

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

FORM OF ORDER SHEET
Complaint No. FOH-HQR/0000541/18

Serial No. of Order of Proceedings	Date of order of Proceedings	order of other proceedings with signature of federal ombudsman			
		TITLE:	KHADIJA SHAHEEN Student	VS	TAHIR Teacher
		DEPARTMENT: PIMS COLLEGE OF NURSING			
1	2	3			
	02-09-2022	<p>Complaint No. <u>FOH-HQR/0000541/18</u></p> <p>Ms. Khadija Shahin (hereinafter called the Complainant) filed the instant complaint against her teacher Muhammad Tahir, Assistant Clinical Instructor college of Nursing, PIMS Islamabad (hereinafter called the Accused) in terms of section 8 of the Protection against Harassment of Women at the Workplace Act 2010.</p> <p>Facts forming the background of the case as highlighted and admitted by the Accused himself are as under:-</p> <p>That the Complainant, student of 2nd year B.Sc Nursing, College of Nursing PIMS filed a complaint against the Accused before Principal of the College of Nursing PIMS Islamabad on 29-09-2018. The Principal, College of Nursing forwarded the said complaint to the Chairperson Harassment Committee PIMS Islamabad on 01-10-2018. The harassment committee submitted its report to the competent authority on 23-10-2018 with the following remarks:</p> <ol style="list-style-type: none"> 1. Refer to observation number one in the previous report. Since no conclusive evidence was submitted by the complainant, regards objectionable text messages and phone calls, and since the committee has no means or authority to retrieve these records, no penalty can be levied on the accused in this particular case. 2. Refer to observations numbers 02, 03 and 04 of the previous report. Since these are observations made during the investigation of this case, do not directly provide evidence for this case, the committee submitted these observations considering it an obligation to report to the competent authority for an appropriate action. Penalizing for 			

previous follies does not fall in the sphere of this committee, it is prerogative of the competent authority.

That the report of inquiry committee was kept confidential when meanwhile the Complainant filed second complaint before FOSPAH on 23-10-2018. That FOSPAH held the inquiry committee constituted as against the law and hence the inquiry report was set aside vide order dated 13-12-2018. Accused preferred writ petition No. 531/2019 against the order of FOSPAH dated 29-01-2019 before honorable Islamabad High Court Islamabad but it was dismissed vide order dated 13-02-2020. After that the application of the Accused with regard to his objection on jurisdiction of the forum and maintainability of the complaint was dismissed vide order dated 17-06-2019. During the process of recording evidence, the accused was burdened with cost of Rs. 15000/- vide order dated 27-01-2021. Accused assailed that order in a representation before the office of President of Pakistan but that representation failed and the case remanded back to this forum.

It took long time to mature the case. The Accused party tried its level best to prolong and delay the case one way or the other. Complainant continuously raised hue and cry on the delay so caused but the Accused would succeed in prolonging the matter through different tactic. At last the trial and inquiry came to an end. Both the parties recorded their evidence and their learned counsel argued their respective viewpoints.

As mentioned above the initial complaint was filed by the Complainant to the Principal, College of Nursing PIMS Islamabad, wherein she complained of the conduct of the accused Tahir towards her. She alleged that the Accused would send her messages on mobile expressing strange things like "you are very dear to me. You are very smart and you contract marriage with me or make friendship with me". He would ask her to remain under his shelter so as to obtain good marks in the examination. At the beginning she avoided this conduct and behavior of the Accused but ultimately she told the Accused that there was a big difference between their ages and that he should realize that he was her teacher and for that matter he should not harass her. That on her this response to the Accused he started causing more torture to her. Once he offered her to accompany him to Lahore but she refused the same after which the Accused threatened her of failure in examination. That she informed and complained of the matter to Deputy Director Benazir Bhuto

hospital and also brought the matter into the notice of Ms. Saima Mobeen, wife of the Accused. Subsequently Accused blamed her to have spent time with someone else in orange coloured vehicle and insulted her in front to Ms. Saima Mateen and Iffat Raina, nursing instructor. Complainant also alleged physical assault on her by the Accused.

This complaint was perhaps not dealt with on priority and got delayed that is why the Complainant had approached this forum with her complaint dated 23-10-2018. In this complaint the Complainant disclosed that she did not receive the inquiry report from departmental committee and when she requested the concerned quarter for the report, it was denied to her.

The above complaint at this forum was processed and consequently this forum passed an order dated 13-12-2018 vide which the inquiry report of the department was set aside on the ground that committee was not constituted as per relevant law. Against the order dated 13-12-2018 Accused filed writ petition No. 531/2019 but it was dismissed by the honorable Islamabad High Court Islamabad vide order dated 13-02-2020. Accused did not assail the order of the honorable Islamabad High Court Islamabad dated 13-12-2020 meaning thereby that the said order attained finality.

In the above circumstances, the position would be that there exists no inquiry report of the department and whatever is to be decided is to be decided by this forum in the light of the evidence produced by the parties.

Now the Accused is not competent to say that he has been exonerated by the inquiry committee and hence he may not be proceeded against by this forum under the principle of double jeopardy. Inquiry committee report relied upon by the Accused is non-existent because of the order of this forum dated 13-12-2018, whereby the inquiry report and its findings are set aside. The representation of the Accused against the order of this forum dated 27-01-2021 has also been declined. Accused challenged the jurisdiction of this forum which was declined by the order dated 27-01-2021.

Coming to the merits of the case, as per material on the file, the Complainant submitted her affidavit in evidence Ex PW 1/1 consisting of two pages, wherein she narrated her allegations against the Accused with regard to her harassment. Before that she

had made clear allegations of sexual harassment against the Accused in her complaint to Principal, College of Nursing PIMS Islamabad. The complaint to the Principal concerned was quite specific with regard to sexual harassment caused to the Complainant. The Complainant was subjected to lengthy cross examination by the learned counsel for the accused when she recorded her statement before this forum as PW 1. Although the Complainant was cross examined at length, yet, most of the cross examination remained out of context and for that matter regarding irrelevant things. From the cross examination of the Complainant the Accused has been unable to show that the complaint filed against him by the Complainant is either false or fabricated or has been filed with some malafide intention. There is no record or proof of previous animosity, enmity, grudge and ill will between the Complainant and the Accused. The Complainant came to the institution only getting training for few months. She did not come there as a permanent employee. She had no clash of interest with the Accused who was working on a senior position. It is also not established on the record that the Complainant got hands in gloves with other people who intended to harm the Accused and used the Complainant as a tool.

In absence of the above factors it does not appeal to a common sense and prudent mind that Complainant could have filed such a case against a senior person like the Accused who was also her teacher during the training course.

There are statements of Mr. Sher Muhamamd Hazara, Nursing Instructor and Mr. Muhammad Ahmed, Assistant Nursing Instructor of Nursing of College PIMS Islamabad, apparently supporting the Complainant's version with regard to her complaint against the Accused. These statements have been exhibited as CW 1 and CW 2 on the file.

Statement of Accused Tahir was recorded as DW 1. He produced his affidavit in evidence Ex DW-1/1. He was also subjected to lengthy cross examination by the opposite side. He admitted that vide office order dated 23-10-2018 he was suspended from service and before that he was transferred from College of Nursing cell to H-10 Islamabad vide office order Ex DW 1/x2. It is strange that the Accused although relied upon the inquiry report at the departmental level, yet, he expressed ignorance about the complaint filed by the Complainant to the Principal, College of Nursing PIMS against him. He also expressed his ignorance about any written reply submitted

by him in connection with the complaint at departmental level. Accused also shown his unawareness about the legal notice dated 09-11-2018 (Ex DW 1/x5) sent to the Complainant through SS Mateen Law Associates.

Accused during the cross examination remained quite unclear as to whether or not he produced the record placed on the file. His answers remained unclear, vague and contradictory. Accused produced his wife Saima mateen as a witness and also examined Iffat, Nursing Instructor, PIMS.

After deep analysis and scrutiny of the case in the light of the substance placed on the file one cannot deny the fact that the Complainant has not charged the Accused for sexual harassment at the workplace. On the other hand it stands duly established and proved that the Complainant clearly charged the Accused for causing her sexual harassment through different ways and means. Her initial application and complaint to the Principal, College of Nursing PIMS Islamabad is quite clear to show that the Complainant charged the Accused in specific terms for her sexual harassment.

It has already been pointed out that there existed no previous ill will, malice or grudge between the Complainant and the Accused prompting the Complainant to file a false and fabricated case. Accused has been unable to show any false motive of the Complainant. No such evidence has been recorded by the Accused to prove that the complaint against him is the result of any conspiracy against him or that the Complainant has been used by his opponents to cause harm to him.

In these circumstances, *“It is a matter of common sense that a lady would not ruin her modesty/dignity/respect by making a false complaint of sexual harassment just to defame a person with whom she had no previous enmity--- Protection Against Harassment of Women at the Workplace Act 2010 had been promulgated for the safety of persons who feel insecure at the workplace and to punish transgressors for their act of sexual harassment, abuse or assault--- Such acts had to be condemned and discouraged specially in educational institutions”*.

The above findings get support from the judgment of honorable Lahore High Court Lahore reported in **PLD 2019 Lahore 407**.

The August Supreme Court of Pakistan in its judgment in the **Civil Petition No. 4570 of 2019** observed that:

“Harassment, in all forms and manifestations, may it be based on race, gender, religion, disability, sexual orientation, age-related, an arrangement of quid pro quo, and/or sexual harassment etc affects and violates the dignity of a person, as guaranteed under the Constitution of Pakistan, 1973. Even though anyone may be subject to sexual harassment, in a culture and society like Pakistan, women are the distressing majority of victims. Harassment in any society or organization is a testament to regressive behavior that creates an intimidating, hostile, degrading, humiliating, and offensive environment which has a devastating effect on any society or organization by adversely affecting its overall performance and development”.

As discussed earlier there seems no reason or justification for the Complainant to file false complaint against the Accused. This proposition has been discussed in the judgment of Indian jurisdiction reported in **AIR 2003 SC 4684** and **PLD 1984 SC 218 (SAB)** as under:

“When Indian woman in tradition bound society makes a complaint of rape there is an inbuilt assurance that the charge is genuine. To insist on corroboration is to add insult to injury”.

The allegations made by the Complainant in her application/initial complaint to the Principal, College of Nursing PIMS Islamabad are fully cover in (xii) of the Code of Conduct for Protection against Harassment of Women at the Workplace:

“Unwelcome sexually determined behavior and demand from male employees at workplace such as any physical contacts, and advances, sexually coloured remarks, showing pornography, passing lewd comments or gestures, sexual demands by any means, any rumors/talk at a workplace with sexually coloured remarks about a working woman or

spending rumors about a woman's sexual relationship with anybody".

While putting all the record and evidence together, its accumulative effect would show that the **Accused is guilty of causing sexual harassment** to the Complainant in terms of the provisions of the Protection against Harassment of Women at the Workplace Act 2010 (Now Amendment Act 2022). Accused is, therefore, proceeded against under Section 4(4)(ii)(c)(e) of the Act 2010 and is **imposed upon the major penalty of removal** from service with a fine of Rs. 5 lacs which would be used as compensation for the Complainant.

Disposed off.

FEDERAL OMBUDSMAN