



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

J U D G M E N T

1. Appeal Number: 1(55)/2013-FOS
2. Date of Institution: 10-04-2013
3. Date of Decision: 21-8-2013
4. Appellant: Mr. Afraz Khan
5. Respondent: Mr. Mehmood-ul-Hassan Butt
Chief of Party,
Educational Development Centre Inc.

Yasmin Abbasey,

Ombudsman:

Appeal No. 1(55)/ 2013-FOS

1. This is an appeal filed by appellant Muhammad Afraz Khan, an employee of Education Development Centre (EDC) against the decision passed by inquiry committee of EDC alleging to be a biased decision given without proper investigating the case.
2. Facts of the case as narrated by appellant are that by letter dated 07-3-2013 a show cause was given to him for disciplinary action in against to the complaint lodged by Mst. Uzma, an office employee of IMS deployed in EDC office since October 2012, for harassing her verbally and physically on 22-2-2013.
3. According to appellant Mst Uzma has alleged that on 21-2-2013 when there was a heavy rain in the city she received a call from appellant with an offer to drop at home, she accepted his offer. As per statement of appellant he picked her in his vehicle from Faisal Mosque Islamabad on humanitarian ground and drop her to Kurri Road, Islamabad. But this facility provided by him to Mst. Uzma in situation of heavy rain was taken by her, in against to him, in retaliation to the complainants made by the appellant against her and she had

logged this complaint of sexual harassment.

4. According to appellant he replied to the show cause notice on 13-3-2013 and had denied all the allegations leveled against him. It is alleged that without providing proper opportunity to place his case before inquiry committee a biased decision was given against him. Finally a termination letter was issued to appellant on 14-3-2013.
5. In reply to averment made by appellant respondent EDC has taken legal plea that this forum has no jurisdiction in the matter as the protection against harassment of women at workplace Act 2010 (herein after referred Act 2010) exclusively deals with women harassment at workplace whereas incident did not take place at the workplace. However EDC has its own internal employment rules and by virtue of clause 11-01-2 of those rules EDC has zero tolerance in harassment cases of any nature happened both on and off the work side. Therefore EDC at its own inquired the matter and had provided full opportunity of hearing to appellant and had taken appropriate action in the light of recommendation of the inquiry committee. Therefore this appeal is not maintainable.
6. Appellant never raise any objection as to the biased attitude of inquiry committee or that the proceeding were unfair. The

statement of allegation leveled by Mst Uzma and the charge sheet were duly communicated to appellant. Three members inquiry committee was constituted to probe into the matter and during interrogation appellant at one stage had admitted the allegation leveled against him but subsequently in his reply to show cause notice he resiled from his previous statement. Dismissal from service is admitted.

7. During the pendency of proceeding before this forum once again an opportunity was given to parties to produce the evidence if any they want. Both have placed oral as well as documentary evidence on record.
8. Heard appellant in person and representative of respondent.
9. The facts that has been gathered from the record are that on 21-2-2013 when appellant and one Muhammad Ashraf were going on the vehicle of appellant, Muhmmad Ashraf asked appellant to provide a facility of picking and dropping to Mst. Uzma due to heavy rain in the city on humanitarian ground. On the request of Ashraf, Mst. Uzma was contacted on phone and on her information that she is standing near Faisal Mosque she was picked up from there by appellant.
10. According to respondent before taking up Mst. Uzma Ashraf dropped in the way and at the time when Mst. Uzma get in the

vehicle of appellant they both were alone. According to respondent Mst. Uzama reported to them that during the way appellant tried to have physical touch with her and on her protest he expressed that this is a normal course in her society, however on protest of Mst. Uzma, he stopped the car and she get down from it.

11. This incident, as per email communication placed on record by respondent, was first intimated by an official Mst. Batool Attiya to Mobeen Tahir Senior Manager Operation and Logistic EDC on 22-02-2013 at 01:25 pm. This message was forwarded by Mobeen Tahir through email to Bajwa Salman who again communicated these facts to Mehmood-ul-Hassan Butt Chief of Party USAID Teacher Education Project on the same day at 05:37 pm. On this information provided by Bajwa Salman another email communication which appears to have been made by Mehmood-ul-Hassan Butt to himself at 06:59 pm an inquiry committee was constituted consisting of three members with two alternative members. In this whole communication starting from Mst. Batool Attiya till the last addressee Mehmood-ul-Hassan Butt I do not find any statement of Mst. Uzma, the main victim. The first information was placed by Batool Attiya, though it seems to be on the basis of statement of Mst. Uzma but that original complaint of Mst.

Uzma is not available on record to ascertain the correct facts.

12. The detail report by inquiry committee said to have been conveyed on 04-3-2013 also doesn't have supporting statement of the parties taken by the inquiry committee on oath with an opportunity to Afraz and Mst. Uzma to cross-examine each other, to reach at proper and definite conclusion as to the alleged incident. Further this detail report of inquiry committee as referred by learned counsel for respondent and placed on record is also silent that who were the members of that committee on 04-3-2013. As neither the names of those members are appearing on this report nor it bears the signature of any of the members who had recommended options for taking action against appellant.
13. Any how on 07-3-2013 a show cause notice was issued to appellant which was replied by him on 11-3-2013 wherein he has denied the allegation leveled against him. Second reply of appellant dated 13-3-2013 is also on record wherein he has clarified that the act of Mst. Uzma of logging complaint against her is an act of retaliation to the complaints made by him against Mst. Uzma on 15-2-2013 and 20-2-2013 through email to Zahid Khan, filed alongwith appeal, wherein he has complaint against Mst Uzma that "she avail max leaves and some time she leaves without information. So this is too

difficult for him to manage support staff”.

14. The record further reveals that on 11-03-2013 a charge sheet was issued to appellant by Mehmood-ul-Hassan Butt, Chief of party of EDC wherein he has informed the appellant about the constitution of inquiry committee and hearing of it on 12-3-2013. After this notice of charge sheet the inquiry committee seems to have conducted the matter and on 13-03-2013 they had given there verdict that “we cannot ignore the aspects that he has already admitted of this act” and on this observation recommendation of termination of Afraz was made. Here it cannot be ignored that it is observed that the preliminary inquiry committee report which has been placed on record as Ext D/3 is itself a argumentative report because I have already observed that report neither discloses the name of the inquiry committee members nor the decision taken by them has been affirmed by signatures of any of the committee members. Therefore relying on such preliminary inquiry will be a dangers act for taking any action on such report. Even in the second report of 13-03-2013 submitted by the committee consisting on three members itself has not investigated the matter as required under the law, no appearance of Mst. Uzma before this committee of 13-03-2013 is shown in this report so that appellant could had an opportunity to cross examine her.

The conversation as reproduced in Ext A/1 titled as “Note to file after final meeting with Afraz on 14-03-2013” is also a self contained note with no statement of Afraz on oath, record is silent about the noting of the conversation made therein.

15. During the pendency of proceeding this forum has issued notices to Mst. Uzma at the address available on the record and finally a notice was got published in the Daily Express of 27-07-2013 to appear before this forum and give her statement for proper adjudication of the matter but no representation were made on her behalf.
16. In view of above discussion and inquiry committee reports as placed by respondent on record I am of the view that neither inquiry committee was constituted as required under the Act of 2010 nor a fair trail was made by that inquiry committee constituted by EDC. Here it will not be out of mentioned that by virtue of section 3 of Act 2010 each organization is bound to constituted an inquiry committee, with the placement of code of conduct as prescribed in scheduled of Act 2010 in a language understood by majority of employees at conspicuous place in the organization and the workplace within 06 months of commencement of this Act. The non compliance of section 11 of Act 2010 will make then liable to a penal action with penalty to extent to one hundred thousand rupees and not less

than twenty-five hundreds thousand rupees.

17. So for is the legal objection taken by respondent that this forum has no jurisdiction to entertain this appeal because alleged incident took place outside the workplace therefore only the policies and rules constituted by EDC will be applicable. No doubt the incident said to had happened is out of the ambit of the 'workplace' as defined in the Act but still if on the face of it, it appears that the principle of justice have not been followed that needs to be re-examined.
18. In view of above the matter is remanded to management of EDC to constitute a proper inquiry committee with full opportunity of hearing to the parties without prejudice to the inquiry conducted and recommendations made by them in their first report of 13-3-2013 and 14-3-2013 place as Ext A/1 and report to this office within 30 days from the date of this order.
19. Till that time termination letter issued against appellant be not acted upon.

YASMIN ABBASEY
Ombudsman