



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

J U D G M E N T

1. Appeal Number: 1(69)/2013-FOS
2. Date of Institution: 18-6-2013
3. Date of Decision: 30-9-2013
4. Complainant: Muneeza Majeed
Ministry of Foreign Affairs,
Islamabad.
5. Respondent: Inquiry Committee,
Ministry of Foreign Affairs
Islamabad.

Justice (R) Yasmin Abbasey,

Ombudsman:

This matter arises out of an appeal No. 1(69)/ 2013-FOS

1. This appeal has been presented by appellant against the findings of second inquiry committee report dated 13-3-2013 whereby it was recommended that a senior officer not below the rank of additional secretary may call both Mst. Muneeza Majeed and Mr. Sanaullah for counseling and advice and resolve the issue through reconciliation.
2. Facts of the case are that on 12-8-2010 an application was moved by appellant Mst. Muneeza Majeed commercial secretary, Embassy of Pakistan, Jakarta, Indonesia (here in after will referred as appellant) to secretary Ministry of Foreign Affairs alleging that since November 2009 when ambassador Sanaullah (here in after will referred as respondent) has been posted in Jakarta, Indonesia, she is constantly facing indecent gestures, immoral prepositions, and inappropriate advances from the side of respondent. Of and on when appellant and respondent were all alone respondent tried to express his likeliness towards her. On number of occasion he read out such poem which expresses unpleasant words. He also deliberately leave pencil sketches of naked women lying on table which he

used to shift from one place to an other in order to attract appellant's attention. His attitude and actions were of offensive nature as to violate the modesty of decent women. He also offered to have pleasure visits at Bali. According to appellant she delayed to make a representation in the hope that her ignorance towards respondent may stop this illegal advances of respondent, but when no favorable result came out of it therefore she lodged complaint on 12-8-2010.

3. On the complaint of appellant with the recommendation of Prime Minister of Pakistan an inquiry committee was constituted on 23-01-2012. The first inquiry committee after investigating the matter was of the view that "the veracity of investigation can not be established without examining all the witnesses working during the period November 2009-2010 at the embassy of Pakistan Jakarta. A formal inquiry therefore needs to be held." This report of inquiry committee was sent to establishment division and after going through inquiry committee report Establishment Division vide report dated 10-4-2012 had placed it before Prime Minister of Pakistan which reads as under:

Option-I

The case be remanded to the instant committee for re-examination of the case in the light of observation at para 40

above and make their recommendations afresh. For this purpose sufficient time (say 90-days may be given to the committee).

Option-II

Formal Inquiry may be held as recommended by the instant committee which did not spell out the law/rule under which proposed formal inquiry be held. Prima-facie, this may be conducted by the harassment committee of the Ministry of Foreign Affairs to be constituted under section 3 (1) of the Protection against Harassment of Women at Workplace Act 2010.

Option-III

Prima facie, the report of instant committee does not provide any substantial grounds to determine the veracity of allegation. Therefore, keeping in view the dying service career of the accused, who is going to retire on 12-9-2013 on attaining the age of 60 years, benefit of doubt may be given to him and case may be dropped.

4. Out of the three options propose by Secretary Establishment Division the then Prime Minister had approved option No.1 for remanding the case to the instant committee for re-examination of case in the light of observation at para 40 of the summary

and make their recommendation afresh within 90-days.

5. The matter was again examined by the committee, report was submitted on 13-7-2012 with the finding that:
 - a. The complainant Ms. Muneeza Majeed opted not to appear before the committee. She neither produced any witness(s) nor any documents in support of her complaint/ contention. In response to the committee's letter she also retracted from and disowned her previous statement recorded on 23-03-2012 by the committee and attached with the previous report.
 - b. The complainant did not get any statement recorded. The status of her previous statement recorded by the committee on 23-02-2012 and attached with the first inquiry report, remains the same as she contends that she did not agree with certain part of the statement. She had the options of correcting the statement and then signing it but she preferred not to join the proceedings.
 - c. The witnesses have not stated anything incriminating against the Ambassador, except the three witnesses, who were in fact informed/ conveyed by Ms. Muneeza Majeed about the inappropriate behavior which could not be substantiated because of

the fact that the case was not pursued by the complainant and nor did she appear before the committee constituted under the order of Prime Minister to pursue her complaint. Due to non pursuance by the complainant and lack of any direct evidence the veracity of allegation could not be established. The committee is of the view that it is a case of no evidence.

- d. All witnesses have denied having witnessed anything directly amounting to sexual harassment or inappropriate behavior by the ambassador towards the complainant. Rather, they have testified and reposed full confidence in Mr. Sanaullah's behavior and his performance as Ambassador.

In view of the above finding Prime Minister has approved the proposal of dropping the proceeding against respondent in the subject case on 13-8-2012.

6. It is thereafter a second complaint was made by appellant to the then Foreign Minister of Pakistan on 25-10-2012. On 10-01-2013 the then Foreign Minister of Pakistan has ordered for inquiry and to report within a month. On the direction of Foreign Minister a committee was constituted and it has submitted its report on 13-03-2013. Out of the three members

of this committee two were of the opinion that “strictly going by the definition of sexual harassment and the statement and evidences examined by the committee, it is very difficult to find manifestation of sexual harassment in the subject case”.

“Mr. Sanaullah’s attitude towards Ms. Muneeza was casual and unconcerned. He should have been more responsible and considerate towards her who was young, alone and new in the changed environment. Being Head of Mission it was clearly his responsibility to see that embassy personnel are working in a congenial environment. Due to his indecisiveness and weak control, the Mission’s affairs were not smooth.”

7. With this recommendation it was proposed by of the committee that senior officer not below the rank of Additional Secretary may call both the parties for counseling and advice and resolve the issue to reconciliation.
8. The third member of the committee Mr. Safdar Hayat though was the opinion that the acts attributed to respondent are not of serious nature that writing poetry and making sketches is not objectionable, however doing it during office hours is of course is objectionable. Likewise sharing poetry with a junior lady officer of other service and leaving female sketches less than modest postures on the desk while a lady officer is in the office is highly objectionable if the intention was not bad. Being a

senior officer with 34 years of experience he should have been alive to other sensitivities. With these remarks he proposed that respondent Sanaullah should be censure and if deem appropriate recalled to the headquarters for his indiscretion and lack of caution. And it is against this second inquiry committee report to resolve the issue through reconciliation this appeal has been presented.

9. Heard parties counsels. My findings on the above issue are as under:

In view of the factual and legal position stated above learned counsel for appellant at the very outset has challenged the constitution of first inquiry committee, constituted on 23-01-2012 with the approval of Prime Minister, was not in accordance to the Act IV of 2010. According to her the function of inquiry committee under Act 2010 is to enquire and investigate the matter as whole and give its recommendation. Whereas in the committee constituted on 23-01-2012 to conduct informal inquiry was mainly to assess the veracity of allegation of sexual harassment made by appellant.

10. Whereas the case of respondent is that after his posting at Jakarta as Ambassador in November, 2009 he found, the Embassy dysfunctional due to unnecessary define and ridicule administration by Commercial Secretary and rift in between

her and HOC Mr. Mirza Saleem Babar. To support his defence he has attached some annexures alongwith his evidence. So far the constitution and findings of the inquiry committee constituted on 23-01-2013 it is contended by learned counsel for respondent that this committee was constituted in accordance to clause 3 & 5 of Code of Conduct of Act 2010. Complainant appeared before that informal committee and had never raised any objection as to its constitution and findings given from 2010 to 2012.

11. Irrespective of the case pleaded by both the parties it cannot be overlooked that the very purpose of legislation of this Act of Protection against Harassment of Women at the Workplace is expeditious disposal of complaints moved by victim of harassment in order to given both parties a state of relief that a speedy justice will be provided to them. It is with this intent a period of 60 days was given as a time limit to dispose of the complaint. In the present case, complaint was moved on 12-08-2010, but for having an approval for constitution of inquiry committee it took about 1½ years, and it is there after first inquiry committee was constituted on 23-01-2012 which is a major violation of law.
12. Section 3 of Protection against Harassment of Women at the Workplace Act 2010 (herein after referred as Act 2010)

provides that each organization shall constitute an inquiry committee within 30 days of the enactment of this Act to enquire into complaint under this Act. Thus the constitution of first inquiry committee on 23-01-2013 was violation of Section 4 of Act 2010. Which further provides that the inquiry committee within 3 days of the receipt of a written complaint received to them will communicate the charges and statement of allegation leveled against the opponent and on receiving the same within 7 days, after making an inquiry committee will submit its recommendations to the competent authority within 30 days of the initiation of inquiry. Where as in the present case I have found that it took a long time to the inquiry committee to reach at conclusion on 10-04-2012 and that also to the extent that verification of allegations cannot be establish without examining all the witness working at the Embassy of Pakistan, Jakarta during the period November, 2009 to 2010 and has proposed after about 01 year 07 months and 28 days that a formal inquiry needs to be held. Thereafter on this report of inquiry committee the Establishment Division has given its own view and has placed 3 options before the Prime Minister for consideration and further orders. That approval was granted by Prime Minister on 02-5-2005 that the case was remanded to the instant committee for re-examination of the case in the light of observation at para 40 of the summary and make there

recommendations. For this purpose a period of 90 days was given to committee. As per directions of the Prime Minister the inquiry committee was again notified on 08-05-2012 and has submitted its report on 13-07-2012. In second report the inquiry committee was of the view that appellant / complainant has not co-operated with the inquiry committee and opted not to appear before it. Committee has however expressed that complainant did not agree with certain part of her statement and she had the option of correcting the statement and then signing it, but she chooses not to join the proceedings. They were also of the view that the witnesses have not stated anything in criminating against the Ambassador except the 3 witnesses. Finally Committee was also of the view that as all witnesses has denied having witnesses anything directly amounting to sexual harassment or in appropriate behavior by the Ambassador towards the complainant therefore proceedings be dropped against opponent. This recommendation of the committee was approved by the then Prime Minister on 13-08-2012.

13. Article 34 of Constitution of Pakistan provides that it be ensured that women have full participation in all spheres of national life. Article 37 (n) also speaks about in expensive and expeditious justice. The object behind these Articles is to promote healing of victim of circumstances by making

procedure easier and faster so that people gain confidence in judicial system. If such like lengthy and painful procedure is adopted having no nexus with the law legislated to entertain such like issues, it will amount to nullify the law legislated by Parliament of Pakistan depriving the fundamental rights of citizen to have speedy justice.

14. Anyhow as the complainant was not satisfied with the proceedings conducted and the recommendation made by the first inquiry committee therefore she choose to move another application on 25-10-2012 to the then Foreign Minister, Hina Rabbani Khar, as the objectionable acts of respondent continued on.
15. Questioning the approach to the then Foreign Minister for redressel of her grievances through 2nd complaint of 25-10-2012, the learned counsel for respondent argued that it was illegal because the Foreign Minister cannot undo the approval or recommendations of the Prime Minister of Pakistan. Whereas according to learned counsel for appellant Foreign Minister is competent authority of her Division and as the Embassy of Pakistan came under her control therefore she was the right person to be approached for holding second inquiry under the committee constituted on 10-01-2013 which was in accordance with the law an embodied in Act of 2010.

16. After recording the statement of the witnesses and the parties, 2nd inquiry committee has given its decision on 13-03-2013. It is of the view that:

“Strictly going by the definition of Sexual Harassment and the statement and witness examined by the inquiry committee it is very difficult to find manifestation of sexual harassment in the subject case”.

17. With this observation they had recommended that a senior officer not below the rank of Additional Secretary may call both the parties for counseling and advice and resolve the issue through re-conciliation. Although all the three members had unanimously agree with this proposal of the inquiry committee, but a descending note was also put by one of the member of the committee Mr. Safdar Hayat Director General (A&I). According to him:

“No doubt there is no direct evidence of any act of sexual harassment on the part of Mr. Sanaullah, however, there exists sufficient evidence which cannot be ignored altogether. The most significant being the effort on the part of Mr. Sanaullah to hide the fact that he would recite his poetry to Mrs. Muneeza and other officers and that he never made pencil sketches of females while in the office”.

“This Act of hiding an important fact creates serious doubts and lends some credence to Muneeza’s allegations. However it would not be fair to pass the judgment on the basis of this”.

18. Aggrieved with the decision of the 2nd inquiry committee this appeal has been presented by appellant with the complainant that beside the conduct of respondent the observations of committees constituted in the matter at different stages was more to make the appellant as accuse rather to examine the conduct of respondent in the light of allegations leveled by her against him. Delay in communication of 2nd inquiry committee report has also been highlighted that on 13-03-2013, 2nd inquiry committee had made its recommendations but those were never communicated to the appellant. From a letter addressed to opponent on 28-05-2013 she came in knowledge of the recommendations made by the committee. Though the inquiry committee is required to submit its record to the competent authority and inform the parties well in time within 30 days. But again it appears that a very irresponsible conduct was shown by member of the inquiry committee. They had taken the issue of sexual harassment in a very casual manner ignoring the pain with which a person crosses in such like cases. All the three officers are on senior management posts and it cannot be assumed from them that inspite of taking the responsibility of inquiring a matter on such serious issue. They will adopt the

same casual practice of “Red Tape”. It seems that they have not gone through the law titled as The Protection against Harassment of Women at the Workplace to redress such like issues or if they did so then the record reflects that for them modesty of women is an unconcerned subject, otherwise they would had been vigilant enough in giving their recommendation after going through all pro and cons of their recommendation.

19. From the record it appears that despite the fact that recommendations were made on 13-3-2013, but till the written request made by the appellant by letter dated 05-06-2013 these recommendations of the inquiry committee and copy of inquiry report was not dispatched to her till 18-06-2013 vide letter of Ministry of Foreign Affairs.
20. In view of above discussion I am constrained to take this view that neither first inquiry committee nor the 2nd inquiry committee had taken the matter seriously and had just tried to kind it up in one way or the other without reaching at a proper conclusion in three years.
21. Irrespective of the fact that what has been observed by the two committees that the appellant was not able to prove allegation of harassment leveled by her in against to respondent. This fact cannot be overlooked that unwelcome advances by perpetrators

is not an issue, which can be pushed aside, because besides an attack on the modesty of the person, it has far reaching effect on his/her personality. It also effects his / her work performance and creates an offence work environment for the victim. Therefore there is a need, that fair trial should seems to have been done. Otherwise the very purpose of providing quick relief to the victims and punishment to the perpetrators which is intended of this Act 2010 will be frustrated.

22. Coming up to the present case I have gone through the facts placed by the parties and evidence recorded by the inquiry committee out of them some have supported the appellant and while some have supported the respondent. The statement of Mirza Salman Babar Deputy Head of Mission of Embassy is material. Nevertheless respondent through out had tried to show that because of conflict in between appellant and Mirza Salman Baber, Deputy Head of Mission of Embassy of Pakistan, Jakarta, performance of the Embassy and particularly in the area of local business community was badly effecting. He counseled both of them as appearing in note portion on page 47 of this file, but this very Mirza Saleem Babar in his statement recorded on 18-02-2013 in para 5 at page 93 of this file has stated that:

“After the Muneeza incident had come to fro, I did see sketches

of women in less than modest postures in Ambassadors office. I am not sure if other officers had seen such sketches / painting. High-lighting on the conducted of Ambassador in dealing with the administrative affairs of the Embassy, this very witness Mirza Saleem Babar has stated that there was a dispute on use of bathroom and appellant after locking it had kept the keys with her, therefore he changed them and when respondent was informed about the change of locks of bathrooms in the Embassy, it is stated by witness, as to the behavior of respondent, that:

“He seemingly enjoyed listing to the episode. He informed me that other side had also called him and asked for his intervention”. He further stated that when Ambassador came back he did what Commercial Secretary/ appellant asked him to do. According to him he was not flabbergasted because this was Ambassador unknown practice. Recalling the conduct of respondent /Ambassador he has further stated that Ambassador role was not natural. He prompted the clash and then tried to appraise the Commercial Secretary (appellant) leaving him (Mirza Saleem Babar) with the distinct impression that he want to give her a message that he had a power to make her life difficult or comfortable. Statement of Mirza Saleem Babar has been supported by Javed Jaleel Khattak, Director Afghanistan in his statement record at 06-03-2013 on page 107 of the file.

He has also stated that the Ambassador some time uses to make pencil sketches of female in the office.

23. Notwithstanding the fact that most of the witnesses have supported the respondent, but the very statement of the respondent himself, inspite of giving justification that his table is comparatively small and does not allow enough space to display sketches thereon, has admitted that for an exhibition which was going to be organized on 16-03-2010 of Pakistan and Indonesia Artists he in his spare time at his office sketch the pictures and his half completed impressionist sculptures. He also admits that he use to write poems while sitting in the office during the office hours. He has tried to cover up the allegations of appellant of reading of the poetry before her and has stated that while he was finalizing his poems on computer, appellant came in her office, she was asked to wait and allow him to complete the poem and while he was reading the last line, appellant expressing the poems to be “profound” had requested a copy of it, which was given to her. He denied that he never read any poem to her nor his poems are lewd. They himself depict Sufi thoughts.
24. Inspite of the fact that respondent in his letter dated 23-08-2010 has leveled serious allegations against appellant as to her performance and had recommended in his telegram grade (2)

addressed to Foreign Secretary, Ministry of Foreign Affairs to recall the appellant or relocate her to another mission as her continued stay at Jakarta will further, erode office discipline, efficiency and functioning, but this letter of complaint by respondent was moved by him after presenting the complaint against him on 12-08-2010. So far as the delay in filing the complaint by appellant against the ill acts of the respondent is concern, which has been highlighted at different stages by the appellant that inspite of continuous unethical activities of respondent towards her, she ignored them with the hope that her absence of encouragement will stop the respondent's advances, but no favorable had happened to her and she was forced to file complaint.

25. Much has been argued from the respondent's side that the allegation so leveled by appellant was to cover up her inefficiency and indiscriminate attitude in the Embassy otherwise if she would have been facing such like problems she would have never awaited for such a long period. It is further argued that she is not the only lady working in the Embassy, but there are also other female employees who had never complaint or had leveled such like allegations against the respondent. But this defence has no justification because if other female members had not faced such problems or they had no courage to raise voice on such issues of ill activities of a

person particularly who is the head of the institution it cannot be assumed that appellant had also not faced them. The statement of Mirza Saleem Babar, Head of Chancery in this context cannot be over looked wherein he has stated during the inquiry proceeding that “I do not know about the veracity of this allegation however, it was going around that Paulina left because of the Ambassador, just like Mrs. Trudi Ted”.

26. Further as to the plea of respondent that “without evidence or a pattern corroborated by coworkers, any lady officer who is not happy with his superior may launch such complaint to scare her superior officer, it has rightly been stated by Mirza Saleem Babar, that if this would had been position then appellant, because of rift in between him (Mirza Saleem Babar) and appellant, she had a greater choice to file such like complaint leveling allegation of sexual harassment. Instead of she approached him when she felt threatened and sought his advise/help.
27. Learned counsel for respondent has referred number of authorities on the ground that no retrospective affect can be given to a penal legislation, to the act which at that particularly time was not crime. Therefore this Act of 2010 will not apply in the present case as the alleged act attributed by appellant against respondent is from November 2009 when this Act of

2010 was not in existence. Apparently the argument advances by respondent's counsel seems to have weight but at the same time it is to be analyze that those unwelcome advances of the respondent which started in November, 2009 continued on even thereafter and on 11-3-2010 when this law was enforced appellant was facing the problem therefore, the law enacted on 11-03-2010 is very much applicable in the present case.

28. The upshot of about discussion is that appellant has been able to approve the guilt alleged by her against respondent and has held him liable for imposition of penalties as provided in Section 4 of Act 2010. At the same time it is also pointed out by learned counsel for respondent and also appearing in the letter written by respondent to Foreign Secretary on 02-05-2013 that he reached to the age of superannuation on September, 2013.
29. Under these circumstances with a fine of Rs.10,00,000/- (One million) imposed on respondent to be paid to appellant after deduction from his pension and service benefits it is further held that the respondent should not be given proforma Promotion in BS-22 by the Special Selection Board as requested by him in letter dated 02-5-2013 addressed to Foreign Secretary.

30. This order be communicated to the concern organization for it's implementation and report to this office. Further the concerned organization is directed if such complaints on the issue of harassment are received to them they should work on them in accordance to the law legislated under Act of 2010 and should not put the complaint in another kind of continuous harassment for years together under the umbrella of formal approval to be obtained as have been done in the present case.

YASMIN ABBASEY
Ombudsman