

**OFFICE OF THE FEDERAL  
OMBUDSPERSON  
FOR PROTECTION AGAINST HARASSMENT OF WOMEN  
AT THE WORKPLACE, ISLAMABAD**

FORM OF ORDER SHEET  
Complaint No. FOH-HQR/0000214/2023

**Date of Institution: 17-05-2023**

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson			
		TITLE:	Amina Hassan	VS	Sharjeel Shahid & others
1	2	DEPARTMENT: KHUSHHALI MICROFINANCE BANK LIMITED			
37	11-11-2024	<p><b><u>Subject: Final Order</u></b></p> <p>1. This Complaint has been filed by Ms. Amina Hassan (hereinafter referred to as “<b>the Complainant</b>”), Group Head Business at Khushhali Microfinance Bank Limited (hereinafter referred to as “<b>the Bank</b>”), located on the 5th Floor, Ufone Tower, Blue Area, Islamabad. The complaint is against nine individuals, namely, Mr. Sharjeel Shahid; Mr. Aameer Karachiwala; Mr. Saleem Akhtar Bhatti; Mr. Robert Binyon; Mr. Gert Petermans; Mr. Henning Haugerudbraten; Mr. Elco Willem Gerard; Ms. Simi Sadaf Kamal; and Mr. Humayun Bashir. It has been filed under Section 8(1) of the Protection Against Harassment of Women at the Workplace Act, 2010 (the “<b>Act</b>”). The principal Accused are Mr. Sharjeel Shahid (hereinafter referred to as “<b>Accused No.1</b>”), Mr. Aameer Karachiwala (hereinafter referred to as “<b>Accused No.2</b>”) and Mr. Saleem Akhtar Bhatti (hereinafter referred to as “<b>Accused No.3</b>”).</p> <p>2. It is alleged that Accused Nos.1-3 caused harassment at the workplace by discriminating against the Complainant on the basis of her gender and abused their positions of</p>			

power and authority to adversely influence her employment conditions by, inter alia:

- i. Demanding the Complainant's forceful resignation;
- ii. Influencing the Board to decline the Complainant's separation package, which the President of the Bank confirmed would be supported by Mr. Robert Binyon, then Head of the HR Committee; and
- iii. Colluding with Accused No.3 to make an inaccurate settlement of account calculations.

Additionally Accused No.4, the Chairman of the Board of Directors and Head of the HR Committee at the relevant time, aided the principal Accused instead of granting the Complainant an opportunity of hearing and/or initiating procedures to redress her grievance. Accused Nos.5-9, who were all Directors at the Bank, are alleged to have acted negligently in this matter, both individually and collectively. All were, therefore, deemed to be guilty of harassment at the workplace. More so, when despite sending notices of harassment to each Accused person, no action was taken by any to comply with their legal obligations under the Act. The first notice was sent to the Bank on 24.10.2022, however, the Bank failed to fulfil its responsibility of forming an Inquiry Committee. In continued efforts to seek redress under the law, on 05.05.2023 the Complainant also sent a notice to the Bank's shareholders but to no avail.

3. According to the Complainant, the above facts show that the conduct complained of falls within the prohibited category of harassment outlined in Section 2(h)(ii) of the Act, as well as within the interpretation of the law laid down by the Hon'ble Supreme Court of Pakistan in Nadia

*Naz vs. President of Islamic Republic of Pakistan (PLD 2023 SC 588).*

4. A perusal of the contents of the complaint reveals that the central issue in the case is that the Complainant received less favorable treatment than male colleagues working on a comparable level. Previous severance benefits offered to male employees were denied to her, highlighting the discrimination faced by her. According to the Complainant, the principles of equal protection and equal opportunity extend throughout all stages of employment, from appointment and promotion to termination as well as the payment of gratuity and pension. However, the Complainant has faced discrimination and harassment not only regarding her work performance but also in terms of settlement upon the premature conclusion of her service, despite a distinguished professional record spanning over 20 years. It is her case that equality in employment implies that no one should be denied opportunities and benefits for reasons related to their gender.
  
5. The Complainant submitted that the Accused, particularly the principal Accused, employed threats, intimidation and coercion without giving the Complainant an opportunity to counter or defend against any allegation. Male employees were rewarded more favorably than the Complainant, despite her possessing equal or greater job experience than those retained or compensated upon termination. Additionally, the Bank and the Accused unlawfully retaliated against the Complainant by subjecting her to undue scrutiny, depriving her of rightful compensation and levying false and inaccurate account reconciliations under various pretenses, resulting in monetary damage solely because she reported her discrimination and harassment to the former President on

24.10.2022. The Complainant prays that each Accused be held guilty of harassment, be directed to tender a written apology to her for the harassment caused and be held jointly or severally liable to either pay compensation to her under Section 4(4)(i)(d) or Section 4(4)(ii)(e) of the Act. Furthermore, the Complainant requests that the Bank compensate her under Section 4(8) of the Act.

6. Written reply to the complaint on behalf of Accused Nos.1-9 has been placed on the file. In this reply, the Accused have raised preliminary objections, stating that in 2022 the Bank initiated a restructuring process to address ongoing financial losses. For this purpose, the business strategy and organizational structure were modified to become more cost-effective and feasible. As part of these changes, the Board of the Bank decided to implement a plan that led to the Complainant's resignation, documented in a letter dated 24.10.2022. The Accused assert that this separation was a routine matter in corporate organizations and a commercial decision fully supported by law.

7. It was averred that upon an employee's separation, the Bank adheres to the procedures outlined in its Separation Policy, which includes preparing a final settlement covering all payables and receivables. This policy does not require payment of a separation package or an ad hoc ex-gratia payment. The authority to grant such payments rests solely with the Bank's Board as a discretionary decision, to be exercised if and when deemed viable for the Bank. Consequently, no rights of the Complainant were infringed when the Board chose not to grant the ad hoc ex-gratia payment. This decision was made based on the recommendation by the previous President and CEO, Mr. Ghalib Nishtar, who determined that presenting the ad hoc ex-gratia payment to the Board

was not viable given the Bank's financial situation at the time.

8. It was further asserted that prior to her separation and during her employment, the Complainant obtained various loans from the Bank, for which timely repayments were required according to the loans' terms and conditions. However, the Complainant was found to be in default on three specific loans, namely: a Home Loan, an Auto Loan and a General-Purpose Loan. Upon identifying these defaults, the Bank initiated correspondence, requesting that the Complainant repay the outstanding amounts. Meanwhile, the Board reviewed the proposed ad hoc ex-gratia payment and, as previously stated, decided not to approve it. Instead, the Board opted to reduce the interest rate applicable to the loans owed by the Complainant as it was unable to approve the ad hoc ex-gratia payment due to financial constraints (an amount that was, in any case, not a right of the Complainant). This decision was duly communicated to the Complainant by the Bank and she was subsequently requested to settle her outstanding liabilities via emails dated 11.01.2023, 30.01.2023, 13.03.2023, 31.03.2023, 04.05.2023, and 13.06.2023. Upon her failure to comply, the Bank initiated recovery proceedings at the concessionary rate by filing a suit titled *Khushhali Microfinance Bank Limited vs. Ms. Amina Hassan* before the Learned Civil Judge, Mr. Mian Azhar Nadeem, at the Islamabad District Court. The Bank contended that the instant complaint is a retaliatory action in response to the suit for recovery filed against the Complainant.
9. In addition to the concessionary markup rate, the Complainant received a favor through the former President and CEO of the Bank, Mr. Ghalib Nishtar, whereby the outstanding loan amounts she owed were

not deducted from her final settlement. This arrangement directly contradicted the Bank's Separation Policy and the terms of the loan agreements and was, therefore, unprecedented.

10. It was argued that the individuals classified as principal Accused persons did not commit any acts constituting harassment, as the decision not to provide the ad hoc ex-gratia payment to the Complainant was a collective decision made by the Bank's Board. All Board members present voted in favor of passing the resolution. Consequently, the decision to deny the ad hoc ex-gratia payment to the Complainant was unanimous and not the action of specific individuals. Moreover, the principal Accused had no authority over the members of the Board as the Board includes independent directors. In any event, it is unreasonable to suggest that the Board of an organization or corporation can be influenced to act against a specific individual, especially when the Accused persons had no direct contact with the Complainant, as is evident from the contents of the complaint.

11. Next, it was submitted that the Bank has no policy that condones discrimination, including on the basis of gender. It is important to note that the Separation Policy in question does not provide for the payment of a separation package or ad hoc ex-gratia payment as a matter of right. These payments are not included in the final settlement of an employee of the Bank.

12. Thereafter, evidence was recorded. The Complainant produced Ghalib Nishtar, Ex-president of the Bank, and Osman Habib, Company Secretary and General Counsel (Legal Head) as her witnesses while also recording her own statement. Whereas Accused Nos.1-3 and 8

appeared on behalf of the Accused. Saira Gabol, Chief Human Resource Officer, was summoned as a Court Witness. Arguments at length were heard and the record was perused.

13. The instant case relates to gender-based discrimination which is defined in Section 2(h)(ii) of the Act as follows:

*“discrimination on the basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mind set or notion, resulting in discriminatory behavior on basis of gender against the complainant.”*

On behalf of the Complainant it was argued that she was the only woman working in such a high position at the Bank, a distinction she achieved after over 20 years of service. She filed a whistleblower complaint against Accused Nos.1 and 2, alleging that they were routing foreign exchange through UBL, the Bank's primary shareholder. This action allegedly triggered discriminatory behavior against her. Despite her significant achievements, Accused No.2 forced her to resign and she was subsequently denied a severance package, contrary to the Bank's previous practices. All male employees who resigned before, during and after her tenure received severance packages. However, her case was irregularly placed before the Board, bypassing the President's authority to approve severance packages as per Bank policy. During the same meeting, the Board approved a vehicle retention benefit for President Ghalib Nishtar, even though it contravened the Bank's policy, while simultaneously denying the Complainant's severance package. It was argued that a "glass ceiling" had been imposed, blocking her career advancement and causing her financial loss through the denial of severance benefits and discriminatory treatment.

14. On behalf of the Accused it was argued that the Bank was incurring financial losses, leading to efforts to reduce costs through restructuring. As part of this process, the Bank engaged KPMG for an evaluation. KPMG recommended separating the Recovery Unit from the Group Head Business, a suggestion the Complainant resisted, allegedly creating obstacles to its implementation and causing losses to the Bank. Consequently, with the Bank's approval she was given the option to resign. It was argued that ex-gratia benefits in the severance package are not an entitlement for any employee. The Complainant was granted a concession through a reduced interest rate on her loan, but the loan amount was not deducted from her dues. Later, she was asked to repay the loan, leading the Bank to file a civil suit on this matter. The Accused argued that the Complainant was denied ex-gratia benefits due to performance issues.

15. Based on the evidence on record, the case will be examined to determine whether the Complainant has been subjected to discrimination on the basis of her gender.

16. The evidence shows that the Complainant served at Khushhali Microfinance Bank for over 20 years and was promoted as Group Head of Business in 2019. During a Board meeting held on 25.07.2022, she presented a collection and recovery strategy which was approved by the Board. In the same meeting a report by KPMG, hired by the Bank as an independent evaluator to conduct a gap analysis, was also presented. The KPMG report recommended the segregation of functions and the establishment of an independent collection and recovery structure. In contrast, the Complainant's strategy proposed that collection remain under the oversight of the



business department. Both the KPMG report and the Complainant's business plan were reviewed and the Board approved her collection strategy. However, just two months after this approval she was asked to resign. There exists no evidence on record which shows that any loss was caused by the Complainant to the Bank, within those two months, that could justify the Bank seeking her removal.

17. As per PW-1, Ghalib Nishtar, the collection strategy of the Complainant was approved by the Board, which included all the Accused. He submitted that while the Board discussed the option of eliminating the post of Group Head Business, the same was never approved and the post still exists to this day. He also acknowledged that the whole microfinance sector suffered an economic downturn due to COVID-19.

18. According to the statement of DW-1, Simi Sadaf Kamal, an Independent Director at Khushhali Microfinance Bank, she had neither received any complaints regarding the Complainant's performance nor did she have any personal complaints against her. Kamal stated that during a closed Board meeting, Ghalib Nishtar was recommended to obtain the Complainant's resignation, as she had failed in her role as a Business Head (however, this suggestion was never put to Ghalib Nishtar during his cross-examination thereby rendering the assertion doubtful). She claimed that the Complainant had not complied with the Board's directions, however, she was unable to specify any contravened directions or provide meeting minutes to substantiate this claim. During arguments, no specific Board directions were identified as unmet by the Complainant. DW-1 further admitted that by the end of 2022, inter alia, total assets had shown growth.

19.DW-2, Sharjeel Shahid, a UBL Nominee Director, admitted that there was no indication in the Board's minutes that the Board disagreed with the Complainant's performance. He noted that business plans are reviewed every six months and despite challenges to the Capital Adequacy Ratio (CAR), the Bank grew by 20% by the end of Q3 of 2022. He confirmed that the Board had observed and appreciated efforts in retail banking and acknowledged that there was no documented evidence showing the Complainant was given an opportunity to meet required performance metrics. He also admitted that the Bank had been awarded "Best Performing Microfinance Bank" for four consecutive years from 2018 to 2021. He further deposed that both the floods and COVID-19 had affected the Bank's business and that the State Bank had directed all microfinance banks to offer relief to borrowers due to these events. He stated that there was no Board decision authorizing Aameer Karachiwala (Accused No.2) to procure the Complainant's resignation. He unequivocally stated, "The Bank wanted the Complainant to go." He also acknowledged that he was unaware of any notice from the Bank or the President identifying performance issues with the Complainant.

20.DW-3, Mr. Saleem Akhtar Bhatti, CEO & Group Head Business, stated that after the Complainant's departure a new business plan was implemented, which resulted in financial loss to the Bank. He noted that the new plan incurred greater losses than before. DW-3 also acknowledged that profitability in the microfinance sector was generally impacted from January 2022 through the end of Q3 2022.

21.DW-1's statement corroborates that it was, in fact, Accused No.2 who directed the Bank's President to

procure her resignation. While this was argued to be restructuring to mitigate the Bank's losses, the evidence presented does not support this claim since the Complainant's position was not eliminated and her successor led the Bank to even greater losses. Instead of providing her an opportunity to improve her performance or transferring her to another department, the Bank unjustly forced her to resign despite her longstanding service.

22. The witness statements, therefore, clearly demonstrate that the Complainant's performance was not an issue, as alleged by the Accused. Having served the Bank for over 20 years in various capacities, she received numerous awards and accolades, as demonstrated by exhibits EX PW 3/3 and annexure 1C, which went uncontested by the Accused. She was the Bank's most senior female employee and the only one to attain her rank based on her own merit. Positioned just one level below the President/CEO, her advancement was nevertheless obstructed by the Bank which, due to her gender, established a glass ceiling that limited her upward mobility. Statements from defense witnesses, namely, DW-2 and DW-3 confirm that the Bank incurred no losses from her activities. However, the Bank forced her resignation to install a male candidate of their own choosing, effectively engaging in intimidation—a form of harassment. *This appears to be the result of "Think Manager Think Male" bias which assumes that managerial success is more closely associated with male traits.' Women in leadership roles—especially in fields or positions typically dominated by men, such as in banking—are often subjected to greater scrutiny and skepticism compared to their male counterparts. This skepticism may result in less favorable evaluations, leading to situations where women are unjustly penalized*

*for poor company performance that may not be their fault.*<sup>1</sup>

23. This case is consequently a clear example of creating a glass ceiling to impede the career elevation of the Complainant. The "glass ceiling" is a metaphor that describes the invisible yet powerful barriers that prevent certain groups, particularly women and minorities, from advancing to the highest levels within organizations, despite possessing the qualifications and skills necessary to succeed. Unlike explicit discrimination, which is more overt, the glass ceiling operates subtly, often through systemic bias and ingrained workplace cultures that limit opportunities for individuals based on their gender, race or other protected characteristics. The glass ceiling contributes to the lack of diversity in senior management and executive roles. When there are few role models or mentors for women and minorities at the top, it reinforces the perception that such positions are out of reach. With limited representation, individuals within organizations may unconsciously or consciously believe that only certain people are "fit" for higher levels, thus perpetuating a cycle where women and minorities remain underrepresented.

24. The Accused argued that the Bank has a gender policy and other workplace policies favorable to women, noting that two of its Board members are women. To this effect Ghalib Nishtar admitted that both Saira Gabol and Simi Sadaf Kamal were appointed to their respective positions as CHRO and Chair of Board Audit Committee by the Board, which comprised all the Accused persons. It was also stated by Saira Gabol that three employees, who resigned after the Complainant, received ex-gratia

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<sup>1</sup> Virginia E. Schein, A Global Look at the Psychological Barriers to Women's Progress in Management, 57 J. SOC. ISSUES 675, 675-76 (2001) [hereinafter Schein 2001]; Virginia Ellen Schein, Relationships between Sex Role Stereotypes and Requisite Management Characteristics among Female Managers

payments. One of the employees was a woman. The Accused, therefore, contended that the Complainant cannot claim gender-based discrimination. However, the existence of female Board members or general policies promoting gender equality does not inherently negate a claim of gender-based discrimination. In cases of gender-based discrimination, it is not necessary to prove that every woman in the organization is experiencing discrimination. The Act recognizes that discrimination can occur on an individual basis. Thus, if even one woman faces discriminatory treatment based on her gender, she has the right to file a complaint of workplace harassment.

25. A gender policy, token representation on the Board or sporadic payment of benefits to female employees does not automatically eliminate discriminatory practices within an organization. Often policies that appear favorable can be ineffective if not genuinely implemented or enforced. Discriminatory practices can manifest in various ways such as denial of promotions, unequal pay, lack of access to senior roles or biased decision-making processes, which disproportionately affect individual employees rather than the entire group. Additionally, tokenism—where a small number of women are included in leadership roles for appearance sake—and the occasional payment of benefits to women can obscure the reality of unequal treatment and hide broader, systemic gender equity within the organization.

26. In the instant case, the Complainant has alleged that her gender was a determining factor in denying her equal treatment and advancement opportunities. This specific allegation qualifies as gender-based discrimination, regardless of the Bank's gender policies or the presence of female Board members. It underscores that gender-

based discrimination claims are valid when one individual is treated unfairly due to gender, irrespective of broader claims about organizational policies or structures.

27. In *Imran Maqbool vs. Federation of Pakistan (PLD 2019 Lahore 17)*, the Hon'ble Lahore High Court affirmed that:

"10. ...The right to work is a multifaceted right which is recognized under different international treaties and conventions for creating a safe work environment especially for women. Article 23 of UDHR declares the right to work and the right to favourable conditions of work as a human right. Article 11 of CEDAW specifically requires States to ensure women have equal work opportunity and safe working conditions..."

Forcing the Complainant to resign infringed upon her right to work. Even if the alleged losses attributed to her business plan were conceded, she alone could not bear responsibility. The Board, which approved her plan, would be equally accountable.

28. The handling of the Complainant's severance package by the Bank and the Accused also demonstrates clear gender-based discrimination. Evidence shows that the President held the authority to approve severance packages and ex-gratia payments for resigning employees. Traditionally, this did not involve the Board's approval, however, in the Complainant's case the Bank deviated from this established policy. Her case was presented to the Board for approval, marking the first instance of such a deviation. Testimony from CW-1, Saira Gabol, shows that prior to the Complainant's resignation, all male employees at her rank were granted ex-gratia benefits. However, hers was the first time a case of ex-gratia benefits was sent to the Board and denied, highlighting a clear-cut case of gender disparity. The Accused argued that financial losses justified the denial of her ex-gratia benefits. However, evidence shows that

in the same meeting where her request was denied, Ghalib Nishtar was permitted to retain his company vehicle, even though this contravened Bank rules. Furthermore, Saira Gabol confirmed that even though DAC proceedings were conducted against Mr. Hammad Haider for borderline abuse of authority, and despite receiving a formal reprimand, he was still awarded ex-gratia benefits. This inconsistency shows that discriminatory policies and prejudicial actions have impacted the Complainant's career and compensation, evidencing a pattern of gender-based inequity.

29. Discrimination, as defined in Section 2(h)(ii) of the Act, includes a prejudicial mindset. The statement by Accused No.1 that "the Board wanted the Complainant to go," reveals a prejudicial attitude from leadership, further evidenced by subsequent actions of retaining the Complainant's post and filling it with a man who performed even more poorly than the Complainant. The prejudicial mindset of the Accused is also proved by their retaliatory actions. Generally as policy, loans are deducted from the dues which are paid to an outgoing employee. But in the Complainant's case the loan amount was not deducted and later on a civil suit was instituted for recovery of the dues but only after the Complainant filed her harassment complaint. This is a clear attempt to deter the Complainant from pursuing her complaint before this Forum and to intimidate her.

30. In view of the above, all the Accused are found guilty of gender-based discrimination as defined in Section 2(h)(ii) of the Act. They are therefore sentenced to a major penalty under Section 4(4)(ii)(e) i.e., a fine of Rs.500,000/- each, of which 50% is to be paid to the Complainant while the remaining is to be deposited in the state treasury. Additionally, under Section 4(8) of the Act

the Bank is liable to pay Rs.5,000,000/- to the Complainant as compensation for damages for subjecting her to blatant discrimination. The Bank is also directed to pay her the ex-gratia benefits that she is entitled to (and which must be similar to those paid to male employees working in a comparable position) after deducting her loan amount.

31. Before parting with this Order, and keeping in view the testimony of Saira Gabol that in the Complainant's case the Bank did not follow the harassment policy and constitute an Inquiry Committee, I consider it appropriate to direct the Senior Management of the Bank to ensure strict compliance with the provisions of the Act, including constituting a standing Inquiry Committee in accordance with Section 3(2) of the Act; displaying the names and contact information of the members of the Inquiry Committee at conspicuous places in the Bank; conducting proper trainings of the members of the Inquiry Committee to ensure that they are equipped to address incidents of harassment reported to them; and displaying the Code of Conduct in both Urdu and English at conspicuous places in the Bank. Senior Management shall also conduct regular training sessions on the Act to educate employees on acceptable and unacceptable conduct at the workplace. The Bank shall implement the given penalties and directions within fourteen days from the date of receipt of this Order and shall submit a compliance report to this Forum by **03.12.2024**.

**FEDERAL OMBUDSPERSON**