



FEDERAL OMBUDSMAN
For Protection against Harassment of Women at Workplace
Islamabad

ORDER

1. Appeal Number: No. 1(20)/FOS-2011
2. Date of Institution: 17-9-2011
3. Date of Decision: 05-01-2012
4. Appellant: Noor Mustafa Awan, lecturer Quaid-e-Azam
University, Islamabad.
5. Respondent
 - i. Quaid-e-Azam University, Islamabad.
 - ii. Ms. Tehrim Tahir

Musarrat Hilali

Ombudsman:

This matter arises out of an appeal No.1(20)/FOS-2011.

1. Briefly the facts are that on 07-7-2011 Ms. Tehrim Tahir, a student of information technology department made a written complaint to the vice chancellor that the appellant called the respondent to his office on the pretext to show her the paper of computer system IT-304. That at about 11:00 am she went to the office of appellant who asked her for sexual favours promising that in return the appellant would pass her in the said paper. That on her refusal, the appellant sexually harassed her by violating all norms of decency and morality. Respondent resisted and left the office of the appellant and informed the faculty members and her colleagues about the incident and lodged a complaint with the vice chancellor. It is also on record that the appellant after the incident repeatedly made calls on her cell phone and insisted upon her to visit the office of the appellant.
2. That on directions of the vice chancellor, the registrar and the Dean Faculty of Natural Science visited the office of the appellant and impounded papers of the course IT -304 (34 in number) and

got sealed the same in 2 envelopes. During scrutiny, it was found that four questions of the paper of part-II which were solved by Ms. Tehrim were not marked. In addition, question No.1 of part four the MCQs not attempted by Ms. Tehrim Tahir were also not marked. This fact shows that the appellant had deliberately not marked the paper to blackmail Ms. Tehrim Tahir. The over all behaviour of appellant with students was also unbecoming of a gentleman and a teacher, as he would often use sexually suggestive remarks in class room.

3. That an inquiry committee was constituted under protection against harassment of women at workplace Act 2010, to inquire into the complaint made by Ms. Tehrim Tahir. The committee recorded the statements of Ms. Tahir Tahir (complainant), Miss. Nida Younas, Miss Naz Arif, Irfan Khaliq and Arsalan Ahmed. The committee also recorded the statement of the appellant, and upon the consideration of statements of Ms. Tehrim Tahir and her witnesses found the appellant guilty of sexually harassing Ms. Tehrim Tahir and recommended termination of appellant from service.

4. That the syndicate in its capacity of competent authority issued show cause notice to the appellant who submitted his reply and denied all the charges leveled against him. The competent authority after examining the statements of the Ms. Tehrim Tahir, the appellant and the witnesses, accepted the recommendations of the inquiry committee.
5. Aggrieved of the recommendations of the inquiry committee dated 20-8-2011 and the subsequent order of the competent authority dated 24-8-2011 the appellant filed the instant appeal under section 6 (1) of the protection against harassment of women at workplace Act 2010.
6. Learned counsel for appellant submitted that protection against harassment of women at workplace Act 2010 is not applicable to the educational institutions. That the relationship of employer and employee does not exist between the appellant and Ms. Tehrim Tahir. He added that under the act only an employee of an institution can file a complaint against her employer for harassing her at workplace. That the syndicate is not competent authority. That Mr. Wasim was member of inquiry committee as well as member of competent authority.

7. Learned counsel for appellant alleged melafide against Tehrim Tahir that she was pressurizing the appellant to grant her more marks. That the appellant was not given an opportunity of cross examination of Tehrim Tahir and her witnesses. Learned counsel submitted that the impugned notification dated 24-8-2011 be set aside.
8. On the other hand learned counsel appearing on behalf of respondents supported the recommendations of the inquiry committee dated 20-8-2011 and the subsequent order of the competent authority dated 24-8-2011 and prayed for the dismissal of the appeal.
9. I have gone through the statements of appellant, Ms. Tehrim Tahir and her witnesses and have examined the annexed documents. The question to ponder whether the protection against harassment Act 2010 is applicable to educational institutions and whether it only permits an employee of an organization to make a complaint. It will be useful to reproduce section 2, sub section (L) and (C) which reads as under:

“Section 2 subsection (L) “Organization” means a Federal or Provincial Government Ministry, Division or department, a corporation or any autonomous or semi-autonomous body, Educational Institutes, Medical facilities

established or controlled by the Federal or Provincial Government or District Government or registered civil society associations or privately managed a commercial or an industrial establishment or institution, a company as defined in the Companies Ordinance, 1984 (XLVII of 1984) and includes any other registered private sector organization or institution

Further sub section (n) “Workplace” means the place of work or the premises where an organization or employer operates and includes building, factory, open area or a larger geographical area where the activities of the organization or of employer are carried out and including any situation that is linked to official work or official activity outside the office.

Section 2 (e) “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.”

10. From the plain reading of the above sections it is clear that the university being an educational institution is an organization within the meaning of section 2 sub-section (L) of the act. Further under section 2 sub-sections (e) the application of the act is not restricted to the employees of an organization. Sexual harassment as defined is not in any way limited in its application to the

employees of an organization. In view of this it is held that the female students even otherwise being the part of the university cannot be deprived of the remedy provided by the act if sexually harassed. The objection of the appellant that the act is not applicable to the educational institutions has no force in it, therefore this argument is rejected.

11. The arguments of the learned counsel for appellant that the act is not applicable to the students as it only permits an employee of an organization is not based on legal hypothesis. The fact remains that work means physical and mental effort or activity directed to the production or accomplishment of something that one is doing, making or performing especially as an occupation or undertaking a duty or a task, therefore, the act equally applies to employer, employee and students.
12. On 29-7-2011, the members of syndicate resolved to designate the syndicate as management and competent authority under section 2(j) and (d) of the Protection against Harassment of Women at Work Place Act 2010. The syndicate again met on 20-8-2011 to discuss the report of inquiry committee alongwith show cause notice issued to the appellant. The record shows that Dr. Wasim did not attend the meeting of the syndicate held on 20-8-2011 as

he was member of the committee who conducted inquiry in case of the appellant.

13. The arguments of the learned counsel for appellant that Ms. Tehrim Tahir (complainant) made a complaint against appellant just to pressurize him to grant her more marks is unfounded as Ms. Tehrim Tahir made complaint at the advise of her fellow students.
14. This is also evinced from the minutes of the seventh meeting of the committee held on 20-7-2011 that the appellant was given an opportunity of cross examination of Ms. Tehrim Tahir and her witnesses but he declined to cross examine any of them. A certificate in this regard duly signed by the appellant is on record.
15. In the view of foregoing, it is held that the appeal in hand strictly falls within the definition of harassment under section 2 sub section (h) of protection against harassment of women at workplace Act 2010. The appellant Noor Mustafa Awan is found guilty of sexually harassing Ms. Tehrim Tahir through verbal communication of sexual nature and sexually demeaning attitude, and have failed to make out a case in appeal justifying interference of this forum.

16. In the wake of what has been discussed above this appeal is dismissed.

Announced

MUSARRAT HILALI
Ombudsman

Certificate

Certified that this decision consists of 08-pages each page has been signed and verified by me after completion and compilation.

MUSARRAT HILALI
Ombudsman