

OFFICE OF THE OMBUDSMAN

Islamabad

FORM OF ORDER SHEET

Appeal No. FOH-HQR/0000525/18

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsman
		TITLE: HAMAYUN IQBAL VS VICE CHACELLOR & OTHERS Assistant Professor i. Vice Chancellor ii. Anti Harassment Committee
		Department: Shaheed Zulfiqar Ali Bhutto Medical University, Islamabad
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	23-06-2021	<p>Appeal No. <u>FOH-HQR/0000525/18</u></p> <p>Arguments already heard and record perused.</p> <p>This case has a chequered history having seen different forums, but it needs not to discuss them here.</p> <p>Briefly, the present Appellant namely Dr. Hamayun Iqbal who possessed lot of qualifications both domestic and foreign was serving as Associate Professor of Cardiac surgery at Shaheed Zulfiqar Ali Bhutto Medical University Islamabad when during this time a lady doctor namely Ms. Hira Taj, a graduate trainee at SZAMBU filed a complaint against him, alleging her sexual harassment at the hands of the Appellant. This complaint was addressed to the Vice Chancellor of the concerned university.</p> <p>In view of this complaint, the matter was referred to anti sexual harassment committee of the organization. The constitution of the committee was challenged by the Appellant before learned Islamabad High Court Islamabad but his writ petition was dismissed being non maintainable at the relevant time. Anti harassment committee gave its findings and recommendations against the Appellant Dr. Hamayun Iqbal which obliged him to file the instant appeal at this</p>

	<p>forum in terms of section 6 of the Protection against Harassment of Women at the Workplace Act 2010. He prayed to set aside the order dated 16-08-2018 vide which his services were terminated. During pendency of appeal the appellant also filed another writ petition before Islamabad High Court whereby he assailed orders of this forum dated 11-11-2018, 16-11-2018 and 12-12-2018. Sufficient time consumed in connection with above writ but ultimately it was withdrawn.</p> <p>Now coming to the main appeal filed by the Appellant against the notification dated 16-08-2018 regarding his termination, it has been averred by the Appellant that the anti harassment committee which conducted the proceedings in the matter has acted in blatant violation of laws and norms of natural justice in a highly unfair, arbitrary, hastily and biased manner because the Appellant was neither served with charge sheet nor was provided with copy of the compliant and was pushed into proceedings without being informed of the exact charges without affording him opportunity of producing evidence or to reply to the complaint filed against him. Appellant further alleged that unconcerned person namely Dr. Farid Ullah against whom he had grudge was allowed to be present in the meeting of the committee to influence it in the whole process. That one another irrelevant person Ms. Maliha was also invited as co-opted member of the committee which was patently illegal and unjust. That the proceedings were carried out in slipshod manner and the Appellant was only asked verbal questions not allowing him to speak up in his defense.</p> <p>The Appellant kept on submitting that in gross violation of law the inquiry proceedings were conducted behind his back. He was never afforded the chance to cross examine the Complainant, the other witnesses and no statement of any witness was recorded in his presence.</p> <p>The opposite side resisted and contested the averments of the Appellant above mentioned.</p> <p>The record would show that first meeting of the anti sexual harassment committee was held on 15th September, 2017 at 10:00 am in the office of Professor Shazia F. Khan, HOD Radiology. In the said meeting only the Complainant Dr. Hira was summoned who narrated the episode to the committee. She also produced</p>
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		<p>material from the UK's GMC website about Dr. Hamayun Iqbal showing that how his license of practice in UK had been revoked due to similar harassment cases at the hospital. In the light of the statement of the Complainant the committee decided to call the Appellant Dr. Hamayun Iqbal. He attended the second meeting of the committee on 20-09-2014 where he categorically denied the allegations leveled against him by Dr. Hira Taj. Instead he alleged that there was totally disruption of patient care in the cardiac center so he started the streamlining of PGs for better patient care due to which he was targeted by the people of vested interest.</p> <p>Third meeting of the anti sexual harassment committee was held on 23-09-2017 where statements of different doctors were recorded. The minutes of meeting of the committee do not show the attendance of the parties, meaning thereby that none of the parties was afforded opportunity to test the veracity of the narrations of the above witnesses through cross examination.</p> <p>4th meeting was held on 28-09-2014 in which the Appellant attendance is not marked. In the 5th meeting which was held on 03-10-2017 it was concluded and recommended that committee felt that despite there not being any witness to this allegation of sexual harassment, they had to decide one way or the other keeping in mind credibility of all those who had been questioned. In light of all these hearings and deliberations, the committee feels that this incident of sexual harassment did not take place and Dr. Hamayun Iqbal is unfit to continue his service at PIMS.</p> <p>The above recommendations of the committee are, apparently, quite conflicting interse because on the one hand the committee feels that there is no any witness to the allegation of sexual harassment of the Complainant while on the other hand it holds the Appellant guilty of the charge of sexual harassment against the Complainant. Needless to explain that in a case of such nature one has to prove his/her charge beyond reasonable doubt. Accused being favorite child of law has to be extended the benefit of doubt if it exists in the case of prosecution or Complainant. The Complainant or prosecution has to prove its case to the hilt, beyond any shadow of reasonable doubt. Hence in view of such contradictory</p>
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recommendations/findings, penalty could not have been imposed upon the Appellant.

Since Harassment of a woman, at the workplace, is involved here, this case falls under the domain of Protection against Harassment of Women at the Workplace Act 2010. This Act has provided the procedure to be followed by an inquiry committee constituted in terms of section 3 and 4 of Act 2010.

3. Inquiry Committee._(1) *Each organization shall constitute an Inquiry Committee within thirty days of the enactment of this Act to enquire into complaints under this Act*

(2) *The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA. One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them.*

(3) *In case a complaint is made against one of the members of the Inquiry Committee that member should be replaced by another for that particular case. Such member may be from within or outside the organization.*

(4) *In case where no competent authority is designated the organization shall within thirty days of the enactment of this Act designate a competent authority.*

4. Procedure for holding inquiry._(1) *The Inquiry committee, within three days of receipt of a written complaint, shall_*

(a) *communicate to the accused the charges and statement of allegations leveled against him, the formal written receipt of which will be given;*

(b) *require the accused within seven days from the day the charge is communicated to him to submit a written defense and*

		<p><i>on his failure to do so without reasonable cause, the Committee shall proceed ex-parte; and</i></p> <p><i>(c) enquire into the charge and may examine such oral or documental evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross examine the witnesses against him.</i></p> <p><i>(2) subject to the provisions of this Act and any rules made thereunder the Inquiry Committee shall have power to regulate its own procedure for conducting inquiry and for the fixing place and time of its sitting.</i></p> <p><i>(3) The following provisions inter alia shall be followed by the Committee in relation to inquiry;</i></p> <p><i>(a) The statements and other evidence acquired in the inquiry process shall be considered as confidential;</i></p> <p><i>(b) An officer in an organization, if considered necessary, may be nominated to provide advice and assistance to each party;</i></p> <p><i>(c) both parties, the complainant and the accused, shall have the right to be represented or accompanied by a Collective Bargaining Agent representative, a friend or a colleague;</i></p> <p><i>(d) Adverse action shall not be taken against the complainant or the witnesses;</i></p> <p><i>(e) The inquiry Committee shall ensure that the employer or accused shall in no case create any hostile environment for the complainant so as to pressurize her from freely pursuing her complaint; and</i></p> <p><i>(f) The Inquiry Committee shall give its findings in writing by recording reasons thereof.</i></p> <p><i>(4) The Inquiry Committee shall submit its findings and recommendation to the Competent Authority within thirty days of the initiation of inquiry. If the Inquiry Committee finds the accused to be</i></p>
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guilty it shall recommend to the Competent Authority for imposing one or more of the following penalties.

(i) Minor Penalties:

(a) censure;

(b) withholding, for a specific period, promotion or increment;

(c) Stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar; and

(d) Recovery of the compensation payable to the complainant from pay or any other source of the accused;

(ii) Major penalties:

(a) Reduction to a lower post or time-scale, or to a lower stage in a time scale;

(b) Compulsory retirement;

(c) Removal from service;

(d) Dismissal from service; and

(e) Fine. A part of the fine can be used as compensation for the complainant. In case of the owner, the fine shall be payable to the Complainant.

(5) the Competent Authority shall impose the penalty recommended by the Inquiry Committee under sub section (4) within one week of the receipt of the recommendations of the Inquiry Committee

(6) the Inquiry Committee shall meet on regular basis and monitor the situation regularly until they are satisfied that their recommendations subject to decision, if any of the Competent Authority and Appellate Authority have been implemented.

(7) In case the complainant is in trauma the organization will arrange for psycho-social counseling or medical treatment and for additional medical leave.

(8) the organization may also offer compensation to the complainant in case of loss of salary or other damages

	<p>If the inquiry report in question and the provisions of section 3 & 4 of the Act 2010 are put in juxta position, it becomes clear that the committee did not follow the mandatory provisions of the Act in letter and spirit while conducting the inquiry proceedings. There is no clear proof of communicating to the accused the charges and statement of allegations leveled against him, as required by law. It is further evident from the inquiry report that the Appellant was not given the chance of cross examining the witnesses against him. Inquiry committee also failed to comply with provisions of sub section 3 of section 4 of the Act 2010 in letter and spirit.</p> <p>In the above circumstances I would respectfully rely upon the verdict of the apex court cited at PLD 2005 SC 63, observing that where no opportunity to cross examine the deponent has been given his testimony would be in admissible.</p> <p>In the case law cited at PLD 1980 Quetta 1 it has been held that statue providing a procedure for doing of a thing in a particular manner, such thing should be done in that manner or not done at all. That procedure laid down for taking proceedings before a court or tribunal, such procedure construed to be imperative and condition precedent to conferring jurisdiction upon a court or tribunal, non compliance with such procedure would invalidate all proceedings, orders made or passed by same or any other authority.</p> <p>In view of the above, I am of the considered opinion that the harassment committee did not do the things in the mandatory manner as laid down in Section 3 & 4 of the Act 2010 and, hence, its recommendations are not sustainable in the eyes of law.</p> <p>For the aforementioned reasons I set aside the findings/recommendations of the anti harassment committee and consequent thereupon the order dated 16-08-2018 pertaining to termination/dismissal of the Appellant from service. It will be more just and fair to send the case back to the organization for conducting denovo inquiry strictly adhering to the provisions of section 3 & 4 of the Act 2010, providing both the parties full opportunity of hearing and producing evidence as they wished. Inquiry committee should complete its task promptly, preferably, within thirty days of receipt of the order and the competent authority concerned</p>
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		<p>to make decision as per law within seven days of receiving the inquiry report. Any of the aggrieved party, then, may file appeal before the forum invoking section 6 of the Act 2010. My office should do the needful remitting the case to the concerned quarter without causing undue and unnecessary delay.</p> <p>Disposed off accordingly.</p> <p>OMBUDSMAN</p>
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