1)(c) explicitly recognises that every party has the right to cross examine the witnesses produced against him/her. However, it is unfortunate that the Inquiry Committee did not follow this cardinal principle of law and instead accepted the statements of two witnesses i.e., Dr. Maryam Chughtai and Dr. Riffat Jabeen without either informing the Appellant or giving her the opportunity of cross-examining them. The Lahore High Court in **Khalid Mehmood Vs. Punjab Labour Appellate Tribunal, Lahore** (2018) PLC 56), after

referring to various precedents of the Superior Courts, has categorically held that cross-examination of witnesses is an integral feature of the Fundamental Right to a fair trial and due process (Article 10A of the Constitution) and the right to be treated in accordance with law (Article 4 of the Constitution). Therefore by not providing the Appellant the right to cross-examine the witnesses against her, her due process rights have been violated. This is in addition to the fact that after 14.03.2023 the entire proceedings were conducted by the Inquiry Committee in the absence of the Appellant and that a crucial piece of evidence i.e., the video recording of the Zoom call held on 23.02.2023 was never summoned by the Inquiry Committee, let alone examined by it during the course of the proceedings. This latter omission becomes all the more glaring when it is seen that the Appellant specifically sought the video recording from the Inquiry Committee through her letter dated 17.03.2023. Resultantly, the Inquiry Committee's report dated 22.03.2023 has lost all force because of the afore-cited lapses.

11. Lastly, it is also extremely regrettable that despite the Appellant's clear pleas that she was facing adverse action on account of having filed the complaint of harassment, the Inquiry Committee merely termed such retaliatory actions as orders of a normal administrative procedure without considering that the same were passed either on the same day that the Appellant filed her formal complaint of harassment or soon after. Even before this forum the Appellant stated that she is unsure of her employment status. This is a deeply unsatisfactory situation that clearly goes against the spirit of the Act which was enacted, *inter alia*, to protect complainants of harassment from adverse action. Therefore, I direct the Federal Ministry of Education and Professional Training to immediately reinstate the Appellant to the post of Professor (BS-20) that she was occupying prior to the filing of her complaint and to submit a compliance report to this effect on **19.12.2023**.

12. In light of what has been discussed above, I set aside the Inquiry Committee's report dated 22.03.2023 and the Competent Authority's order dated 04.04.2023. The case is remitted to the department for conducting a fresh inquiry into the complaint of the Appellant strictly in

		<p>accordance with the law and keeping in view the deficiencies noted above. The Inquiry Committee shall give its findings within 30 days from the date of receipt of this order. However, if the Appellant does not wish to proceed with the complaint before the Inquiry Committee she is at liberty to file a fresh complaint before this forum under Section 8(1) of the Act.</p> <p>13. This appeal is allowed in the afore-noted terms.</p> <p style="text-align: right;">FEDERAL OMBUDSPERSON</p>
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