

By this Order, I am going to dispose of complaint No. 1(3)/FOS/2011.

1. Briefly the facts are, that on 20-04-2011, a complaint was filed by Imtiaz Waryah, against accused Ghulam Mustafa Driver and co-accused Nisar Ahmed, Chowkidar of Federal Government Girls Higher Secondary School G-9/2, Islamabad. The said complaint was accompanied by two other applications of similar nature filed by Sobia Kousar Wife of Imtiaz Waryah and Naziran Bibi Widow of Younis.

2. The gist of all the three applications are that Naziran Bibi was serving as Aya in a day care centre situated inside Federal Government Girls Higher Secondary School G-9/2, Islamabad. That on 07-01-2011 Naziran Bibi, after her duty was leaving for her home. When she reached near the gate of the school, co-accused Nisar Ahmed, Chowkidar stopped her and inquired about the two shoppers that she was carrying at that time. To this Naziran Bibi protested and asked co-accused Nisar Ahmed as to why every time when she leaves the day care centre, he stops her unnecessarily and search her belongings. During her arguments with co-accused Nisar Ahmed, accused Ghulam Mustafa, Driver came there and joined co-accused Nisar Ahmed Chowkidar. Both the accused encircled Naziran Bibi and abused her, accused Ghulam Mustafa not only subjected her to harassment by calling her names but also made an attempt to slap Naziran Bibi which

she managed to escape. Sobia Kausor who is serving as Trained Graduate Teacher (TGT) in the said school was standing near the gate. She came to the rescue of Naziran Bibi and asked both the accused not to harass Naziran Bibi. On hearing this, the accused Ghulam Mustafa, got furious and abused Sobia Kausar in presence of 25 to 30 students. Meanwhile complainant Imtiaz Waryah reached the place of occurrence. He asked the accused as to why he was misbehaving with Sobia Kausar and Naziran Bibi. The accused Ghulam Mustafa exchanged harsh words with Imtiaz Waryah and grappled with him Ms. Sobia Kausar called Rescue 15 for help. The police reached there and asked both the parties to come to the police station. Next day when the complainant went to the Police Station she was informed that her case was pending in the court of Assistant Commissioner Industrial Area, Islamabad. The learned A.C after taking machalka of naik nami from accused Ghulam Mustafa, disposed of the case and directed the complainant to approach competent court having jurisdiction to try the subject complaint. The complainant Sobia Kasar submitted an application in the office of Federal Directorate of Education on 9-01-2011 regarding the same incident. According to Sobia Kosar a fact finding committee was formed by the Federal Directorate of Education Islamabad, to inquire in to the matter but the said committee neither recorded the statement of Sobia Kausar nor was she informed of the finding of the said committee. Another

application was submitted in the office of the Principal of the said school but no action was taken on that application hence the present complainant filed under section 8 sub-section (i) of Protection against Harassment of Women at Workplace Act 2010 with a prayer that accused be awarded major penalty for harassing the complainants at workplace.

3.

A Show Cause notice under section 7, sub-section (ii) was issued to the accused alongwith the allegations levelled against him by the complainant. Both the parties appeared before this forum. The statements of Sobia Kausar, Naziran Bibi, Fareeda Yasmeen and Shahnaz Parveen were recorded. The closure of complainant evidence was followed by the statement of learned counsel for the accused Ghulam Mustafa.

4.

The learned counsel for the accused did not cross examine Mrs. Fareeda Yasmeen and Shahnaz Parveen as according to him, they were neither complainants nor were eye witness to the occurrence. The learned counsel did not wish to record the statement of accused respondent No.1, as according to the learned counsel the accused was already punished by a competent authority therefore under Article 13 of the Constitution of 1973, he can not be punished twice for the same offence.

5.

The Director General, Federal Directorate of Education was also

summoned alongwith personal file of the accused Ghulam Mustafa Statement of Mr. Azhar Khan Supervisor Monitoring was recorded as representative of the Directorate. He produced copies of various complaints against accused which were made part of the Personal File of accused.

I have gone through the statements of complainant Sobia Kausar, Naziran Bibi Fareeda Yasmeen and Shehnaz Perveen and have perused the record.

6. The objection raised by the learned counsel for accused Ghulam Mustafa that Mrs. Fareeda Yasmeen and Shehnaz Parveen were not eye witness to the incident that took place on 07-01-2011, has no force in it, as under sub-section 4 of section 8 of the Protection against Harassment of Women at Workplace Act 2010, the Ombudsman may require any person, officer or member of an organization concerned to furnish any information or to produce any document which in the opinion of the ombudsman is relevant.
7. The statements of Mrs. Fareeda Yasmeen , Principal, F.G. Model School F-7/2, Islamabad and Shehnaz Perveen, Principal, IMCG, G-6/1-4, Islamabad were relevant and helpful as both the ladies suffered harassment at the hands of accused Ghulam Mustafa.
8. The exoneration of accused Ghulam Mustafa, as alleged by the learned counsel in his statement that he has already been

punished by a competent authority, is not based on legal hypothesis, as according to the record the learned Assistant Commissioner directed the complainant to approach competent court of law having jurisdiction to try the complaint and the case of complainant was disposed of accordingly. Similarly Federal directorate of education has not constituted the inquiry committee as provided under section 3 of Protection against Harassment of Women at Work Place Act 2010. Their fact finding committee was not competent forum for hearing of this case. The accused has impliedly accepted the charges leveled against him as he did not deny the charges rather his objection was that he has already been punished by a competent authority.

9. The record shows that the fact finding committee recommended to transfer the accused Ghulam Mustafa from the said school to another school. It is not a defense to the accused that he was transferred from the said school as:

“Transfer is an administrative action and is not a punishment”.

The personal file of accused contains a number of complaints filed by girl students alleging therein that accused Ghulam Mustafa is habitual of passing objectionable remarks in respect of girl’s dresses and their figures. There are number of complaints available on the personal file of accused but no proper disciplinary action has been taken against the accused for unknown reasons.

10. The fundamental right to carry on any occupation, trade or profession depends on availability of a “safe” working environment. This Act has been promulgated to provide safe working environment for women. It was the duty of the Director General Federal Directorate of Education to have taken effective steps both to prevent harassment as and when it occurred he should have intervened quickly as under Section 11 of the Act it is the responsibilities of the employer to ensure implementation of the Act, including but not limited to incorporate the code of conduct for Protection against Harassment at the Workplace as part of their management policy. The complainant Sobia Kausar who belongs to an honourable profession of teaching, was subjected to harassment and demeaning attitude by using threatening abusive and insulting language, thus created an intimidating hostile and offensive work environment. The instant complaint is a typical case of harassment under section 2 sub-section (h) of Protection against Harassment of Women at Workplace. Moreover no mela fide has been alleged against complainants to have falsely charged the accused Ghulam Mustafa in the instant complaint. Nisar Ahmed Chowkidar is not found guilty as both the complainants have not charged accused for harassment.
11. In the view of forgoing it is held that the Ghulam Mustafa

accused is found guilty of harassing Sobia Kausar and Naziran Bibi through verbal communication of sexual nature and sexually demeaning attitude. I therefore impose major penalty of dismissal from service as provided under Section 4(ii) (d) of the Protection against Harassment of Women at Workplace Act 2010. The Director General Federal Directorate of Education is directed to implement the decision within fourteen days of the receipt of this decision/order and report compliance within five days as provided in sub rule 12 of rule 10 of the Protection against Harassment of Women at Workplace rules 2010.

12.

The Director General is directed to constitute an inquiry committee under Section 3 of the Protection against Harassment of Women at Workplace Act 2010. He is further directed to ensure that the code of conduct is displayed at the conspicuous place in all the Institutions of the Federal Directorate of Education and this Act is implemented in its letter and spirit otherwise proceedings under section 11 of the Protection against Harassment of Women at Workplace, 2010 will be initiated against him.

A copy of this Order be sent to Federal Directorate General of Education, Islamabad for compliance and information.

Case file be consigned to record room after its necessary

completion and compilation.

Announced.

(Musarrat Hilali)
Ombudsman

Certificate:

Certified that this Judgment consists of 07-pages. Each page has been signed and verified by me after necessary completion and compilation.

(Musarrat Hilali)
Ombudsman