



FEDERAL OMBUDSMAN
For Protection against Harassment of Women at Workplace
Islamabad

J U D G M E N T

1. Appeal Number: 1(319) / 2017-FOS (Reg)
2. Date of Institution: 06-02-2017
3. Date of Decision: 10-05-2017
4. Appellant: Mr. Fahad Faruqi
S/o Shoaib Fariqi
Resident of House No. 43/1, 15th Street
Khayaban-e-Mujahid, DHA
Karachi
5. Respondents:
 - i. Shaheed Zulfiqar Ali Bhutto Institute
Of Science and Technology
through President
90, Clifton Karachi
 - ii. Ms. Searha Asghar
D/o Asghar Memon
Imran Mir
through President
90, Clifton Karachi

Justice (R) Yasmin Abbasey,

Federal Ombudsman:

Appeal No. 1(319)/ 2017-FOS.

1. Aggrieved by the decision of inquiry committee dated 18-01-2017 and in consequences of those recommendation of inquiry committee, appellant has filed this appeal against his dismissal on 25-01-2017 from service from Shaheed Zulfiqar Ali Bhutto Shaheed Institute of Science and Technology (SZABIST).
2. Facts leading to this case are that appellant is serving in SZABIST as faculty member of Media Sciences, whereas respondent No. 2 Searha Asghar was student of appellant up till May 2015. On 21-11-2016 respondent No. 2 through an email to Mst. Shela Najeeb Siddiqui an employee of SZABIST had filed a complaint against appellant, which was taken up by inquiry committee constituted on 23-11-2016 by the institution that finally reached to the conclusion that appellant "Mr. Fahad Faruqi could not present any evidence pertaining to recording or rumors / calumny claimed to be put up against him by complainant". With this observation recommendation of major penalty of dismissal was marked.
3. It is alleged by appellant that four different uncalled incidents as detailed in email of 25-11-2016 are false and frivolous. Inquiry committee was also constituted in violation of Section 3(2) of Act of 2010 as Mr. Khalid Hameed was appointed few months prior to inquiry cannot be said to be senior representative. Inquiry committee has not followed proper procedure as provided in section 4(c) of Act of 2010. Decision of inquiry committee was communicated to appellant on 25-01-2017. Appellant is a victim of circumstances and allegations leveled against him are absolutely false and fabricated. Respondent No. 2 always believes that she deserve A grade, but as B grade was given by appellant to her she has developed grudge against him.
4. Inquiry conducted and action taken against appellant was a biased and malafide intention of respondents. Malafide act of respondent No. 1 can be

judged from very fact that before moving any complaint by respondent No. 2 respondent No. 1 has initiated inquiry against appellant on 24-11-2016. On 27th November Mst. Shela Sidiqui told appellant to resign after finishing ongoing semester. On refusal of appellant she responded that he cannot stay here any more as much bad mouthing has happened against him. Chairperson as well as Head of department Mr. Shariq Chapra forced appellant to resign to settle the dust.

5. According to appellant as he had protested against promotion of his Junior Mr. Shariq Chapra as head of department, that protest of appellant was not taken positively and since then attitude of management had changed. It is thereafter complaint has been fabricated in order to teach lesson to appellant.
6. Twice appellant has shown his reservation on composition of inquiry committee and had also sent an email on 17-12-2016 complaining that proceedings are not been done in accordance to law, but those objection of appellant were not considered as chairperson of committee has openly expressed her opinion of dismissal of appellant from service. No proper chance of cross examination of witnesses of complainant was provided to appellant. During inquiry proceedings committee members harassed appellant. Incidents said to had been happened in email of 25-11-2016 are shown to have been committed several months before filing of this complaint. Third incident said to had been happened on 08-11-2016 is false as on that day appellant was not present in Pakistan. So far as 4th incident of 19-11-2016 is concerned is false and frivolous and no evidence to support incident has been produced. In spite of demand of appellant of CCTV footage recordings of incident, which has not been provided to appellant. Though committee in its report has referred statements of Fahad Alvi, Natalia Awais, but their statements were never supplied to appellant nor he was afforded opportunity to cross examine them.
7. After service of notice of this appeal Mr. Khusroo Pervaiz Khan appeared on behalf of SZABIST respondent No. 1 and intimated that as appellant has also preferred an appeal before Provincial Ombudsman for Protection

against Harassment of Women at Workplace therefore present appeal is not maintainable, as same issue cannot be proceeded at two different forums in between same parties and against same order, as there was no rebuttal from appellant's side, because of his absence, therefore considering the statement of Mr. Khusroo Pervaiz Khan matter was disposed of on 02-03-2017 as redundant.

8. It is thereafter on 07-03-2017 an application was moved by appellant stating that although he has filed an appeal before Provincial Ombudsman but as no progress in the matter has taken place and also because of decision of Supreme Court fate of Provincial Ombudsman is uncertain, therefore he will withdraw his appeal filed before Provincial Ombudsman and wants to proceed with case before Federal Ombudsman. After hearing arguments of representative for appellants and respondent No. 1 application of appellant was allowed. Respondent No. 2 remained absent in spite of notice and matter was fixed for final arguments.
9. On 20-03-2017 respondent No. 1 intimated that they have filed a constitution petition having No. 1725/2017 before High Court of Sindh, whereas respondent no. 2 pointed out that she has not received copy of documents filed by petitioner therefore order for dispatching same was passed with an additional opportunity to parties that if they want to file any rejoinder to any document they may file the same before next date of hearing with exchange of copies to each other.
10. Heard arguments of appellant on 27-03-2017. Both respondents in spite of their presence before Federal Ombudsman refused to argue the matter. It was adjourned to 11-04-2017 for judgment. During examining record it was observed that record and proceedings of inquiry committee is necessary for proper adjudication of matter therefore on 27-03-2017 a letter was issued to SZABIST to submit that record and proceedings of inquiry committee. On same day both respondents were again given an opportunity that if they want to argue they may place the same before date of judgment either verbally or in writing with notice to appellant and his representative. On 27-04-2017 Mr. Khusroo Pervaiz Khan head of campus of SZABIST

has submitted inquiry report along with record and proceedings.

11. After going through the file my observations are as under:

As per record produced on 21-11-2016 a few lines message was communicated by respondent No. 1 to respondent No. 2 to Mst. Shehla Najeeb Siddiqui alleging that "Mr. Fahad Faruqi has been harassing, threatening and has also spreading false rumors relating to herself", therefore she has requested to have a meeting with Mst. Shehla Najeeb to discuss the matter in detail. This email was responded on very day. Respondent No. 1 was called for meeting on Wednesday at 12:00 pm. On 24-11-2016 an email was sent by Mst. Shehla Najeeb to Mr. Shariq Chapra to submit "statement of events that were witnessed by Mr. Shariq Chapra on Film Festival and any other that you would like us to take notice of". It is thereafter on 25-11-2016 Mr. Shariq Chapra had reported about incident happened on 19-11-2016 in between appellant and respondent No. 2.

12. Record shows that before submission of report by Mr. Shariq Chapra, Mst. Shehla Majeed again has sent an email to respondent No. 2 on 24-11-2016 requesting her to "write a statement of all incidents that have transpired between you and Fahad". In that very email she had informed to respondent No. 2 to have set a meeting on Monday at 3:00 pm with further direction to send her statement before coming. From all these correspondence it appears that on 21-11-2016 respondent No. 2 has not so much with her to say in against to appellant and it was Mst. Shehla Najeeb Siddiqui which was trying to collect evidence. In result thereof on 25-11-2016 a detail complaint was submitted by respondent No. 2 to Mst. Shehla Najeeb.

13. After perusal of details of incidents reported on 25-11-2016 I observed that no particular date or period has been shown therein when those alleged incidents had happened. Period of incidents said to had happened are shown as "**Last semester, this semester, after my documentary class, after two weeks, same Tuesday 8th November after my documentary class,**" Only of incident happened in SZABIST in Film Festival she has

given particular date as of 19th November but again year is missing therefore it was judge from photographs placed on record as 19-11-2016. Although not reporting immediately will not affect the merits of case but even then an inconsiderable period with no sufficient ground of those laches needs a notice of them.

14. On the basis of these allegations inquiry committee initiated its proceedings and comments were called from appellant which was submitted by him as Annexure-D in final report of Inquiry Committee wherein he has denied almost all allegations with further addition that on 08-11-2016 when particular hot words are alleged to have been made by him towards respondent No. 2 he was not in country. In support of his statement he has produced copy of his passport at Page 231 of file showing his exit from Pakistan on 02-11-2016 and entry on 13-11-2016. Apart from allegations made by respondent No. 2 and denied by appellant the important thing to notice is that very composition of inquiry committee does not consist of independent person. Out of four committee members one member namely Mst. Shehla Majeed Siddiqui who is chairman of inquiry committee is a person, with whom complainant was in communication from 21-11-2016 and under whose guidance complainant has extended her complaint from that moved on 21-11-2016 to complaint filed on 25-11-2016, therefore apparently partial attitude as alleged by appellant of committee members towards appellant cannot be overlooked. However from report as produced it appears that inquiry was made from different persons particularly from students of other media science programs but nor their names have not been disclosed in report neither appellant had been given an opportunity to controvert those statements because as per inquiry report all students of other Media Science and Mst. Natalia a friend of respondent No. 2 were called on 02-12-2016. Whereas no notice of hearing of 02-12-2016 was issued to appellant, nor on that day he was present. So also their statements did not seems to have been recorded in writing. Statements of one Fahad Alvi student of media science, Natalia and Muhammad Salman have also been referred in proof of bad conduct of appellant towards respondent No. 2. On the contrary one facebook message sent by

Muhammad Salman Khan to appellant has been placed on record which is in against to the observation made by inquiry committee and seems to be much supportive to appellant. An apology letter of respondent No. 2 has also been filed on record at Page 239 of file which instead of proof allegation of harassment by appellant towards respondent No. 2 is showing contrary conduct of respondent No. 2 of misbehaving with appellant and seeking apology from him, but report as produced show that mere on assumptions and presumptions that "Mr. Fahad Faruqi assumes things according to his perception and had misinterpreted the relationship with Searha. He has further asserted paranoia of sorts regarding the fact that everyone including his colleagues in department, anti-harassment committee, SZABIST, management and students wants to malign his name", Inquiry Committee members have expressed their views which is in against to principle of justice, because even in criminal trials under Article 133 of Qanun Shahadat order 1984 accused is entitled to have right to cross examine and to judge the credibility of witnesses produced against him. It is also general principle of law that to ensure justice to have been done person affected must at least made aware of nature of allegations made against him and he should be given fair opportunity to correct or controvert any relevant statement brought forward to his prejudice, with right of rebuttal through cross examination, which admittedly has not been provided to appellant by inquiry committee on ground of taking it to be confidential.

15. It appears that to cover up these illegalities respondent No. 1 by filing writ petition before Sindh High Court has tried to hide himself before stay order obtained by him from Sindh High Court on 20-03-2017 and 25-04-2017. After going through contents of petition it appears that instead of presenting correct fact and law before High Court respondent No. 1 has tried to give an impression that fundamental rights of respondent No. 1 have been infringed, therefore they had filed this petition. Article 199 of Constitution of Pakistan specifically says that High Court may, if it is satisfied that no other adequate alternate remedy is available to appellant will entertain petition under Article 199 of Constitution. Respondent No. 1 had also failed to

disclosed before High Court that by virtue of Section 9 of Law relating to Protection against Harassment of Women at Workplace Act 2010 and Section 14 of Federal Ombudsman Institutional Reform Act 2013 alternate remedy is available to any person or authority aggrieved by decision, order, finding or recommendation of Ombudsman by filing a representation to President of Pakistan. And this adequate alternate remedy admittedly has not been availed by both respondents. If according to respondents they were aggrieved by decision of this forum passed on 13-03-2017 proper course for them was to seek remedy by filing representation before President of Pakistan as referred above because Section 18 of Federal Ombudsman Institution Reform Act further emphasizes that no court or authority shall have jurisdiction to entertain the matter which falls within jurisdiction of Ombudsman nor any court or authority shall assume jurisdiction in respect to any matter pending with or decided by Ombudsman. Intention behind this legislation is quick disposal of cases within period of 60 days as provided in Section-8, Clause 5 of Act of 2010. If matters are kept pending for months or years together the very purpose of quick disposal and speedy justice to litigants of this forum will be frustrated, and it is with this intent Section 18 was made a part of Act of 2013.

16. Here it will be appropriate to refer the judgments of honorable Supreme Court of Pakistan reported in PLD 2004, S.C 127, 2003 S.C MR 928, 1992 S.C MR2102 and of Sindh High Court reported in 2007 YLR 585. Observing that when adequate alternate remedy is available to the litigants of complaints of Federal Ombudsman writ petition is not maintainable and these decisions of Supreme Court of Pakistan by virtue of Article 189 of Constitution of Pakistan are binding on all courts in Pakistan including High Courts. Therefore any deviation on question of law laid down by honorable Supreme Court of Pakistan will be hit by Article 189 of Constitution of Pakistan.
17. Article 175(2) of Constitution of Pakistan further say that "No court shall have any jurisdiction same as is or may be conferred on it by the

constitution or by or under any law which means that every authority has to work within the specified territories as defined in law. Same analogy, as observed by honorable Supreme Court of Pakistan in cases referred above, is applicable to the office of Federal Ombudsman for Protection against Harassment of Women at Workplace being the same nature of judicial forum as defined in Federal Ombudsman Institutional Reform Act 2013.

18. After perusal of writ petition filed before High Court of Sindh by respondent No. 1 it seems that much emphasis has been given on point of jurisdiction that as institution of SZABIST is an outcome of provincial legislation gazette on 25-10-1995 and after 18th amendment educational institution have been devolved to provinces therefore Federal Ombudsman has no jurisdiction to entertain this appeal. Beside that parties in proceedings are resident of Karachi, cause of action arose at Karachi, the institution is also situated at Karachi therefore too Federal Ombudsman has no jurisdiction in matter. No matter that respondent No. 1's institution is an outcome of provincial legislation but it cannot be ignored that for purpose of affording degree of its students every university in Pakistan needs recognition by HEC and in absence thereof that institution or university will be termed as non-recognized its degrees will not be acceptable. It is with this compulsory imposition respondent no. 1 got its institution recognized with Higher Education Commission. Therefore in spite of its creation through provincial legislation, being under control of HEC which admittedly is federal institution this office of Federal Ombudsman has jurisdiction to entertain this appeal. So far as concurrent jurisdiction is concerned learned representative for respondent No. 1 has ignored that jurisdiction of Provincial Ombudsman for Protection against Harassment of Women at Workplace is restricted to extent of province of Sindh. Apart from that appeal filed by appellant before Provincial Ombudsman have been disposed of on 27-04-2017 as withdrawn with consent of both respondents i.e. SZABIST and Searha Asghar.
19. Learned representative for respondent No. 1 has taken a plea before High Court that as tenure of Federal Ombudsman sitting at present has expired

on 13-03-2017 in spite of that she is acting with undue haste in the matter also seems to be a flimsy ground because admittedly my term has expired on 13-03-20417 but in term of Proviso of Section 3 of Act of 2013 I have to continue to hold office till my successor enters upon the office. Words used as "Ombudsman shall continue to hold office after expiry of tenure till her successor enter upon the office" does not mean an idle sitting. I have to work and this is not the single case which has been proceeded by this office after expiry of my tenure

20. With this observation I am of the view that inquiry committee constituted by SZABIST has not acted in accordance with law and they have failed to bring forward the names of all witnesses examined by them nor had provided opportunity of cross examination as available to litigant under section 4(c) of Act of 2010. Defense as pleaded by appellant before inquiry committee was also not considered as no observation in that context is appearing in report of 18-01-2017. Illegalities and irregularities are appearing in inquiry committee report.
21. In view of above I hereby set aside order of inquiry committee passed on 18-01-2017 and order of termination of service of appellant dated 25-01-2017 made in consequences of inquiry committee recommendation.
22. Resulting thereby appeal of appellant is hereby allowed. Appellant may be allowed to resume his duties.
23. Issue letter to Vice Chancellor of Shaheed Zulfiqar Ali Bhutto Shaheed Institute of Science and Technology (SZABIST) to implement the decision and report to this office within 15 days of receipt of this order.
24. Parties be informed accordingly.
25. Announced in open court.

JUSTICE (R) YASMIN ABBASEY
Federal Ombudsman