



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

**TITLE: Dr. Saba Bashir Vs Dr. Mehmood Ashraf
Fazia Akhtar Vs Dr. Mehmood Ashraf
Fakhra kashif Vs Dr. Mehmood Ashraf**

J U D G M E N T

1. Complaints Number: FOH-HQR/0000545/18
FOH-HQR/0000547/18
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2. Date of Institution: 25-10-2018
3. Date of Decision: 15-10-2019
4. Complainants:
 - i. Dr. Saba Bashir
Assistant Professor
Computer Science Department
FUUAST
Islamabad
 - ii. Fazia Akhtar
Lecturer
Computer Science Department
FUUAST
Islamabad
 - iii. Fakhra Kashif
Assistant Professor
Computer Science Department
FUUAST
Islamabad
5. Opponent: Mehmood Ashraf
Head of Department
Computer Science Department
FUUAST
Islamabad

Kashmala Tariq
Federal Ombudsman

TITLE: Dr. Saba Bashir. Vs. Dr. Mehmood Ashraf
Fazia Akhtar. Vs. Dr. Mehmood Ashraf
Fakhra kashif Vs Dr. Mehmood Ashraf

Through this single judgment, it is intended that the complaints filed by individual complainants, namely, Fakhra Kashif (Assistant Professor), Fazia Akhtar (Lecturer) and Saba Bashir (Assistant Professor), at the Computer Science Department of Federal Urdu University of Science and Technology (FUUAST), Islamabad, be decided. The reasons why the complaints are coalesced are that the same share the accused namely, Mehmood Ashraf Head of Department (HOD), at the Computer Science Department of FUUAST, Islamabad, involved similar allegations of harassment and common questions of law.

Brief facts of the complaints are as follows.

Fakhra Kashif in her complaint dated 20th October 2018, stated that the Opponent was insistent on calling her to his office alone under the pretense of work. It was also alleged that the Opponent would try to discuss the complainant's personal matters. Any objection raised towards his behavior was allegedly met with retaliation. A specific incident was mentioned therein, where Mehmood Ashraf refused to sign the official documents brought by Fakhra Kashif and had asked her to return when he is alone, whereupon her return she waited outside his office and saw a female exit his room; the door of which was previously locked.

Fazia Akhtar in her complaint dated 24th October 2018 stated that the Opponent would call her to his office on the pretext of work. It was also claimed that he appointed the Complainant as a class counselor and female student coordinator specifically to meet her alone. It is alleged that on her avoidance to

meet him, she faced retaliation by the Opponent under the garb of an official inquiry and issuance of letters of tardiness.

Saba Bashir in her complaint dated 25th October 2018 stated that the Opponent had assigned her duty to supervise seating arrangement for examination after official hours, despite her intimation that her husband was waiting outside for her. Another incident mentioned therein was that on 13th August Mehmood Ashraf took pictures of her official document, which she had requested to be signed by him, and used them to officiate an inquiry against her on the account of holding two public offices. She also alleged that he appointed her as a female student coordinator on the pretext to call her alone in his office, though she avoided it resulting in retaliation where she too was issued letters for being tardy.

Mehmood Ashraf (Opponent) was given the opportunity to reply to the complaints. In his reply dated 8th November 2018, he claimed that the three Complainants had misrepresented the facts. He leveled counter allegations on the Complainants, stating that the complaints were filed with mala fide intentions. Elaborating upon the intentions it was mentioned that the Complainants were in the habit of being late for their assigned duties and became hostile after the Opponent imposed strict measures to monitor the timings of the duties. In case of Saba Bashir he denied initiating any inquiry against her on the basis of her documents. Further, he contested the allegation of meeting or calling to meet the Complainants alone, providing that he had instructed staff members to accompany any female seeking to meet him.

After the submission of reply, the parties were asked to provide evidence corroborating the allegations raised. Witnesses were produced by the parties involved and their statements recorded. The learned counsel for the Opponent and the Complainants cross-examined the parties and the witnesses accordingly.

The learned counsel for the Opponent argued that the Complainants had made dishonest improvements in their affidavits. The Complainants in their affidavits submitted before this court, mentioned certain facts which were not previously present in the complaints. All three alleged the existence of an all-female WhatsApp group named 'Strivers'. Where the Opponent encouraged women to discuss their personal matters like menstruation, personal hygiene etc. with him. All three alleged that the Opponent would try to physically get closer to them by whispering in their ears. Fazia Akhter and Fakhra Kashif also mentioned that Mehmood Ashraf had tried to touch their hands when they would pass any object to him. Fazia Akhter and Saba Bashir claimed that certain female students had also complained about Mehmood Ashraf's behavior; alleging that he would force them to discuss their personal matters with him and also persist by offering to drop them off in his car and buying them lunches.

Whereas, the learned counsel for the Complainants contended that the Opponent failed to establish any malafide intentions on part of the Complainants. The counsel argued that the witnesses produced by the Opponent only provided hearsay evidence; nothing concrete to prove their counter allegations.

Arguments have been heard and the record available perused.

There are two questions before this forum that need to be addressed:

1. Whether the aforesaid allegations leveled against the Opponent amount to harassment, as per the definition provided in **S.2 (h) of the 2010 Act**?
2. Whether the instant complaints were filed by the Complainants with ulterior motives and mala fide intentions?

For ease the definition provided in **S.2(h)** is reproduced below.

"harassment" means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the Complainant for refusal to comply to such a request or is made a condition for employment"

In the light of the above mentioned definition only the relevant instances will be discussed henceforth.

In the original complaints filed by the Complainants, they alleged that Mehmood Ashraf would call them to his office alone, though they tried to avoid it. Only two of the Complainants, Fazia Akhter and Fakhra Kashif, expatiated their avoidance, stating that the Opponent tried to touch their hands when they would hand him over objects. It is accepted that most instances of harassment take place in a private capacity, where there are no eye witnesses, as the persons present may only be the Complainant and the accused. However, there must be some evidence that establishes that the incident is likely to have happened. This criteria is known as the “**balance of probability**”. Both the Complainants failed to provide any such evidence. None of the witnesses produced by the Complainants testified that the Complainants were called to the Opponent’s office alone. Fakhra Kashif specifically did not provide any detail about the female exiting Mehmood Ashraf’s office. The reason why this is important to establish harassment is that, it would have provided support to the narrative that the Opponent was in the habit of meeting females alone in his office.

This office has also taken notice of the fact that the Opponent had failed to produce a key witness, which is the staff member Adnan Zafar, who according to the Opponent himself was instructed to accompany any lone female, so that she may not be alone in his office. Such omission while proving to be a disadvantage for the Opponent, due to his failure to produce best evidence, was not enough to support the Complainants’ allegation.

Another allegation shared by all the Complainants in their affidavits is that the Opponent tried to get physically closer to them by whispering in their ears. Only one witness, namely, Dr. Muhammad Sheraz gave a statement testifying to the fact that he witnessed Mehmood Ashraf whisper in Saba Bashir’s ear. However, the ombudsman is of the view that Dr. Muhammad Sheraz’s statement should not be taken in full confidence keeping in view the animosity between the said

witness and Opponent, gleaned from the statements made by Opponent in his reply and the witness in his affidavit. Furthermore, no witness attested to the same allegation in relation to Fazia Akhter and Fakhra Kashif. Hence, the claim is found to be weak.

All three Complainants also provided in their affidavits that the Opponent added them to an all-female **WhatsApp group named 'Strivers'**, wherein he was the only male and would encourage them to discuss their personal matters such as menstruation with him; evidence of which was provided in form of screenshots. It is acknowledged that such an act was not only unprofessional but also crossed a boundary, that a university's Head of Department (HOD) encourages his female faculty members to engage with him on such a personal level, especially when such conversation is not consented to. However, in the view of the above weakness of the harassment claims it is judged that it is reasonable to hold that the Complainants could have collectively confronted the Opponent about the group and raised their concerns.

The final allegation concerning harassment raised by the Complainants, Fazia Akhter and Saba Bashir, was where they mentioned in their affidavits that certain female students also faced problems in relation to Opponent's behavior. Though none of the alleged female students testified the same before the forum. Thus, the claim stands unproved.

Now that no harassment claim is established, the other allegations in the complaints labeled 'retaliation' hold no significance before this forum. The reason being that the allegations of issuing letters of tardiness and the inquiries conducted were all said to be the consequences faced by the Complainants upon refusing the requests of the Opponent. With such behavior on part of the Opponent not being established through evidence, there can be no retaliation. Therefore, the actions alleged to be retaliation come under the ambit of administrative issues, which does not fall under the jurisdiction of this office.

The second issue identified above will now be addressed, that is whether the complaints were filed with malafide intentions. This issue has further two parts; which are that whether there were dishonest improvements made by the Complainants and whether there were any ill intentions on part of the Complainants.

Dishonest improvement is defined in ***Muhammad Asghar vs State 2019 PCrLJN 90*** as:

“...when a witness improves his statement to strengthen the prosecution case and the moment it was concluded that the improvement was made deliberately and with mala fide intention, the testimony of such witness does not remain reliable”.

Such an improvement by a witness is made in his/her testimony almost always to bring the case in line with the evidence already submitted before the court: reliance is placed on ***Muhammad Mansha vs State 2018 SCMR 772***; resulting in contradictory statements. In the present case, the Complainants did not alter their complaints to make it parallel to any evidence submitted in the court. The addition of incidents such as the act of whispering in the Complainants' ears, touching their hands and the WhatsApp group are details linked to the previous allegations in the complaints. Furthermore, these allegations need to be established through the criteria of evidence mentioned above. Hence, the said allegations are not statements taken as evidence but to be proven by evidence submitted. This fundamental distinction is what separates such additions from dishonest improvements.

Apart from that, it is pertinent to mention here **S.5(3) of 2013 Rules**, to further the discussion. It provides that any party may amend his/her complaint or defense statement at any stage before the decision. The section is reproduced below.

“A party may amend his or her complaint or defense statement, as the case may be, at any stage of the inquiry before decision.”

Though in the present case such an amendment was not sought, the reason for

its discussion is that an amendment under the said rule would be similar in nature to the additions made by the Complainants, discussed above. Both are not dishonest improvements due to the fundamental distinction identified previously.

As far as malafide on part of Complainants is concerned, it is settled law that one who alleges it must prove it; reliance is placed on ***Muhammad Shafi vs Multan Development Authority, Multan through Director General, Multan 2010 YLR 1161.***

The Opponent produced a number of witnesses in this regard. Four main allegations surfaced against the Complainants. Three witnesses namely, **Bilal Khan, Fakhr ul Islam** and **Abdul Mateen**, stated that Fakhra Kashif had started a propaganda against the Opponent. However, the witness, Bilal Khan in his cross examination admitted that he was not himself a witness to Fakhra's involvement in any such propaganda. Abdul Mateen in his statement while mentioning the alleged propaganda lead by Fakira Kashif, did not elaborate what is meant by this "propaganda". The only statements provided are that allegedly she either remained absent or was late for her duties. This is in no form a propaganda. While Fakhr ul Islam in his affidavit stated that Fakhra Kashif had proclaimed in front of him that she would rip her clothes in the Opponent's office and file a false harassment against him. This office is of the view that his statement does not deserve any confidence due to the conflict between the witness and the Complainant, which is apparent from his statements in the cross examination where he accused the Complainants of being the reason why his contract was not renewed.

In case of Fazia Akhtar, the witness, Abdul Mateen, stated that she was in the habit of filing cases against her superiors. The case alluded to was the one filed against Mansoor Ansar which was decided by the Honorable High court of Islamabad. This cannot be the basis for mala fide, as none can be prevented from availing the remedy of a court, when they believe their legal right has been

infringed, on the basis that in the future that may be used against them. Another allegation against Fazia Akhtar was that she was habitually late for her assigned duties. The witness, Naeem Akhtar; an evening In-charge testified in relation to the allegation above. However, in his cross examination he admitted that he did not submit any documentary evidence corroborating his statement, which could have easily been provided given the fact that the witness admitted to having the said attendance register in his possession.

In case of Saba Bashir, the main allegation was that on 7th December 2018 she called a faculty member named Jafar Khan. She threatened him to give a statement in his favor or face dire consequences and also confessed that the present case against the Opponent is false. Three witnesses, Abdul Mateen, Khawaja Tahir and Saeed Ullah submitted a written statement testifying that Jafar Khan had received such a call. But those three had not witnessed the call themselves but were informed by Jafar Khan at a later time, that is, on 7th December 2018 Abdul Mateen and Saeed Ullah were informed, and on 11th December 2018 Khawaja Tahir was informed. Despite not witnessing the alleged call, the said witnesses endured the cross examination where no discrepancies were revealed in their statements. Further the witnesses cannot be discredited, for no evidence of such nature was submitted before the forum by the Complainant. Hence, it is established that a phone call made by the Complainant, Saba Bashir, was received by the Opponent's witness Jaffar Khan. However, the contents of the telephonic conversation in the form of audio recording were unattainable. None the less the Opponent established that the Complainant, Saba Bashir had threatened Jaffar Khan to give his statement in her favor.

It is deemed important to discuss a particular witness procured by the Opponent, namely, Khalid Khan, who stated in his affidavit that the present case is false. But during his cross examination it was revealed that he had not read the complaints he provided his statement on.

It is settled law and a general principle that “***affidavits are required to be confined to such facts as the deponent is able of his own knowledge to prove***”: **Mian Muhammad Lateef vs Mst Nasima Warsi 2009 CLC 279 Lahore High Court**. Thus, frivolous statements should be avoided.

It is, thus, apparent that the Opponent was unable to prove mala fide on part of the Complainants, Fakhra Kashif and Fazia Akhtar. It is “***easy to allege mala fide, but difficult to prove the same***”: **Muhammad Shafi vs Multan Development Authority, Multan through Director General, Multan 2010 YLR 1161 Lahore High Court**, as mala fide is “***not a word of art but it is a fact***” which needs to be established by appropriate evidence: **Haq Nawaz vs Haji Ghulam Farid 2011 SCMR 782 Supreme Court**. The forum could not simply rely on mere witness statements when documentary could have been provided. Whereas, in relation to Saba Bashir, with the alleged threatening call was **successfully established**.

This is a special forum, established under the Protection Against Harassment of Women at Work Place Act, 2010, it only entertains cases pertaining to work place harassment. The definition of both “harassment” and “work place” are provided in the Act, 2010 under Section 2(h) and 2(n), respectively. After scrupulously discussing the issues identified previously this forum finds that no harassment as per Section 2(h) of the 2010 Act has been established. Therefore, to not digress from the actual purpose of the forum, the respective instant complaints filed by the Complainants are dismissed. In light of the threatening phone call made by Saba Bashir, this forum orders the competent authority of Federal Urdu University of Science and Technology to impose a minor penalty of censure, under section 4(4)(i)(a) of the Act 2010. As pressurizing a witness to give a statement on their behalf is an act not condoned by this forum.

Further order that the order of suspension dated 30-01-2019 passed by this forum is set aside and the Competent Authority of **FUUAST** is directed to

reinstate the Opponent on the previous position. A copy of this order be sent to the Competent Authority of FUUAST for implementation and the compliance report, thereof, should be submitted within 7 working days after announcement.

Moreover, this office in relation to FUUAST observed various lacunas in its administration. The proceedings revealed that majority of the grievances could have easily been prevented had the administration of the University been vigilant enough. The administration is directed to ensure a conducive work environment for its female faculty members. Further, in today's age where technology has progressed so vastly, the University is ordered to install CCTV cameras and biometric attendance. Thus, eliminating the issue of attendance and custody of the attendance register. The administration is also directed to discourage any activities outside the ambit of academics, and should have zero tolerance for any on campus advisory sessions conducted privately by faculty members without the authorization of the University. It is further directed to report the status of its harassment committee.

The compliance report of the above directions to the administration of FUUAST should be submitted within 30 days.

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

OMBUDSMAN