



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

**J U D G M E N T**

1. Appeal Number: 1(87)/2014-FOS
2. Date of Institution: 11-07-2014
3. Date of Decision: 16-10-2014
4. Appellant: Ms. Marium Khawaja
5. Respondent:
  - i. Mr. Sohail H. Naqvi, VC-LUMS
  - ii. Enquiry Committee LUMS, Lahore
  - iii. Mr. Abid H. Imam, Faculty member,  
LUMS, Lahore

**Justice (R) Yasmin Abbasey,****Ombudsman:**

1. This appeal has been presented by appellant against the decision of inquiry committee dated 30.04.2014, whereby inquiry committee instead of taking the act of respondent No. 3 as sexual harassment has taken it as a highly unprofessional conduct and “conduct unbecoming” and recommend as follows:
  - i. Mr. Imam should write an apology letter to Mariam which clearly and unequivocally demonstrates his contrition and repentance. This letter should be written as soon as (within one week) directed by the VC. This letter should be placed in the personal file of Mr. Imam maintained by LUMS.
  - ii. A copy of this Inquiry Committee Report should also be placed in the personal file of Mr. Imam maintained by LUMS.
  - iii. The VC should counsel Mr. Imam about his serious lack of judgment in dealing with students in and outside of class. While faculty members have every right to debate subjects freely with students, they should also exhibit a mature judgment in how the arguments are presented and when the debate is crossing boundaries. He cannot abuse his authority as a teacher in crossing limits in the three domains mentioned above. His belief that these comments

are made in just and not to hurt anyone, or in order to provoke a more rigorous debate only shows his lack of sensitivity. Given that he has had the privilege of attending highly reputable institutions makes this lack of sensitivity even more troublesome. Mr. Imam should be helped in reflecting about his behavior and its hurtful consequences for students. He should be helped to modify his behavior so that we do not lose a potentially brilliant teacher. In order to monitor progress Mr. Imam's course and teacher evaluation should be closely monitored and discussed with him by both the Dean of the School and the HOD.

2. Facts of the case as pleaded by appellant are that she is a law student in Sheikh Ahmed Hassan School of Law LUMS and has completed her law degree course. It is alleged that during the course period, respondent No. 3 who was an Academic Advisor and coach for the price media law Court of appellant on 21.01.2014 when appellant after offering Jumma prayer was going towards law department and was passing from respondent No. 3 office which is at the door step of the department. He was standing outside of his office remarked to appellant that "you look very fashionable Marium". Remarks passed by appellant were with malafiedly intention to harassed the appellant on sexual basis, appellant ignored remarks and tried to move forward to avoid the situation, but respondent No. 3 did not stop their and proceeded to reach over the appellant and gripped into the 3 inch zipper detail on her shoulder and while saying

that “is that real” all of sudden pulled it down and non-covered her shoulder in presence of person present there. According to appellant this behavior of respondent No. 3 was not only limited to appellant but he is a pattern of offensive of sexual intimidating behavior with other students as well.

3. This act of sexual harassment by respondent no. 3 was threatening to appellant which causes her severe mental agony and trauma. It creates sense of insecurity and embarrassment to the appellant because 4 people were present during this shameful act of respondent No. 3 out of which 2 were male class fellows of appellant. Appellant got shocked from the situation and after reziping left the place in order to save her honor and to avoid violence from respondent no. 3. Thereafter appellant lodge a formal complaint with respondent No. 1, the Vice Chancellor of LUMS University against respondent No. 3 Abid H. Imam.
4. The incident was also witnessed by HOD of the law department but as relationship of HOD with respondent no. 3 was known to every student and there was a fear of dire consequences to the appellant if such complaint is lodge with HOD. However after receiving complaint, respondent no. 1 tried to resolve the matter informally and ask HOD of law department to mediate and see if it can be resolved. On nomination of HOD law department Dr. Ghazanfar, appellant shared her reservation with respondent No. 1 and insisted that formal inquiry committee be constituted. Thereon 3 member inquiry committee was constituted. Inquiry committee interviewed various people from both parties including appellant and respondent No. 3. Respondent No. 3 objected on the formation of the inquiry committee

and tried to show it as a conspiracy against him plotted by appellant with some law faculty members. After start of inquiry appellant was pressurized to withdraw it otherwise her career will be reined from all influential circle of the University administration.

5. On 25.04.2014 inquiry committee submitted its report, In its report committee ignored gravity of offence committed by respondent No. 3 and observed that there is no evidence against respondent No. 3 indulging in any sort of behavior which can be deemed as sexual harassment. However the act of respondent No. 3 was simply declared as “highly non professional conduct” and no major or minor penalty was imposed on him. In order to save her career appellant has filed this appeal against the decision of inquiry committee after giving final examination in the month of June, 2014. Happening of event is proved from footage video and confession of respondent No. 3 which has been endorsed in the committee report of 25.04.2014. Eye witnesses were not purposely called by the committee to shade the event with their own surmises and to reach upon their own conclusion that the criminal act of respondent No. 3 did not fall in the category of sexual harassment. Although it is observed by the inquiry committee in its report that the students were extremely apprehensive about negative implications of their career at LUMS if their names and testimony were made public. Eye wash exercise was carried out by the inquiry committee to support respondent no. 3. No opportunity was provided to appellant to cross examine the students whose evidence was recorded by the Inquiry committee.
6. In view of the above, inquiry committee report is against the law and the facts of the case and needs to be rectified.

7. Respondent No. 1 and 2 in their reply have submitted that underline issue pertains to respondent no. 3. Respondent No. 1 and 2 have only attempted to address the appellant's complaint to the best abilities and as fairly as possible.
8. It is stated that even if the law of Protection against Harassment of Women at Workplace Act 2010 as pleaded by respondent No. 3 is not applicable in case of interaction between students and teacher then also LUMS has its own policies against sexual harassment and professional misconduct which required the matter to be investigated.
9. Question has also been raised to the maintainability and jurisdiction of this office of Ombudsman that incident took place in Lahore whereas the appeal has been presented before Federal Ombudsman at Islamabad. Reference of section 6 and 7 of Act 2010 has also been made as to the maintainability of appeal. Respondent No.1 and 2 have also highlighted some contradictory statements made by the appellant before inquiry committee and in the appeal presented before this forum. It is stated that respondent No. 3 was also not satisfied with the impugned report of inquiry committee, his grievance was that the report is too harsh to him with the result that he has resigned from LUMS.
10. So far the allegation made by appellant that she was threatened by University administration that if any appeal is preferred she won't be able to graduate and will face consequences are absolutely wrong. Answering respondent has extended full cooperation to the appellant in all respect during and after inquiry. According to them it is pertinent to note that though appellant missed her final exams in law 472, but

makeup examination was arranged for her on 06.06.2014 so that she should not suffer on this account. Allegation that eye witnesses were not purposely called by the committee to shade the event within their surmises and to reach upon their own conclusion is incorrect. On the contrary appellant version was fully accepted and respondent No. 2 did not think any further corroboration of the incident through eye witnesses on account of admission of respondent No. 3. Inquiry committee had interviewed those students who were nominated by the complainant and also interview 10 other students who were randomly selected from courses taught by respondent No. 3. Out of them 5 were female students. For any further clarification and further assistance, respondent No. 1 and 2 will always be available to clarify them.

11. Respondent No. 3 in his reply has taken some legal pleas that appeal is time barred by virtue of section 6 of Act of 2010 as the inquiry committee report is of 25.04.2014 which was communicated to the parties on 30.04.2014 whereas the appeal has been preferred on 11.07.2014 after delay of more than 30 days.
12. Territorial jurisdiction of this forum of Federal Ombudsman has been objected that cause of action arose at Lahore, LUMS University is also situated at Lahore therefore the provincial Ombudsman of Punjab is competent to adjudicate the matter. Appeal as presented is lacking from verification as required under rule 13(5) of Protection against Harassment of Women at Workplace rule 2013. Act of 2010 is non-applicable in the case of interaction between teacher and student and admittedly complainant is student and respondent No. 3 is a teacher. Although the student and teacher are very basic

component of educational institutes yet this law does not apply to their interaction.

13. The alleged incident does not constitute sexual harassment under the Act. Video evidence verifies that answering respondent did not commit anything of what so ever nature which can be termed as sexual harassment under the Act of 2010. During the course of his coaching and advising appellant never made any allegation of improper conduct what to say of sexual harassment. Respondent No. 3 enjoys very good reputation regarding his behavior and attitude and it is because of that when student came to know about his resignation from LUMS, 130 students filed a petition in his support. In 3 years of his service in University no complaint was ever filed against him except the instant complaint that relates to a minor and innocent incident for which respondent No. 3 apologized on the spot which was recorded in video and which does not constitute anything resembling sexual harassment. Appellant made informed in her appeal to defame and humiliate the answering respondent because the allegations made in this appeal were not part of original complaint. Competent authority of LUMS in his findings has exonerated the answering respondent. Findings of inquiry committee are correct, logical and based on cogent reasons. Video shows that there was no expression of any harassment on the face of appellant from entering till leaving scene. All the grounds taken in memo of appeal are without substance, legally incorrect and based on incorrect assumption of law.

Appeal is liable to dismissed.



14. After hearing parties representative and perusal of record my findings are as under:

Beside all the legal and technical pleas taken by respondent No. 3 to support his case the main, in issue of matter is whether the act of respondent No. 3 pulling the zip and exposing shoulder of appellant comes within the ambit of sexual harassment or otherwise as observed by the inquiry committee in its report dated 25.04.2014.

15. It is noteworthy that the happening of incident as narrated by appellant in para 5 of appeal has not been denied by respondent No. 3 in his reply, however he had tried to twist his act in other way then sexual harassment stating that the video recording of the event makes it very clear that no sexual harassment of what so ever nature was attempted by him. He further states that video show that there was no expression of any harassment on the face of the appellant from entering till leaving scene. This statement of respondent No. 3, after going through the inquiry committee report and admission made by respondent No. 3 before inquiry committee of happening of incident as narrated by appellant and further seeing the video clipping, without voice recording as provided by the LUMS authority, does not find support from available evidence on record. Record further shows that after holding inquiry, committee reached to the conclusion that availability of a video and admission of Mr. Imam of the event taken place, meant that the committee did not need to establish whether the event took place or not, but in spite of this observation it is very astonishing that the said act of respondent No. 3 was considered as "highly un professional conduct" and "conduct unbecoming" just in fear of losing a potential and brilliant teacher, as

said in report, with addition of remarks of Vice Chancellor of LUMS University made on 09.04.2014 in reply to respondent No. 3 proposal to resign that “that there has been enough heat generated in the School of law. What is required is that we settled down and let the past be past. Move forward”. These observations of inquiry committed and Vice Chancellor in spite of admitted fact of incident seems to be very surprising by an educational institution because teacher is always a role model for students. What students learn from their great teachers is not detailed in syllabus. They inspired and admire the behavior of their teacher for developing a good personality. But in the present case on 31.01.2014, it is reported by the inquiry committee that while conducting investigation in the matter most of the students have expressed that respondent No. 3 while delivering lecture use “inappropriate jokes, many times with sexual innuendos and undertones and obnoxious language”. Almost all students feel that the jokes are extremely inappropriate for two reasons. First there are female students in class and second Mr. Imam is a faculty member and not a fellow student. In spite of all these views expressed by the students and admitted incident of uncovering the shoulder of appellant terming it as conduct unbecoming or highly unprofessional conduct seems to overlook the incident. Definitely an act of sexual harassment has been committed by respondent No. 3. No person under the umbrella of a teacher is allowed to disgrace a female student or to save himself or by his employees under the grab of highly valuable faculty member as expressed by respondent No. 1 or by placing number of statements made by students in response to his offer to resign. Even if for the sake of argument as pleaded by the inquiry committee in its report

that the act of respondent No. 3 was not of a nature of sexual harassment then also at least it was a sexually demeaning attitude on the part of respondent No. 3 which somehow has been admitted by respondent No. 3 himself and by the inquiry committee in its report. The video clipping as provided by LUMS authority, in spite of request to provide with voice recording which was not done, clearly show the act of respondent No. 3 and a quick response of appellant of covering her shoulder and leaving the spot at the very moment display that how uncomfortable she was with the scene happened. Respondent No. 3 has further pleaded that the act committed by him cannot be termed as sexual harassment because as per draft LUMS sexual harassment policy such incident of harassment usually occurs when the offender and victim are alone. But here the incident took place in presence of many persons therefore it cannot be termed as sexual harassment. The defense as pleaded by respondent No. 3 has no logic therein because the incident either it happened while offender and victim are alone or in presence of other persons does not change the nature of offence. No doubt such incident as expressed in the law usually happened when both parties are alone but the elements like that of respondent No. 3 are also there who can cross the limit anywhere.

16. Apart above Respondent no. 3 has also taken legal plea as to the maintainability of the appeal and that it is time barred. It is contended that the inquiry committee has submitted its report on 25.04.2014 it was communicated to the parties on 30.04.2014, whereas the present appeal has been filed on 11.07.2014 after expiry of the prescribed period of 30 days as provided in section-6 clause 1 of Act

of 2010 therefore it cannot be entertained because by virtue of section 29(2) of Limitation Act, section 5 of Limitation Act is not applicable in the matter. To support his version he has referred 2012 CLD page 1112, wherein it is observed that where a period of Limitation is prescribe under specific provisions of special or local law then the general principles of law of Limitation are not applicable and section 5 cannot be invoked for seeking condonation of delay. Without prejudice of the observation of the High Court of Lahore the main consideration in cases filed under the law of Protection against harassment of women at workplace is the honor and dignity of person. Such technicalities have to be avoided to meet the end of justice and give protection to human right. Superior court at the number of time had also observed that to advance justice, court should be liberal while dealing with limitation issue. Therefore any case like that of the instant appeal cannot be rejected merely on the ground that it was filed after the expiry of 30 days particularly when appellant has apprehended that because final exams were going on in the month of June, 2014 therefore she cannot afford to bear further mental agony and face the harassment from respondent No. 3 by filing appeal during that period. Particularly when even after the incident appellant was acting as her advisor vide LUMS portal dated 20.08.2014 placed as Annex-A alongwith her application moved before this forum placed at page 133 and 134 of the file. Whereas the contention of respondent no. 3 is that after the incident of 31.01.2014 and start of inquiry proceeding against him, he had resigned from the job on 09.04.2014 through an email sent to Vice Chancellor (at page 106 and 107 of file) but this email in fact is not a resignation but seems to show his intention to resign in toxic environment. No proper

resignation has been placed by respondent No. 3 even this intention of respondent No. 3 was not accepted by respondent No. 1 Vice Chancellor with remarks in his reply "You are too valuable faculty member and we will discussed this on my return" show that his resignation from job was not accepted. Neither any proper resignation nor its acceptance is also placed on record. He was continuing his job as advisor of appellant even during inquiry and at least till 20.08.2014 which apparently is a violation of clause X-C of Code of Conduct of Schedule of Act 2010 which specifically says that employer shall do its best to temporary makes adjustment so that accused and the complainant do not have to interact for official purpose during the investigation period.

17. Next referring to decision of President of Pakistan in a case filed by female student against a teacher of Quaid-e-Azam University Islamabad it is argue that Act of 2010 for Protection against Harassment of women at Workplace does not cover the cases in between teacher and students, but these arguments by respondent No. 3 are not tangible because the bare reading of definition of "complainant" under section-2(e) says that the complainant can be a women or a man who has made a complaint to the Ombudsman. In the same way the term "accused" has been defined as an "employee" or "employer" of an organization against whom complaint has been made under this Act, meaning thereby that the term of "complainant" has not been restricted to any particular category. A vide scope has been given by using the words of "man" and "women" who either may be employee or employer or not either of two but a person who has been harassed by the employer and the employee of the organization

at the working place of the organization. But term “accused” has been restricted to the extent of employee or employer. Therefore to argue that the present appeal filed by the appellant as student does not fall within the jurisdiction of Protection against Harassment of women at Workplace Act is not sustainable. This forum of Ombudsman has jurisdiction to entertain any complaint filed by a person irrespective of any category, against any employee or employer of educational institution which falls within the jurisdiction of this office of Ombudsman.

18. It is further pleaded that the cause of action arose within jurisdiction of Punjab and the LUMS University is also situated within jurisdiction of Punjab therefore this Federal Ombudsman Institution has not jurisdiction to entertain this appeal. It should have filed before Provincial Ombudsman of Punjab. No doubt beside Federal Ombudsman Institution under the Act of 2010, office of Provincial Ombudsman has also been established under the same Act but in view of admitted position that LUMS is a Federal chartered University recognized by Higher Education Commission. And as the office of HEC is situated within the boundaries of Islamabad, therefore any institution / organization running under HEC will fall under the Federal Ombudsman for Protection against Harassment of Women at Workplace. Even otherwise as observed earlier that to meet the ends of justice and particularly where prestige and honor of a female student is at stake such technicalities should be avoided which is basic purpose of legislation of this Act of Protection against Harassment of Women at workplace 2010 to provide a save and free

working environment.

19. Respondent No. 3 has also taken a plea that he has been targeted by some other elements because of his religious and political background and the appellant has been used by them or that the appellant wants to take benefit in one of her paper therefore she cropped up this issue, has no justification therein neither I want to discuss them. In view of the admitted position that the incident took place and realizing the courageous step taken by the appellant and the consequences thereof respondent No. 3 had taken apology from the appellant, appellant has been able to prove her case. A teacher how much he may be valuable to the institution is not supposed to touch a body of a student with malafied intention rather than to uncover her shoulder.

Appeal allowed.

20. In view of the above discussion I imposed a major penalty of removal from service of respondent No. 3 under Section 4(ii)(c) of Act 2010. LUMS authorities are directed to implement the order without any loss of time and report to this forum within a period of 15 days about the action taken by them.

**JUSTICE (R) YASMIN ABBASEY**  
Federal Ombudsman