



FEDERAL OMBUDSMAN
For Protection against Harassment of Women at Workplace
Islamabad

J U D G M E N T

1. Complaint Number: FOH-HQR/0000158/19
2. Date of Institution: 30-05-2019
3. Date of Decision: 17-10-2019
4. Complainant: Ms. Aliya Mohabbat
Naib Qasida
National Savings
Islamabad
5. Opponents:
 - i. Muhammad Ayyaz
Assistant Director,
National Savings
Islamabad
 - ii. Malik Faisal Saleem,
Joint Director/Zonal Head
National Savings
Islamabad
 - iii. Iftikhar Ahmed,
Driver
National Savings
Islamabad
 - iv. Mirza Shahid Altaf,
Deputy National Saving Officer
National Savings
Islamabad

Kashmala Tariq
Federal Ombudsman

TITLE: Aliya Mohabbat Vs Iftikhar Ahmed & others

The brief facts giving rise to the instant complaint filed by Aliya Mohabbat (hereinafter referred to as Complainant) are that the Complainant filed a harassment complaint against the Muhammad Ayaz, Assistant Director **Accused No.1**. Malik Faisal Saleem, Joint Director/Zonal Head **Accused No.2**, Iftikhar Ahmed, Driver **Accused No.3**. Mirza Shahid Altaf, Deputy National Saving Officer **Accused No.4** (hereinafter referred to as the Accused), wherein all the above mentioned Accused were nominated in the complaint(s) filed within the department, National Savings Islamabad. Hence the matter was taken up by the Inquiry Committee and gave its findings dated 25-03-2019 and 26-03-2019. After Inquiry, the Committee found the Accused guilty and punished the Accused as Accused No. 1 was removed from service, Accused No. 2 was demoted, Accused No. 3, was compulsorily retired and Accused No. 4 was terminated from service.

The aggrieved parties filed appeals separately against the order and findings of the competent authority and Inquiry Committee, before this forum, under **Section 6 of the Protection against Harassment of Women at Workplace Act, 2010**. During hearing and proceedings, major flaws were found in the impugned order therefore, the appeals of Accused persons were allowed by this forum and both the parties were directed that the matter shall be re-inquired in order to meet the ends of justice.

The Accused persons appeared in person along with their learned counsels and submitted their replies in defense and joined the proceedings, accordingly.

For the administration of justice the forum asked the Complainant that she can engage a counsel if she desires so, to plead her case, but the Complainant and her sister refused to engage a counsel and submitted that they will pursue the

instant complaint personally. The sister of the Complainant sought permission for appearance on behalf of Complainant in the instant complaint, the request was allowed in the interest of justice and the Complainant and her sister proceeded the matter thereafter.

The instant judgment is intended to dispose off the complaints filed by the Complainant against the accused persons because all the complaints are interconnected with each other, hence re-inquired by the forum, collectively.

The brief facts of the case are that the Complainant is working as Naib Qasida in National Savings Office, Islamabad since year 2017. She alleged that after two months of her job the Accused No.1 & 3, misbehaved and harassed the Complainant. The Complainant reported the matter to Accused No. 3 & 4, but they did not take any action. The Complainant further alleged, in her complaints, that the Accused No. 4 after receiving a complaint from the Complainant against Accused No. 1 & 2, made a call to Director General office and requested to record her version to the Director General Office but all went in vain and the matter was not reported to the relevant authorities. The Complainant further pleaded that the Accused persons also attempted to kill the father of the Complainant but he survived after getting a long medical treatment. The Complainant made serious allegations against Accused No.4 who was her reporting officer. According to complainant, the Accused No.4 misbehaved and teased her on different occasions, and one day while giving her lift back home he took advantage of the situation and raped her.

On the other side, the Accused persons appeared and submitted their written reply by denying all the allegations leveled by the Complainant. The Accused persons reiterated that the complaint is lodged by the Complainant with malafide intentions and ulterior motives with an aim to save her termination from service on account of her continuous misconduct. The Accused persons further pleaded that the complaints are the result of conspiracy of members of Inquiry Committee, who are colleagues of the Accused persons and have professional

jealousy and personal grudges against them.

Both the parties appeared in person and submitted their evidence. The Complainant herself appeared as CW-1 and did not produce any other witness to prove her allegations. The Accused persons also appeared as witnesses and also produced number of employees of National Savings who were colleagues of the parties. Both the parties were given the opportunity of cross-examination. The Complainant chose to cross examine only the Accused persons i.e. AW-1, AW-2 & AW-3 and **Anar Gul, Ms. Nain Tara and Ms. Shehla Tabassum**, (witnesses of the Accused No.4) and the Complainant waived her right of cross-examination for rest of the witnesses and recorded her statement in that regard on 15.07.2019.

The Accused also produced their documentary evidence which has been placed on record as EX-DW-1 to Ex-DW-8.

The Complainant in person, along with her sister Ms. Nadia Mohabbat appeared and argued that the Complainant was not only harassed by the Accused at their Workplace but they also followed the Complainant and harassed her after working hours outside the office.

On the other hand, learned counsels Mr. Rizwan Shabbir Kiani and Ms. Aliya Zareen Abbasi, Advocates High Court appeared on behalf of the Accused persons and jointly argued that the Complainant has filed all the above three complaints with malafide intentions, in connivance with the Inquiry Committee and with an aim to protect her job. The learned counsels for the Accused argued and referred the documentary evidence establishing continuous absence and misbehavior of the Complainant and pending disciplinary action against the Complainant. The Complainant filed three complaints on different dates i.e. first complaint was filed on 11-01-2019, second complaint was filed on 13-01-2019 and third complaint was filed on 17-01-2019 and all the complaints were improved dishonestly, malafidely, intentionally and in connivance with the members of the Inquiry Committee. That during cross examination the

Complainant admittedly stated that all the complaints were filed by the Complainant in hospital and were handed to the Inquiry Committee. The counsels further argued that the members of the Inquiry Committee have personal grudges and professional jealousy against the Accused persons and they have used the Complainant as a tool to satisfy their egos and to destroy the professional career of the Accused persons.

Moreover, the learned counsels argued that the Complainant did not cross-examine the material points of evidence of the Accused persons and their witnesses, hence the said statements shall be deemed to be admitted by the Complainant. The counsels further argued that the Complainant did not produce any evidence to prove her allegations against the Accused persons.

The learned counsel on behalf of Accused No. 4 Shahid Altaf argued that the allegations of Rape leveled by the Complainant are false and fabricated. The Accused never committed any such act with the Complainant. As a matter of fact the Accused Shahid Altaf worked with the Complainant from **July 2017 to Feb 2018** and after that both the Accused and Complainant had no interaction with each other. He further argued that the stance of the Complainant is self contradictory as the Complainant, in her complaint made in **January 2019**, alleged that she was Raped by the Accused 5/6 months before the filing of complaint and at the time of said incident the Accused No.4 was her officer incharge. The said statement is a self contradictory as during the said period the Accused was neither officer incharge of the Complainant nor had any working relationship with her. The counsel further pointed out that the allegation i.e. Rape committed on some private place does not come within the ambit of **section-2(h) of the Act, 2010** and in the jurisdiction of this Honourable Forum. The allegation of the Complainant is neither covered under the definition of harassment nor the alleged place is a workplace, hence the complaint is not maintainable. He further argued that the Complainant deliberately did not produce any of her family members or other witness to support her version, hence **it shall be a legal presumption that if any of them is produced before**

the court for evidence they may not have supported the version of the Complainant, hence adverse inference should be drawn. Reliance is placed on case titled as **“Jamil V/s State” cited as 2019 YLR 516.**

In support of their aforesaid arguments the learned counsels relied upon the judgments of superior courts which are titled and cited as **“Jamil V/s State 2019 YLR 516. , Ghulam Ali V/s Abubakar 2019 MLD 1163, Iqbal Hussain V/s Federation of Pakistan Etc 2019 PLC (C.S) 475, DIG Motorway V/s Ghulam Mustafa Meher 2019 PLC (C.S) 500, Yameen V/s State 2019 YLR 422, Raja Khuram Ali Khan V/s Tayyeb Bibi 2019 YLR 98, Muhammad Faisal Sultan V/s Muhammad Jamil 2018 CLC 1782, Muhammad Essa Gondal V/s Satara Jameel 2014 YLR 1901”.**

Arguments of the parties have been heard and the record on file perused, carefully.

The record available on the file reflects that the Complainant had mostly remained absent from her duties and number of explanation letters and show cause notices had been issued to her followed by a charge sheet and final show cause notice on disciplinary action. The Complainant, during cross-examination, denied all the said explanation letters and her replies thereon, which shows her malafide. The original record and personal file of the Complainant was called by this forum to check the veracity of the documents and versions of the parties. The record produced by the department shows that the Complainant was a habitual absentee and late comer and a number of explanation letters, absent reports and show cause notices were issued to her by all her officers including the Accused No.4. The said explanation letters were duly received by the Complainant and also responded to some of them however during cross-examination when she was confronted with the said explanation letters and reply thereof, the Complainant either flatly denied or ignored qua issuance of said explanation letters and their reply by the Complainant. The said factum shows malafide and falseness of the Complainant and her entire case and

allegation upon the Accused persons becomes doubtful.

Admittedly, the Complainant was a habitual absentee and late comer with some behavioral issues and was facing disciplinary proceedings in the department. The competent authority had issued a final show cause notice to the Complainant dated 03.01.2019 directing her to submit reply to the said notice immediately with explanation as to why the major penalty of "*Dismissal from service*" should not be imposed upon her. The Complainant filed her first complaint dated 11.01.2019 followed by two complaints dated 14.01.2019 & 17.01.2019 respectively, which were improved versions of her first complaints. The Complainant failed to explain the long delay of approximately two years in filing complaint against the Accused persons. The said aspect of the case again strengthens the stance of the Accused persons that the complaints were filed by the Complainant to save herself from disciplinary actions pending before the department.

The Complainant alleged that the Accused No.4 committed her Rape 5/6 months before the filing of her complaint dated 11.01.2019 and at that time he was Complainant's officer incharge and she was working under his supervision being Naib Qasid. The record available on the file reflects that the Accused No.4 and Complainant were working together from **July 2017 to Feb 2018** and thereafter both the employees had no interaction with each other as both were working in altogether different offices. The Complainant did not produce any evidence to corroborate her version. As per stance of the Complainant she was a virgin girl and the Accused committed Rape but she did not disclose the incident to anyone including her family, which is practically not believable as if such incident happens the victim cannot conceal her emotions and anger, specially from her family and closed friends. As per version of the Complainant, she met the whole family after reaching home and also continued her job on the next working day but neither disclosed the grave incident to any one nor filed complaint before any competent authority. Even otherwise the allegation of Rape as leveled by the Complainant is not proceed-able before this forum. This

forum can only deal with sexual harassment as defined in **section 2(h) of the Act 2010**. The sexual harassment can only be actionable under **Harassment Act 2010**, if the same is committed at workplace. The workplace is also defined in **section 2(n)** which speaks as under:

“Workplace” means the place of work or the premises where an organization or employer operates and includes building, factory, open area or a larger graphical 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.

The evidence of the Complainant in shape of affidavit reflects that she did not describe any incident of sexual harassment at workplace. It is settled law that, to prove any incident, the witness has to depose all the material facts and details in their evidence on oath and bare allegation cannot be treated as gospel truth. The Complainant in her entire evidence, which is in form of her affidavit, did not mention any act of harassment with details against the Accused persons. Furthermore, the Complainant did not produce her mother or sister as witnesses. Hence, the Complainant failed to prove allegations leveled by her through cogent and reliable evidence. As ***“Equity helps vigilant not indolent”***.

The Accused persons produced number of witnesses in their support including female colleagues, who were also the Complainant's reporting officers, who strongly denied the allegations of sexual harassment by the Accused persons rather they too complained about the non-professional working attitude of the Complainant. The Complainant did not rebut their evidence, hence, as per settled principle of law their statements are accepted as true.

The Accused persons, in their reply and evidence leveled allegations against partial conduct of the members of Inquiry Committee and asserted that the complaints have been filed by the Complainant on the behest of members of Inquiry Committee. Astonishingly, during cross-examination, the Complainant admitted that the complaints dated 11.01.2019, 14.01.2019 & 17.01.2019, were

handed over directly to the members of the Inquiry Committee, **on their request**. The wordings of the Complainant during cross-examination were:

(درخواست مورخہ 11-01-2019، 14-01-2019 اور 17-01-2019 مجھ سے انکوائری کمیٹی کے
ممبران نے لکھوائی)

The said admission on the part of Complainant is fatal for her case as it proves the version of the Accused persons. The perusal of the complaints dated **11.01.2019, 14.01.2019 & 17.01.2019** shows that it was addressed to Director General National Savings and received by Director Administration with noting that the same may be forwarded to Harassment Committee. If the members of Harassment Committee were present at the time of writing of the complaints then why the same were addressed to Director General and was submitted in the office of Director Administration. This arrangement shows that the allegations of the Accused persons qua partial conduct of Inquiry Committee and their connivance and conspiracy get strengthened. The Complainant further admitted that she neither provided any list of witnesses to the Inquiry Committee nor called any witness before the inquiry proceedings. However, the report of the Inquiry Committee shows that a number of witnesses were produced on behalf of Complainant. The said fact again establishes that the members of the Inquiry Committee were biased and were acting on their own agenda, hence proving the allegations of the Accused persons as correct. The Inquiry Committee should be impartial and if any member has some personal grudges with any of the parties, the Inquiry Committee should not join the proceedings.

Due to such partial conduct of the Inquiry Committee and baseless complaints the Accused No.2, suffered loss to his career and was not considered for promotion by the board.

Therefore, the forum hereby directs the competent authority of the organization (National Savings) to appoint new Inquiry Committee members and dissolve the existing committee, with immediate effect. Furthermore, Secretary to the Ministry of Finance is also directed to initiate legal proceedings against the

members of the Inquiry Committee based on their malafide and misuse of powers. Further directed to probe the inquiry proceedings against the person who appointed such biased Inquiry Committee members.

In the light of above discussion the Complaints of the Complainant are dismissed. Furthermore the competent authority of the National Savings is directed to reinstate the Accused persons on their original positions which they possessed at the time of filing the instant complaints or any such position which they deserve. Moreover the back benefit should also be awarded, if any.

There is no order as to cost.

A copy of this order be sent to the competent authority of National Savings and office of the Secretary to the Ministry of Finance for implementation and the compliance report should be submitted within **15 working days** after issuance of the instant order.

Case file be consigned to record room after its necessary completion and compilation.

Order announced accordingly.

O M B U D S M A N