

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR THE PROTECTION AGAINST HARRASSMENT OF WOMEN AT THE WORK PLACE,
REGIONAL OFFICE LAHORE

ORDER SHEET

COMPLAINTNO: FOH-LHR/0000489/2023

DATE OF INSTITUTION: 28-11-2023

Serial No. of Proceedings	Date of Proceedings	Order of other Proceedings with Signature of Federal Ombudsperson		
		TITLE:	JAVERIA YASIR	VS CIVIL AVIATION AUTHORITY
1	2	DEPARTMENT: CIVIL AVIATION AUTHORITY		
13	13-05-2024	<p>1. The present complaint has been filed on 28-11-2023, by Javeria Yasir, HR-Supt (hereinafter referred to as the Complainant), before the Regional Head Office, Lahore, Federal Ombudsperson Secretariat. Against Pakistan Civil Aviation Authority (hereinafter referred to as CAA). Through this complaint, the Complainant has challenged the existing Schedule VII i.e. Financial and other Entitlements For Family of a Deceased Employee, of the 2014, CAA Service Regulations. On the grounds that it is a gender biased and discriminatory law, which is in violation of the provisions of the Constitution of Islamic Republic of Pakistan, 1973 (Constitution). She has also submitted that by now, she should have been regularized in service, by virtue of Office Memorandum dated 23.12.2022, F No. 8/23/2021-E-2(pt), issued by the Establishment Division.</p> <p>2. Before discussing the main complaint, it is important to note that the CAA is a public sector, autonomous body, working under the Federal Government. It was established by the Civil Aviation Authority Ordinance, 1982. The CAA adopted the Prime Minister's Family Assistance Package w.e.f. July 2005, as per the Rules and Regulations in place. Later, the package was incorporated in the 2014 CAA Service Regulations.</p> <p>3. The Complainant has been working in CAA since 03.05.2013, when she became a widow, after the death of her husband, Yasir Arfat, an employee of CAA. He was killed in a targeted killing incident during his job. She was appointed to a contractual position, by Director General CAA, under the Family Assistance Package Scheme 2006, against the position of HR-Supt. However, till date, the Complainant has not been</p>		

regularized, despite a period of ten years having elapsed since her appointment and the issuance of Office Memorandum dated 23.12.2022, F No. 8/23/2021-E-2(pt) which states that '*The Prime Minister has further been pleased to approve that the services of contract employees appointed under PMAP-2006 and PMAP-2015, who are still working under the existing contract, shall be regularized with immediate effect, as one-time dispensation.*'

4. After the demise of her husband when the Complainant was appointed, she was just a young widow and a single mother of two minor boys. Although she was employed under the Family Assistance Package 2006, every year under the 2014 CAA Service Regulations, she is being asked to submit proof of her marital status, that she is still single. Therefore, if she wished to continue her employment she had to remain unmarried. This policy of CAA, to obtain a non-marriage certificate from widows of employees, was as a result of the Office Memorandum dated 15.12.2015, No.8/10/2013-E-2, issued by the Establishment Division. Wherein it has been noted that '*After remarriage the widow becomes ineligible to receive family pension. Therefore, this Division is of the view that her contract should be terminated from the date of her remarriage.*' The Complainant has submitted that despite her continuous efforts to seek regularization and advancement within the organization she has found herself stuck at the same position. She contends that her qualification and skills combined with her dedication towards her job warrants recognition and promotion and by now she should have been regularized. According to her, the persistent denial of such opportunity intensifies gender-based discrimination. She has pleaded for ascertainment of the fact whether similar restrictions are imposed on widowers in the 2014 CAA Service Regulations. As per her version, upon her request to get permanently regularized, she was (allegedly) given suggestion that in that case, she may resign, if she so desires. The Complainant has also asserted that the restriction of Non-Marriage Certificate has hindered her professional growth, for the last ten years and has prevented her from exercising her personal right to re-marry. It is prayed by the Complainant that the employment policies/2014 CAA Service Regulations be reviewed and the gender-discriminatory requirement of Non-Marriage Certificate be abolished. Furthermore, her employment should be regularized at CAA.

5. On the other hand, counsel for CAA has raised the preliminary objection that the present complaint does not fall under the definition of harassment as given in Section 2(h) of the Protection Against Harassment of Women at the Workplace Act, 2010 (**Act**). Additionally, that the Complainant was appointed purely on contract basis in PG-06 (now SG-10) upon the demise of her husband and that no official commitment as to regularization was made at the time of hiring and no

correspondence with regard to the same is available on record. That the Complainant has already filed Writ Petition No.24646/2022 before the Hon'ble Lahore High Court for her regularization and so the matter being sub-judice, cannot be adjudicated before this forum. Insofar, as the requirement of asking for a Non-Marriage Certificate is concerned, the same was defended on the touchstone of Office Memorandum dated 15.12.2015, No.8/10/2013-E-2 issued by the Establishment Division. Moreover, the claim of the Complainant regarding gender-based discrimination was vehemently contested on the ground that benefit of employment is only available to widows under the 2014 CAA Service Regulations and no comparable benefit is provided to widowers.

6. I have heard the arguments of the parties at length and have also perused the record.

7. The two primary grievances raised by the Complainant are that in order to continue her employment at CAA she has to submit a Non-Marriage Certificate every year, which has deprived her of her personal right to re-marry and that despite a lapse of ten years, her services have not been regularized. It is the Complainant's case that she is being discriminated against, solely because of her gender. Dealing first with the Complainant's second grievance, it is an admitted fact that the Establishment Division issued an Office Memorandum dated 23.12.2022, F No. 8/23/2021-E-2(pt) which clearly states that the Prime Minister has directed the immediate regularization of employees appointed on contract basis under the Family Assistance Package 2006 and it is this very package under which the Complainant was appointed in the CAA. However, it is also accepted by the Complainant that she has approached the Hon'ble Lahore High Court for the regularization of her services and that too prior to her filing the present complaint before this forum. In these circumstances, when the matter is already sub-judice before a Superior Court, before which the Complainant can agitate her right to be regularized, on the strength of the Office Memorandum dated 23.12.2022, F No. 8/23/2021-E-2(pt), issued by the Establishment Division, I am of the considered view that this forum should not intervene in the matter. More so, when the Complainant has placed no evidence on record that she has been denied regularization by the CAA on account of her being a woman. In this regard, she has been unable to specify any male employee who, like her, was given contractual employment under the Family Assistance Package Scheme but was later regularized to her exclusion. This lack of evidence casts doubt on the Complainant's claim that she has not been regularized because of her gender. Under the provisions of the Act this forum can only grant relief to complainants who are aggrieved of either sexual harassment or gender-based discrimination at the workplace and any other complaint

having no nexus with sexual harassment or gender-based discrimination cannot be entertained by this forum, regardless of its merit. Accordingly, to the extent that the Complainant has sought her regularization in the CAA the same cannot be granted by this forum. The Complainant is therefore advised to pursue her remedy before the Hon'ble Lahore High Court.

8. Insofar as the Complainant's first grievance regarding the Non-Marriage Certificate is concerned, the only answer put forward by the CAA in defence to this claim was that such a certificate is obtained due to the instructions of the Establishment Division issued in Office Memorandum dated 15.12.2015, No.8/10/2013-E-2. However, this submission by the CAA is not tenable in the eyes of the law. Under Section 2(h)(ii) of the Act "*discrimination on 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*" is prohibited and can be proceeded against by this forum. The Family Assistance Package Scheme has been enacted by the Prime Minister to support family members of government employees who either died in service or in security related deaths. One such assistance offered to family members of deceased government employees is that of employment. The CAA adopted the Family Assistance Package Scheme keeping in mind its financial considerations and interests. As a result, the 2014 CAA Service Regulations offered contractual employment to, only the wife or son or daughter of a deceased employee, which employment was made extendable till the age of superannuation or regularization. It is the CAA's case that the Complainant has no cause of action giving rise to gender-based discrimination because a widower (husband of a deceased employee) does not have the option under the 2014 CAA Service Regulations of being offered contractual employment. Therefore, she cannot allege that she is being treated unfavorably compared to men as there are no men in a comparable position to her. While the argument of counsel for the CAA appears attractive at a first glance, on a deeper analysis it becomes clear that the same is flawed. To begin with there is no discrimination against men merely because husbands of deceased employees are not given employment after the death of their wives as Article 25(3) of the Constitution states that "*Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*" There can be no cavill with the fact that women in our society are generally more disadvantaged compared to men when it comes to social indicators such as access to education and literacy rates, economic independence and social mobility [refer to the Global Gender Gap Report 2023 in which Pakistan ranks 142 out of 146 countries, making it the fourth poorest performing country in

terms of gender equality]. Indeed, it is due to these disadvantages that the State has been empowered by the Constitution to take special measures for uplifting the conditions of women. In common parlance, such special measures are known as affirmative action and these are introduced with the aim of ensuring substantive equality between the sexes. Moreover, Article 34 of the Constitution directs that "*Steps shall be taken to ensure full participation of women in all spheres of national life.*" However, if the policy of the CAA is viewed in juxtaposition with the clear command of the Constitution it immediately becomes plain that the policy is constitutionally flawed. Rather than promoting the goal of women's economic empowerment, the actual application of the CAA's policy has tied the Complainant and other women's contributions to the workforce with the status of their husband. As long as the Complainant or a woman appointed under the Family Assistance Package Scheme maintains her connection with her deceased husband she can work to provide for herself and her family but once she chooses to exercise her right to re-marry she is penalised and threatened with removal from service or is actually so removed. This is despite the fact that the Complainant or any other woman may have been adequately performing their duties within CAA. In fact, as per the CAA's own record the Complainant's performance was being monitored under the general performance evaluation regime put in place by the Government according to which she discharged her duties, satisfactorily. Therefore, the approach of the CAA not only indicates the presence of a discriminatory and prejudicial mind set or notion against women [in contravention of Section 2(h)(ii) of the Act] but also violates Section 26 of the Contract Act, 1872 which reads "*Every agreement in restraint of the marriage of any person, other than a minor, is void.*" Further, this approach offends public policy because under Article 35 of the Constitution the State is obligated to "*protect the marriage, the family, the mother and the child.*" In the above legal situation, the condition of submitting a non-marriage certificate, before the renewal of an employment contract, cannot be allowed to stand. In arriving at this conclusion, I am fortified by India's gender-progressive policy governing the employment of widows of deceased employees. Clause 11 of the Compassionate Appointment under Central Government provides that "*A widow appointed on compassionate grounds will be allowed to continue in service even after re-marriage.*" Although not binding on the Government of Pakistan, the approach of the Indian Government is commendable and should be considered and implemented by our Government Functionaries to ensure genuine substantive equality between men and women.

9. Now to rebut the allegation of gender-based discrimination, the only defence taken by the CAA was that it is bound to ask for a non-

marriage certificate from the Complainant in light of the Establishment Division's Office Memorandum. However, this stance of the CAA is unimpressive because at one hand the CAA is implementing in letter and spirit the directive of the Establishment Division that a widow is only entitled to retain her job if she remains unmarried but on the other hand the CAA has paid no heed to Office Memorandum dated 23.12.2022, F No. 8/23/2021-E-2(pt) which notes that the services of contractual employees appointed under the Family Assistance Package Scheme 2006 shall be regularized with immediate effect. Whist the CAA, being an autonomous body, can decide which of the benefits or packages of the Prime Minister/Government it wishes to adopt, it cannot do so in an arbitrary manner, more so when its policies have the effect of discrimination against women and violation of the command of the Constitution. The defence of the CAA is consequently rejected for having no force.

10. Accordingly, for what has been discussed, the requirement of seeking a Non-Marriage Certificate from the Complainant is declared to be gender-based discrimination under Section 2(h)(ii) of the Act. It is also held to be violative of the Constitution. The CAA is therefore directed to immediately refrain from asking the Complainant for a non-marriage certificate every time her contract is put up for renewal. Further, the Establishment Division shall, in light of the above analysis, reconsider its Office Memorandum dated 15.12.2015, No.8/10/2013-E-2 which mandates the submission of a non-marriage certificate from widows who are appointed under the Family Assistance Package Scheme and submit its report to this forum by **28-05-2024**.The instant complaint is allowed in the said terms.

FEDERAL OMBUDSPERSON