



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

J U D G M E N T

1. Complaint Number: 1(449) / 2018-FOS (Reg)
2. Date of Institution: 04-04-2018
3. Date of Decision: 23-10-2018
4. Complainant: Mst. Rizwana Kausar
D/o M. Siddique
Resident of Room no. 22
Federal Lodge-1
G-5/1, Islamabad
5. Opponents:
 1. Mr. Asif Naveed
Director Admin
PHA Foundation
Islamabad
 2. Jamil Ahmad Khan
Managing Director
PHA Foundation
Islamabad

Kashamala Tariq,

Federal Ombudsman:

Complaint No. 1(449)/ 2018-FOS(Reg.)

1. On the directions of the Honorable Islamabad High Court vide Order dated 27-09-2018, I intend to decide upon application filed by Asif Naveed (“accused/respondent no.1”), Deputy Director Pakistan Housing Authority Foundation (PHAF) under Ministry of Housing and Works and Jamil Ahmed (“accused/respondent no.2”), Acting Managing Director (MD) PHAF for dismissal of complaint filed before this office by Rizwana Kausar (“complainant”), Deputy Director (Land and Estate) PHAF. Relevant excerpt of Order dated 27-09-2018 is reproduced below:

“In view of above, learned Federal Ombudsman is directed to decide the question of maintainability of proceedings in terms of its jurisdiction as well as locus-standi of respondent No. 2 in the pending complaint through speaking order having the parties in accordance with law”.

2. Briefly the facts are that the instant complaint was filed on 04-04-2018 wherein the complainant has stated that she is a regular employee deputed as Deputy Director BPS-18 in PHAF since 2012 and that she is a single lady living at Federal Lodges in Sector G-5, Islamabad whereas accused no. 1 has been deputed from Audit and Accounts Group to PHA Foundation and accused no. 2 has been deputed from Establishment Division to PHA Foundation as Acting MD. It is alleged that accused persons started to sexually harass her and accused no. 1 shifted near to room of complainant where he always tried to approach complainant and sexual harass her and complainant kept on protecting herself. It is further alleged that on 30-03-2018 accused no. 1 entered the bed room of complainant without her permission and used vulgar language but somehow complainant managed to escape. Subsequently, feeling aggrieved by the conduct of accused, the

complainant lodged FIR 84/18 under section 345/509 PPC Police Station Secretariat Islamabad however, the FIR did not stop accused no. 1 to harass her.

In response, respondents submitted consolidated reply dated 11-04-2018 wherein following preliminary objections, inter-alia, were taken:

- i. That complaint is false, frivolous and vexatious.
- ii. That instant complaint is not maintainable without jurisdiction and without cause of action.
- iii. That title complaint is pending before Additional District and Session Judge under FIR no. 84/18.
- iv. That instant complaint pertains to service matter as complainant has been removed under Government Servants(Efficiency and Disciplinary) Rules 1973 on 26-03-2018 and respondent no. 1 was authorized officer while respondent no. 2 was authority in removal from service.
- v. That removal from service was made on the basis of not having valid Bachelors and Masters Degrees from University of Sindh, Jamshoro. The complainant was appointed in PHAF on the basis of MA Economics which was declared as bogus by the University.
- vi. Complainant was given full opportunity but she failed to produce valid degrees, hence it was prayed that instant complaint may be dismissed.

Subsequent to filing of the instant complaint, three inquiries were initiated at three different forums being namely: -

- i. Before the Office of Auditor General of Pakistan (parent department of accused no. 1)
- ii. Before Establishment Division (parent department of accused no. 2).
- iii. Before the Learned Judicial Magistrate PS Secretariat, Islamabad (West).

Report by the committee constituted by the Office of Auditor General was submitted before this office on 25.06.18 wherein the committee came to the following findings/conclusion, inter-alia, reproduced below:-

“The committee noted that as per available record no allegation of sexual harassment has formally been communicated to the office of the Auditor-General of Pakistan. A copy of application addressed to the SHO Secretariat Police Station has been endorsed to the Auditor General and others. The committee also observed that the complainant has leveled charges against Mr. Asif Naveed, Director Admin, PHAF as well as Mr. Jameel Ahmed Khan, CEO PHAF. As such, it would be unrealistic to expect PHAF to conduct a fair and impartial inquiry on the issue. Moreover, the incident occurred in the Premises beyond the control of DAGP and the accused is on deputation. Therefore, this committee is not in position to go into details of the case as per laid down procedure. At this stage, we may forward the complaint of Ms. Rizwana Kausar to the Ministry of Housing & Works, controlling Ministry of PHAF, for their fact finding inquiry.

The committee also recommends that the officer Mr. Asif Naveed may be repatriated immediately to avoid any further untoward situation.”

Similarly, the Establishment Division submitted their report on 25.06.18 part of which is reproduced below:-

“The case is presently sub-judice as Mr. Asif Naveed filed a W.P No. 1753/2018 before the Islamabad High Court Islamabad against the Establishment Division O.M. dated 25-04-2018. Moreover in another Crl. Misc.No. 337/Q/2018 dated 15-05-2018 filed by Mr. Asif Naveed, the Islamabad High Court Islamabad passed orders wherein the investigation officer contends before the court, that, he has recommended the cancellation report of case FIR 84/18 dated 30-03-2018, U/s 254,509 PPC, PS Secretariat, Islamabad and the same will be placed before Magistrate for appropriate orders.”

Furthermore, vide Order dated 06.07.18, the Learned Magistrate in FIR No. 84/18 agreed with the cancellation report submitted by the police authorities and

subsequently the accused no.1 was exonerated, excerpt of Order dated 06.07.18 is hereby reproduced below: -

“After taking a bird eye view of the above mentioned provisions, it has become crystal clear that certain ingredients as mentioned in the above mentioned provisions are necessary to exist in order to fulfill the requirements of commission of the offence leveled in the case FIR mentioned above. Contents of the application submitted by the complainant for registration of case as well as contents of FIR reveal that the complainant has leveled general allegations against the accused and the acts specified U/s 509/354 PPC and reproduced above have neither been alleged to be committed by the accused nor attracted after going through the contents of FIR.

Moreover, notification dated 26-03-2018 in respect of imposing major penalty of the complainant and a show cause notice dated 22-12-2017 alongwith notice for personal hearing of the complainant dated 15-01-2018 issued prior to issuance of notification in respect of imposing major penalty upon the complainant, have also been brought on the record which were issued prior to registration of case FIR mentioned above.

All the above mentioned circumstances establish that the case FIR mentioned above was got registered after termination of the complainant from her job and the accused performed major role in respect of said termination. Moreover, the interrogating officer has specifically mentioned that after registration of case, the complainant was contacted and summoned in the police station but she neither appeared nor produced any cogent evidence in respect of her claim.

In the attending circumstances, no fruitful purpose shall be served to proceed with the trial of the case. In light of these observations, the instant cancellation report is hereby agreed. Let file be consigned to the record room after due compilation while copy of this order be sent to concerned SHO for information.”

3. Arguments heard at length. Without getting into deeper appreciation of

facts and circumstances at this stage, the instant complaint can be broken down into two parts. Firstly, the question arises whether the complaint was harassed during her inquiry proceedings by the accused persons. Secondly, whether an inquiry upon incident dated 30.03.18 which has already been adjudicated by the Learned Magistrate would amount to “double-jeopardy” as contended by the accused persons.

4. It is a matter of record that the issue of verification of degrees of the complainant and her removal from service dated 26.03.18 as probative facts were concealed in the contents of the instant complaint and the same were transpired during. There is nothing on record to show that the complainant objected to the inquiry proceedings conducted by the accused persons and similarly, the allegation of harassment was not raised during the inquiry as the complainant did not file any complaint to the harassment committee of PHAF during that time. It is also pertinent to note that there are no direct allegations against accused no.2 by the complaint.

5. To the extent of degrees verification, the complainant is contending that her degrees are genuine but due to session clash of B.A and B.Com, the same were declared bogus by the University of Sindh, Jamshoro. Furthermore, it was submitted that the complainant’s ex-husband, Asad Ali Shah, had a crucial role in creating mischief as he managed to correspond with the University impersonating as the concerned officer of the organization, as a result the complainant did not receive the notices sent by the University and they proceeded ex-parte. It is significant to note that no role of Asad Ali Shah, ex-husband of the complainant, was mentioned in the contents of the complaint. Moreover, degree verification and

subsequent recruitment is purely an administrative issue hence, this office cannot adjudicate upon the same. As far as the restoration of complainant is concerned, the Competent Authority is Secretary, Ministry of Housing and Works.

6. The question whether proceedings before this office to the extent of incident dated 30.03.18, wherein it is alleged that accused no.1 entered the apartment of the complainant and harassed her, would amount to double jeopardy requires examination. This office is of the opinion entertaining the instant complaint does not amount to double jeopardy, as punishment u/s 509 and 354 of Pakistan Penal Code entails imprisonment whereas the powers conferred upon this office u/s 4 of the Protection Against Harassment at the Workplace 2010 (the Act of 2010) are significantly different as they pertain to administrative actions which include major and minor penalties akin to Government Servants (Efficiency & Discipline) Rules 1973. However, the fundamental principle of law is that “Equity aids the vigilant” and record shows the complainant did not contest Order dated 06.07.18 passed by the learned magistrate before any competent forum such as filing an appeal before the Learned Sessions Court or challenging the cancellation report before the High Court or seeking change of investigation report. Hence, the Order dated 06.07.18 stands in field and further probe into the extent of incident dated 30.03.18 would violate the fundamental rights of accused no.1. The complainant also had the option to withdraw her FIR once the complaint was entertained by this office.

7. In a nutshell, many discrepancies and contradictions have been found in the instant complaint which have made the facts and circumstances shrouded in mystery. The complaint was filed after removal from service and the allegation of harassment was not agitated during inquiry of degrees’ verification, hence it is very

likely that the instant complaint is an after-thought. Moreover, the other aspect of the complaint pertains to administrative/service issues for which the complainant may approach a forum with competent jurisdiction. Moreover, as Order dated 06.07.18 has not been assailed or challenged before any court, the same stands in field.

In light of the above discussion, the instant complaint is hereby dismissed being devoid of merits.

OMBUDSMAN