



FEDERAL OMBUDSMAN
For Protection against Harassment of Women at Workplace
Islamabad

J U D G M E N T

1. Complaint Number: 1(86)/2014-FOS
2. Date of Institution: 06-06-2014
3. Date of Decision: 19-08-2014
4. Complainant: Sibah Farooq
5. Opponent:
 - i. Yuriy Shafarenko
 - ii. Jerome CavinInternational Committee of Red Cross (ICRC), Islamabad.

Justice (R) Yasmin Abbasey,

Ombudsman:

1. Facts of the case are that complainant is a contract employee of International Committee of Red Cross (ICRC) as Legal Advisor, whereas opponent Yuriy Shafarenko is holding the post of communication & coordination and Jerome Cavin is on the post of administration & coordination in ICRC. Complainant is in direction subordination of Yuriy Shafarenko. It is alleged that Yuriy Shafarenko continually subjected complainant with discrimination on the ground of sex and family responsibility. Yuriy Shafarenko insured complainant that she would face immense difficulty as a working mother and on the basis of this determinant mind he built up a case of her wrongful termination.
2. In spite of government of Pakistan Labour Policy 2010, International Labour Organization Convention 156 and ILO Maternity Protection Convention 2000 neither after birth of her child any day care facility was provided to her nor daily breaks or daily reduction of work hours to breast feed her child were given to her. It is because of non-providing of these basic facilities complainant availed longer lunch hours and was occasionally irregular in timing in order to rush to feed her child. Although complainant had written a

letter to Yuriy Shafarenko in connection with the problems faced by her but Yuriy Shafarenko purposely instructed her not to share this letter with administration, in order to build a case of breach of punctuality against the complainant and this was done by him in appraisal report of December 2013 and note for file in November 2013.

3. Following the appraisal report Yuriy Shafarenko continued to create a stressful office environment for the complainant and without any due process of inquiry, Yuriy Shafarenko and Jerome Cavin forcibly issued a termination letter to complainant on 30-5-2014. This termination letter was handed over in an environment of extreme hostility wherein undersigned was subjected to harassment and assault. Detailing the environment said to be created by Yuriy Shafarenko and Jerome Cavin, it is stated by complainant that for a handing over termination letter she was called in the office of Jerome Cavin where Jerome Cavin shouted on her and made gesture of anger towards complainant and at one point stood up to threatened complainant using threatening body language and hand gestures intended to push the complainant off her feet. Extremely hostile, aggressive and intimidating language and behaviour was used by both opponents. After receiving a termination letter in such a hostile environment complainant immediately went to the office of Dy Head of Mission Martenius De Boer

and informed Head of Mission and Dy Head of Mission about the behaviour of both opponents. But both Head of delegation Dy Head of Delegation did not take any action against opponents therefore complainant had approached this forum for justice and relief.

4. Opponents in their reply had stated that employment of opponent was terminated on 30-5-2013 in accordance with the staff regulation. It is stated by them that complainant used to come late and depart office early without observing office timing and without intimating and getting permission from the concerned quarters. Such a routine had also affected her performance therefore her supervisor instructed her number of time to observe punctuality in accordance with the prescribed office timing and improve her performance but she did not mend her routine. In office note dated 11-11-2013 complainant was warned to correct her non serious attitude towards the office rules and office timing and such events was also mentioned in her appraisal report of 2013. This complaint is misconceived and filed as a counter blast of her termination.
5. Except raising vague allegation against Yuriy Shafarenko there is no material in the complaint to bring it within the definition of harassment as provided in Act 2010. Yuriy Shafarenko had never subjected her to any discrimination on the ground of sex as she was not the only women

employee working in the organization. Opponent Yuriy Shafarenko never created any difficulty for her except requesting her for observing office timing and to improve her work performance.

6. ICRC has a day care policy and has never refused any female staff for availing this facility if they are fulfilling the criteria. Such facility was offered to complainant but she refused. On the ground that she is not comfortable with this proposal placed before her as she had necessary resources and can afford personal arrangement. With reference to the law quoted by complainant it is stated that those Labour Laws are not applicable on ICRC. ICRC enjoys status of diplomatic mission per Geneva Convention 1949 read with Diplomatic and Councilor Privileges Act 1972 and State Immunity Ordinance (VI of 1981). Complainant daily came late two to three hours. She also used to take long lunch break and leave the office early which is a clear indication that it was not for breast feeding.
7. It is denied that while handing over termination letter to complainant any hostile atmosphere was created against her. According to opponents atmosphere was peaceful and professional but after receiving termination letter complainant extremely provoke and lost her control and started shouting and threatening to Yuriy Shafarenko,

Jerome Cavin as well as to the organization.

8. Because of her attitude instead of issuing a termination letter a proposal was offered to her to resign the post with a more positive note but she refused and left the office without signing the termination letter and also threatened both opponents to lodge a case of harassment against them. It is denied that she were harassed any time by the opponents.
9. Meeting with Head of delegation and Dy Head of delegation complainant retreated same point of allegation of mismanagement by her superiors. She further asked head of delegation and Dy Head of Delegation to revisit her termination letter. Matter was investigated but nothing came out in the favour of complainant which was informed to her and finally complainant signed the end of contract papers. All her contracted dues were paid to her. Both Jerome Cavin and Yuriy Shafarenko were performing their duty strictly in accordance with their charter of duty and ICRC code of conduct, complainant was never discriminated on the base of sex or has ever harassed. Complaint is liable to be dismissed.
10. Heard parties. My findings on the above facts and evidence produced are as under.

Complainant in her complaint as well as during argument had tried to emphasize that after birth of her second child she was time and again requesting the organization of ICRC to provide her day care facility in the organization but same was not provided to her and this was an act of discrimination on the ground of sex. To support her argument she has referred number of policies and conventions made in this regard which provides that *“to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of a child care facility”*.

11. Referring to workers with Family Responsibility Convention 1991 she further argued that Article 3 & 5 further supports her argument to have a child care centre in the organization and so on. It is stated by complainant that on 20-11-2013 she has reminded to opponent Yuriy Shafarenko communication coordination for providing a day care facility in the office but till the time she joined office no such facility was provided to her therefore she had no option but to keep her baby with naneey in her office room primarily to continue breast feeding but it was not acceptable to the administration. However on joint request of female workers alongwith complainant and one Nosheen Akhtar a room was provided to keep the baby but that was right next to all

staff wash room having a bad smell in the area which was not healthy atmosphere for the children therefore that was not availed by her and also by Nosheen Akhtar. In the same letter she has further requested that to facilitate her child she may be allowed an extra hour and a half, as was done in the case of Nosheen Akhtar, without salary deduction so that she could continue mother's duty alongwith side of her job. But it is pertinent to note that the second child for whom facility was sought by complainant was born on 20-7-2012 whereas the application which is said to have been moved by complainant is of 20-11-2013 that is after about more than a year of birth of child. Even if this delay is ignored then also complainant has not been able to brought any reasonable argument on record that if ICRC was facilitating one of its employee as per documents place on record of 20-02-2012, 25-2-2011, 03-03-2011 and of 21-8-2011 why she was discriminated, on the contrary representative for opponent has categorically stated that no such application for having facility of day care for her second child was ever received by them from complainant and this statement of opponent has not been reputed by complainant with any documentary proof.

12. According to opponents main reason of dismissal of complainant was of her irregular attendance of office timing for which she was warned not only on 11-11-2013, but in

her appraisal report of 2011 and 2013 it has been specifically remarked against her that “succeeded to work in perfect harmony with new colleague who working in the same office, but does not respect working hours (although she is at times ready to work from home). In the same way in appraisal report of 2013 it was remarked that “*5F is short of setting example to others as she missed quite a lot of working hours thus creating unhealthy examples for others.*”

13. In such state of affairs an employee who may be well efficient in her performance as has been shown in both the appraisal report of 2011 and 2013 but her efficiency cannot be compromised in against to the Staff Regulation of ICRC which specifically bounds his employee to be punctual at work. Repeated warnings and absences are considered as a breach of disciplinary regulation and are subject to sanctions.
14. Clause 7 of Staff Regulation further provides that violation of regulation may lead to a warning letter and the second warning letter will lead to dismissal. In the present case I found that the remark in appraisal report of 2011 as well as warning letter issued on 11-11-2013 and third warning was given through appraisal report of 2013 has fulfilled the requirement as required by the Staff Regulation which is binding on an employee of organization. Para 10 of contract of employment of complainant supports the view as it read

as under:

“The employee declare to have agreed, to accept and to respect the conditions stated in the ICRC staff regulation and annexure”.

15. In view of the above discussion and from perusal of record I am of the view that the main issue in between the parties is not of facilitating the complainant with day care facility for her second child but an irregular attendance of complainant without having any prior permission from the concern authority which have been twisted by the complainant as a discrimination by the organization of ICRC and towards the attitude of opponents. Apparently observing punctuality by an employee of any organization is an administrative issue and cannot be called as harassment or a discriminating attitude towards him or her.
16. It is also pertinent to know that even in the organization of ICRC an office of ombudsman have been established and if complainant was facing any difficulty because of the attitude of the opponents as alleged by her there is nothing on record nor stated by the complainant that she ever approached to the office of ombudsman to place her grievances and resolve the problem. The conclusion that I have drawn from the record is that although the complainant is shown to have been very efficient officer by

the organization of ICRC in her both appraisal reports of 2011 and 2013 but her irregular attendance and extending brakes without any permission and information of the concerned authority was the main issues which was disturbing the ICRC office and was creating a bad example for the other employees.

17. In view of above I found that question involved in the matter is an administration issue which does not fall within the jurisdiction of this office complaint is hereby dismissed for want of jurisdiction.

YASMIN ABBASEY
Ombudsman