



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

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

1. Appeal Number: 1(76)/2013-FOS
2. Date of Institution: 20-8-2013
3. Date of Decision: 04-11-2013
4. Appellant: Mr. Abdul Samad Mumtaz  
House No. B-III-521, Service Road  
Muslim Town, Rawalpindi.
5. Respondent: Dr. Saqib Ali & Others,  
Qaid-e-Azam University  
Islamabad.

**Justice (R) Yasmin Abbasey,**

**Ombudsman:**

**This matter arises out of an appeal No. 1(76)/ 2013-FOS**

1. This appeal has been presented by appellant against the order dated 24-4-2013 passed by the inquiry committee constituted by the Qaid-e-Azam (QAU) University Islamabad on a complaint received by respondent No.6 Mst. Saba Afzal in 2012 against the appellant.
2. It is stated by appellant that as per report respondent No.6 had presented her complaint in 2012 for the incidents happened in February 2010 – June 2010 without explaining the reason of this delay nor the inquiry committee during proceeding provided an opportunity to him to cross the respondent No.6 and to ask the reason of this inordinate delay. It is further stated that even the inquiry committee itself in his report has not given any justification for considering of the complaints or the allegations leveled by respondent No.6 against him after elapse of two years.
3. It is also alleged that during an inquiry proceeding neither the copy of the complaint nor the copies of the statement of witnesses who had given statements in against to him were provided to the appellant therefore he was unaware of the allegations leveled against him. He has also alleged that even during inquiry proceedings only three to five times he was called but no opportunity was provided to him to cross examine the witnesses produced by the complainant. Even the copies of statement of witnesses were shown to him

during the inquiry proceeding only for five minutes and in such a short time he could hardly managed to readout and point out any relevant material or facts. Therefore was unable to prepare any counter argument in his defence. No eye witnesses were produced by the complainant / respondent No.6 in support of the allegation leveled by her against the appellant. In such circumstances the finding of inquiry committee are biased and distortion of facts without proper evidence. There was a clear contradiction in the statement of witnesses produced by respondent No.6 but this material fact was totally ignored by the inquiry committee. Malicious campaign has been initiated to stop his job confirmation and due promotion which is likely to go in 2013. As such all of his sudden in 2012 this issue of sexual harassment was raised against him by some of faculty members on the whim of female students. If appellant was involved in such mal practice of sexual harassment as alleged from 2008 why the inquiry committee has not communicated those complaints said to be logged against him at the very moment or during inquiry proceedings and why full opportunity was not provided to the appellant to defend himself in against to those alleged complaints.

4. Even in 2010 twenty-five students were supervised by appellant out of them sixteen were female and nine were male members. Appellant is a highly qualified person and has received his Doctorate of plant science from one prestige institution of United Kingdom.

5. On 31-5-2012 in response to a notice received by appellant a detailed reply was submitted wherein factual position was explained that complainant/ respondent No.6 happen to be the student of appellant in two courses during 2009 and 2010. After result of seasonal papers complainant once visited to his office and insisted to increase her assessment marks which were refused by appellant. Appellant never knew that the complainant will took it so serious and personal that in revenge she has filed a malicious and wrongful complaint against him on sexual harassmt after elapse of two years.
6. Apart from all by letter dated 29-4-2013 respondent No.1 to 5 informed him that minor penalty of censure has been imposed upon him, but too without serving a charge sheet. This act of respondent No.1 to 5 was malafide and based on ulterior motives to victimize the appellant. The final show cause notice issued to appellant by respondent No.1 to 5 was replied by him on 16-7-2013 but that reply was totally ignored by inquiry committee although it contains material facts. They concluded their findings on assumption narrated by the complainant. It is denied that any female student ever complaint against the appellant.
7. So far the transfer of female students to different laboratories is concerned that was done because of shortage of chemicals in appellant's laboratory. Despite their transfer the appellant remain co-supervisor of many transferred female students during 2009-2010.

8. The issuance of letter on 24-7-2013 is in contrary to the recommendations of the inquiry committee given on 12-10-2012. It amounts to double punishment which is not permissible under the law. Even the final show cause notice issued on 09-7-2013 is coram-non-judice as the Secretary / Syndicate / Registrar is not the competent authority in instant case. Only vice chancellor is the competent authority and can pass any order in against to the employees of department. The impugn show cause notice of 09-7-2013 is violation of section 16 of General Clauses Act.
9. The impugn order of removal from service is non speaking order because the inquiry committee concluded its findings on the basis of mere assumption and without fulfilling the requirement of law.
10. Lastly he prayed that the impugn order of 24-7-2013 be set aside he may be reinstated in his service with all his consequent benefits.
11. Out of five respondent, respondent No. 1 to 4 are Chairman and members of the inquiry committee of QAU Islamabad while the Respondent No.5 is Registrar of QAU. They denied almost all the allegation leveled by appellant with the addition that general objection has been taken without specifying the detail of bias of against any of the committee member against the appellant. No limitation period is prescribed for filing the complaint under Protection against Harassment of Women at Workplace Act 2010. complainant is a respectable girl and some respectable girl are put in such a situation as that of the

complainant who would think even the hundred time before making the complaint because their honor, academic career, and the honor of their family is involved. Before filing such a complaint she had to consult her family members and have also to consider all aspect before filing the complaint. Such incidence of sexual harassment nature cannot be discussed with the faculty members. There was no malicious intent to file the complaint against appellant. Full opportunity was provided to the appellant to cross examine the witnesses produced before the inquiry committee. All statements were recorded in his presence and copies of the same were also provided to him. Appellant was also ask to produce the evidence but he opted not to produce his defence. Even if no opportunity was provided to the appellant he was at liberty to move an application for providing an opportunity to produce the evidence. But no such attempt was made. It is denied that respondent No.6 in collusion with faculty members had moved that complaint. Inquiry committee had giving its finding after providing full opportunities to the parties to prove their case. Appeal be dismissed as false.

12. Respondent No.6 in his reply has mostly responded as no comments to each and every para however in separate application moved on 14-10-2013 she had expressed her feeling and the problems faced by female students to move such like applications because of their unawareness. According to her most of the female students either do not know how to file such complaints or they are discouraged by

the university authorities, so by this application she has sought help of this forum to request QAU to handle such like complaints and remove the atmosphere of fearness.

13. Heard arguments of learned counsels of parties.

14. My finding on the above facts and evidence produced by parties is as under:

Learned counsel for appellant while referring to the first complaint moved by respondent No.6 on 15-5-2012 has argued that although in her complaint addressed to Dr. Masoom Yasin Zai she has tried to show that Dr. Abdul Samad. The appellant is a cause of constant nuisance and harassment to the female students of QAU. Therefore on behalf of all oppressed students who had no confidence and courage to speak about tyrannical aspects that were done with them she has come forward to help them and to stop the illegal activities of appellant and to punish him, but in her whole application not a single word has been uttered by her of the incident alleged to have happened with her with the hands of appellant. Nor the name of those female students who were victims of sexual harassment by the hands of appellant have been disclosed.

15. It is argued that Rule 5 framed under the Protection Against Harassment of Women at Workplace Act 2010 specifies that what would be the contents of the complaint and how it should be drafted. So if the contents of complaint is examined in the light of Rule 5 neither the first complaint of 15-5-2012

was a comprehensive statement of the allegations leveled by respondent No.6 nor any supporting material was annexed to that complaint. Therefore on the basis of dubious facts the decision taking by the Vice Chancellor of the university to refer the complaint to inquiry committee, constituted under the act of IV of 2010, was not in accordance to the principle of neutral justice.

16. Record show that for the first time, after referring the matter to the inquiry committee, in its meeting of 24-5-2012 respondent No.6 had disclosed that one day during spring semester 2010 when she had gone alongwith her friend Mst. Sania Subhan to the office of appellant to discuss some of her family issues he tried to become physical and ask her to develop friendship with him. This statement of her after elapse of about two years creates a doubt as to her veracity and also that in her first complaint moved on 15-5-2012 as stated about she had not narrated a single word of the incident personally happened with her. The reason of such delay instead of respondent No.6 has been explained by Dr. Farooq Monis, Assistant Professor of Department of Plant Science that respondent No.6 on her contact with him had disclosed that after the incident she could not report it immediately because she was afraid that what people will think about her when they will know about the incident. This explanation on behalf of a girl who stood up to save the modesty of other female students is very unexpected. Any how in his further statement recorded on 03-8-2012 Dr. Farooq Monis in answer to a



question that why he had shown 100% trust on his student instead of his colleague he replied that *"In my opinion if a female student takes some bold step like this then there are good chances that some thing happened"*.

It is a principle of jurisprudence that if any fact is not specifically pleaded, subsequently can not be proceed by leading evidence. Further this statement of Dr. Farooq Monis is on the basis of facts said to be disclosed to him by respondent No.6 or is his personal opinion. He neither is a eye witness of the incident nor in absence of primary evidence, this here say evidence can be relied upon. The bender of proof as to any particular fact is always lies on the person who wishes that its existence should be leveled, which is viewing in the present case.

17. From the perusal of record and the inquiry committee report as presented it seems that statement of all the witnesses were recorded in isolation and neither the complainant / respondent No.6 nor the appellant were ever provided any opportunity to hear the statement of witnesses recorded by inquiry committee nor they could avail the opportunity to cross examine the witnesses appeared before inquiry committee. The inquiry committee on 24-5-2012 recorded statement of respondent No.6, Dr. Asghari Banu, Dr. Farooq Monis, but from the proceeding of second meeting of inquiry committee as recorded does not show the presence of appellant. In the same way on the 04-6-2012 when appellant statement was recorded respondent No.6 the complainant was not in

attendance. The proceeding of fourth meeting of inquiry committee took place on 12-6-2012 when statements of Dr. Muhammad Fayyaz Ch , Ex-Den faculty of biological science of university, Prof. (R) Dr. Mir Ajab Khan, Ex-Den faculty of biological science of Dr. Mushtaq Ahmed , Prof Department of plant science and of Dr. Tariq Mehmood, Assistant Professor incharge Department of plant science were recorded. But again this proceeding of fourth meeting as placed show that neither the respondent No.6 nor appellant were in attendance. Same is the position of 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, meeting of the inquiry committee when statement of rest of the witnesses namely Mst. Sania Subhan, Dr. Syeda Asma Banu, Dr. Samad Mumtaz, were recorded. It is also pertinent to note that as per inquiry proceeding noting statements of non of these witnesses were taken on oath although required under section 5 (a) of Act 2010 r/w section 4 of Oath Act 1873. The lacuna of cross examination has been tried to fill up by transmitting the questions drafted by appellant and placed before the inquiry committee, which were replied by the witness, deeming that the purpose of cross examination has been served. But that is not so, cross examination of witnesses is not just a formality, but it is a continuing part of whole statement to ascertain the truth and is a valuable right of defending party. The inquiry committee while holding the inquiry has also been empowered by virtue of section 4 (C) of Act 2010 to examined such oral or documentary evidence in support of charge and at the same time to provide an opportunity to cross examine the witness produced against

him. In view of above the procedure that has been followed by the inquiry committee of recording the statement of witnesses and cross examination is not in accordance with the law.

18. In criminal justice system framing of charge in against to an accuse is an important stage where he is inform about the allegations leveled against him by particular person with name and the crime committed by him so that he may be in a position to defend his case in the light of allegation and offences charged against him. But in the present case which too is of a semi criminal nature neither the allegation leveled against the appellant and by whom those were leveled were fully disclosed to him neither in 2009 nor on 15-5-2012 when complaint was moved by respondent No.6. Copy of that complaint was also not provided to him by the inquiry committee. Section 4 of Act IV of 2010 described the procedure of holding of inquiry committee constituted by an organization. It specifically says that after receiving written complaint it will be communicated to the appellant within three days with the charge and statement of allegations leveled against him. Seven days time will be given to the opponent after communication of charge to submit a written defence but in the present case from the contents of the inquiry committee report it appears that although committee has given seven days time to appellant to submit his response to respondent No.6 written complaint but before the expiry of seven days the committee started its proceeding of recording the statements and totally ignored the plea raised by the appellant that he is

not in receipt of written complaint moved by respondent No.6. This conduct of inquiry committee is in violation of the very principal of natural justice which says that no one should be condemned unheard.

19. While giving its findings inquiry committee has disclosed that the first application moved by respondent No.6 on 15-5-2012 was an anonymous application without any name and signature of complainant but subsequently her signatures were obtained on her first appearance before the inquiry committee. Any how in addition to herself according to respondent No.6 there were other female students also who were subjected to sexual harassment with the hands of appellant. According to respondent No.6 those female students had informed her that they too had moved applications against appellant in 2009. This statement of respondent No.6 has been supported by the inquiry committee in para 7 at page 627 of report that *"During investigation of the present case, it was revealed that in 2009, 8-9 female research students submitted a sexual harassment case against Dr. Samad Mumtaz. The student presented their case to the then Registrar of University, Deen faculty of biological science and Chairman of the Department Whereon Prof. Dr. Fayyaz Ch. Ex-Deen faculty of biological science and Dr. Mir Ajab Khan, Ex-Deen and Chairman of Department of Plant Science revealed that the harassment involved was a physical nature"*.

20. Here it is pertinent to note that neither any of the female research students who moved applications in 2009 were called to support the allegations leveled by them against the appellant nor their name have been disclosed. And this have been tried to cover up by the inquiry committee by a referring a letter of one out of those students that none of the parents are willing for them to be once again in the situation from which they got ride with a lot of difficulty and that further all those female research students are now married and they do not want any problem in their peaceful married lives because of this issue. The inquiry committee has further tried to discharge its responsibility of non production of those students and not bringing those applications moved on in 2009 on record with the reason that “*on the request of the students, names of these students have not been mentioned here*”. However names of all these students are available in minutes of meeting 230 of advance studies and research board held on 02-02-2012. It is very astonishing that in one side the inquiry committee has trying to penalize the appellant on the basis of allegations leveled by the unidentified female students, relying on respondent No.6, complaint / application moved on 15-5-2012 and believing on subsequent addition made on 24-5-2012 whereas on the other hand are totally denying to give any opportunity to have an approach to the so called applications moved by those ladies which were gone through by the inquiry committee or even the contents of complaint moved on 15-5-2012 to resubmit his defence. In this whole episode statement of respondent No.6 Saba Afzal

recorded on 25-5-2012 is very material wherein while referring to a talk in between her and Dr. Farooq Monis had stated that Dr. Farooq informed her that other girls who complaint to him about the appellant were not of the nature of sexual harassment. So in the statement of Respondent No.6 before the committee where she emphatically admitted that although she herself was victim of sexual harassment by the complainant but she is not witness of any case of sexual harassment of any other girl by the appellant.

21. In spite of that if the inquiry committee still hold on that there were some case of sexual harassment in 2009 against appellant and Vice Chancellor in order to serve the name of university did not held any inquiry, neither has any substance therein nor they had followed the principle that justice should not only be done but seems to have been same. All the observation of inquiry committee are on assumed facts and presumption which is not the requirement of law. Law need concrete evidence.
22. In the light of above discussion wherein on the basis of applications which were never brought on record by the inquiry committee and on the basis of assumption by respondent No.6 if inquiry committee believe them to be true then no reason can be given by inquiry committee that why the application moved by the present students of Plant Science on 25-7-2013 with their signatures and opinion with reference to the appellant character, which has been presented by both male and female students was ignored.

The views separately expressed by each student in their representation strongly show their reservation on the unexpected decision of inquiry committee and they have firmly stated that they found no immoral behaviour of appellant since the day he joined the department.

23. So far the personal case of respondent No.6 is concern, again there is contradiction in the statement of complainant and supporting witness Ms. Sania Subhan. According to respondent No.6 on the day of incident in 2010 she had gone to complainant to discuss some of her family issues, while according to Ms. Sania Subhan perhaps she had gone to discuss notes for sessional exam. Even if this contradiction is ignored then also the question is that faculty of a university and the professor of university are not the proper persons for the students to discuss their family issues with them. And if they did so then it means that the said student has good relation and confidence on that professor/ teacher and because of that respondent No.6 confidently came to appellant. Even if it is assumed that incident happened all of a sudden then also the girls who is showing so much courage the stand up for other girls why remain silent for two years.
24. Learned counsel of appellant has also taken a plea that the inquiry committee in his finding given on 12-10-2012 has imposed a minor penalty of censure but subsequently this minor penalty was converted on 09-7-2013 with dismissal from service and by notification dated 24-7-2013 his service were removed from 18-7-2013. According to learned counsel

the subsequent steps taken by a four member committee then to the inquiry committee in contradiction to the previous penalty imposed is not permissible under the law of protection against harassment of women at the workplace 2010.

25. Referring to section 4 (4) of Act 2010 he argued that after recommendation of inquiry committee the competent authority has no role to reduce or add the penalty imposed on perpetrator, the only authority that has been given to him is the implementation of the recommendation of inquiry committee. Whereas learned counsel for respondent No.1-5 argued that by virtue of section 2 sub clause B and J syndicate was designated as competent authority and that is fully empowered to review or change the decision of the inquiry committee because what the inquiry committee communicate to competent authority are only his recommendations and not the final decision. But this interpretation made by respondent No.1 to 5 does not find any logic therein because sub clause 4 of section 4 of Act 2010 specifically says that "The inquiry committee shall submit its finding and recommendation to the competent authority and the competent authority will impose one or more penalty as recommendation by the inquiry committee. The whole section does not authorized the competent authority to review the decision of inquiry committee. In further support of the observation I will like to refer sub clause 5 & 6 of section 4 which again provide a guide line for the competent authority that he shall impose the penalty recommended by the inquiry committee within one week of receipt of recommendation. To further strengthen the status of inquiry committee sub clause 6 says



that inquiry committee shall meet on regular basis and monitor the situation regularly until they are satisfied that their recommendation subject to decision, if any of competent authority and appellant authority have been implemented.

26. In view of above discussion I am of the view that neither the inquiry committee constituted by QAU had played its role in accordance with the law, there decision is based on surmise and conjecture and also the subsequent role of syndicate of imposing a different penalty then recommended by the inquiry committee is also without any valid reason. The syndicate the competent authority can not act arbitrary because even if the competent authority was not in against of the decision of inquiry committee then before imposing a penalty of removal from service he has to justify its decision with specific reasons of disagreement with the recommendation of inquiry committee.
27. In view of above the appeal is allowed recommendations of the inquiry committee dated 29-4-2013 as well as the notification issued on 24-7-2013 of removal from service of appellant are hereby set aside and QAU is hereby directed to reinstate the appellant on duty.

**YASMIN ABBASEY**  
**Ombudsman**