

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/00297/2024

Date of Institution: 05-09-2024

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson		
		TITLE:	Zainab Zahrah Awan	VS Embrace IT
		Department: Embrace IT		
1	2	3		
23	20-10-2025	<p><u>Subject: Final Order</u></p> <ol style="list-style-type: none"> 1. This complaint has been filed by Ms. Zainab Zahra Awan (hereinafter referred to as the "Complainant") against Embrace IT, through its Chief Executive Officer, located at Wazir Arcade Business Square Center, Gulberg Greens, Islamabad (hereinafter referred to as the "Accused"), alleging gender discrimination under Section 2(h)(ii) of the Protection against Harassment of Women at the Workplace Act, 2010. 2. The Complainant was offered the position of HR Manager by the Accused vide an offer letter dated 20-07-2022 (Ex.PW 1/3). She accepted the offer and commenced her employment with the company. Subsequently, the Complainant notified/informed the Accused of her impending maternity leave which, after due process, was approved and sanctioned on 08-03-2024, effective from 14-03-2024 to 14-06-2024. While the Complainant was still availing her maternity leave, she received a termination intimation on 24-04-2024. The reason cited therein was constraints within the HR team, due to which the company was unable to retain both potential members. The Complainant served a legal notice dated 06-05-2024 upon the Accused against the said termination during the course of her maternity leave. Meanwhile, the Accused company also lodged a report/complaint against the Complainant at the local police station regarding the return of the laptop in her possession. 		

		<p>3. In the above background, the Complainant has preferred the instant complaint before FOSPAH, praying for the following reliefs:</p> <ul style="list-style-type: none">• To declare the impugned termination order dated 24-04-2024 as violative and derogatory of the fundamental rights of the Complainant enshrined under Articles 4, 9, 14, 25, 27, 34 and 37 of the Constitution of the Islamic Republic of Pakistan, and further to declare the same as harassment within the meaning of Section 2(h)(ii) of the Act, 2010 as amended by the Act 2022;• To set aside the impugned termination order dated 24-04-2024 in the interest of justice;• To direct the Accused to pay all back benefits to the Complainant w.e.f. 24-04-2024 till the date of her reinstatement, in the interest of justice;• To direct the Accused to pay appropriate compensation to the Complainant, as deemed just and appropriate in the circumstances, along with the cost of the instant proceedings, in the interest of justice;• To direct the Accused to suitably amend and formulate a comprehensive maternity policy ensuring elimination of all forms of maternity discrimination and compliance with Article 34 of the Constitution, in the interest of justice; and• To restrain the Accused from committing any act of harassment/intimidation against the Complainant, in the interest of justice. <p>4. The claim and complaint of the Complainant were resisted by the Accused side through several objections, both technical and factual. The main objection raised by the Accused was that the grievances of the Complainant do not fall within the definition of harassment as provided under Section 2(h) of the Act. It was further alleged by the Accused that the instant complaint was in fact, a counterblast to the application/complaint filed by the Accused against the Complainant before the local police regarding the misappropriation of their property, i.e., a laptop, which was allegedly in her illegal possession.</p>
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5. During the proceedings, the interim order of this Forum dated 07-11-2024 was assailed by the Accused through a representation before the Honorable President of Pakistan. However, the representation was not favorably entertained; rather, through order dated 10-04-2025, the Honorable President of Pakistan directed this Forum to decide within one month, the issue of whether the matter constitutes a case of gender-based discrimination or not.
6. Both parties produced their respective evidence. The statement of the Complainant was recorded as PW-1 with reference to her Affidavit-in-evidence (Ex.PW-1/1) on the file. She also produced documentary evidence from Ex.PW-1/2 to Ex.PW-1/9. The Complainant was subjected to cross-examination by the other side.
7. Mr. Muhammad Mehmood Alam, the authorized representative of the Company, recorded his statement as DW-1 with reference to his Affidavit-in-evidence (Ex.DW-1/1). He also produced documentary evidence from Ex.DW-1/2 to Ex.DW-1/4. He was duly cross-examined by the other side.
8. After the recording of evidence from both sides, the learned counsel for the parties advanced arguments in support of their respective cases.
9. Learned counsel for the Complainant mainly emphasized that the termination of the Complainant during her approved and duly sanctioned maternity leave was a glaring example of gender-based discrimination. Hence, the impugned termination order was illegal, unwarranted, and uncalled for, having no effect whatsoever on the rights of the Complainant. To fortify his contentions, the learned counsel placed reliance on two judgements: **PLD 2023 Lahore 416 of the Honorable Lahore High Court, Lahore,** and **2021 PLC (CS) 212 of the Honorable Islamabad High Court, Islamabad.**
10. Conversely, the learned counsel for the Accused contended that the case law cited and relied upon by the Complainant was distinguishable and, therefore, not applicable to the facts of the instant case. His stance was that during the leave period, the Complainant joined another company and, as such, had lost, waived or abandoned all her rights, if any, in the company. According

		<p>to the learned counsel for the Accused, the present complaint was malafide, being a counterblast to the complaint/report which was filed by the Accused against the Complainant at the local police station regarding the misappropriation of the company's property, i.e., a laptop.</p> <p>11.As per the available record, and as admitted by the Accused, the Complainant was sanctioned and granted maternity leave w.e.f from 14-03-2024 to 14-06-2024.</p> <p>12.In view of the above, the Complainant was due to resume her duty on 15-06-2024. However, the termination letter was issued by the Company on 24-04-2024, that is, about two months prior to the expiry of the Complainant's maternity leave. More specifically, the impugned termination letter was issued during the subsistence and continuation of her maternity leave. The reason stated in the said order was "constraints within the HR team," due to which the Company was unable to retain both potential members. However, no details were mentioned in the said letter regarding the purported constraints within the HR team.</p> <p>13.The question arises as to what those "constraints" were and what extraordinary circumstances, if any, obligated the Accused Company to issue the termination order dated 24-04-2024 during the subsistence of the Complainant's approved maternity leave. No cogent reason in this regard has been provided or shown by the Accused. The Company's representative, Mr. Muhammad Mehmood Alam, who recorded his testimony as DW-1, could not convincingly establish or substantiate the Company's stance regarding the alleged constraints on the basis of which the termination letter was issued on 24-04-2024. On the contrary, a careful analysis of his cross-examination reveals that the witness had no firsthand information of the matter; rather, he was informed about it by Mr. Taqi Mustafa (Director), who did not appear in this case as a witness. Moreover, under cross-examination, DW-1 candidly admitted that if a woman is terminated during her approved maternity leave, such termination amounts to gender-based discrimination, unless mutually agreed. He further admitted that there is no evidence on record to show that the Complainant ever mutually requested termination.</p>
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		<p>the State's obligation to safeguard maternal health and welfare.</p> <p>18.Article 2 of the Universal Declaration of Human Rights (UDHR, 1948) recognizes the right to health and proclaims that motherhood and childhood are entitled to special care and protection. Similarly, Article 10(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) enjoins that special protection should be accorded to mothers during a reasonable period before and after childbirth, and that working mothers shall be granted paid leave or leave with adequate social benefits. Furthermore, Article 11(2)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) obliges State Parties to introduce maternity leave with pay, or with comparable social benefits, without loss of former employment, seniority, or related social allowances.</p> <p>19.The United Nations Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 24 on women and health, has stated that sex discrimination occurs when women's health needs, such as maternity care, are ignored. The International Labour Organization (ILO) has also developed International Labour standards to protect pregnant and nursing women, recognizing that they are especially vulnerable. It acknowledges the need for special care to safeguard both their health and the health of their children. Such standards affirm that women must be provided sufficient time to give birth, recover, and nurse their infants, and must also be protected from losing their jobs due to pregnancy or availing maternity leave. This protection is crucial to ensure that women enjoy equal access to employment opportunities and are able to continue generating income necessary for their own well-being as well as the financial security of their families.</p> <p>20.Needless to say, Pakistan is a signatory to the UDHR and has ratified the ICESCR and CEDAW. In addition, it has ratified the World Health Organization Constitution of 1946.</p> <p>21.As referred to in the preceding paragraphs, sex discrimination occurs when women's health needs, such as maternity care, are neglected. On this basis, the</p>
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		<p>violation of the right to safe motherhood constitutes an infringement of Article 25 of the Constitution.</p> <p>22. The right to maternity leave entitles working women to paid leave or social security benefits during a reasonable period before and after childbirth. In General Comment No. 3, the Committee on Economic, Social and Cultural Rights (CESCR) has stated that this right protects the women against loss of employment and seniority, thereby preventing gender-based discrimination.</p> <p>23. The dictum laid down by the Honorable Islamabad High Court, Islamabad in <u>2021 PLC (CS) 212</u> is that cancellation of already granted maternity leave amounts to a denial of favorable conditions warranted under various legal instruments. The Honorable High Court further directed that every female worker or employee — whether temporary, contractual, ad hoc, daily-wage, contingent-paid, domestic, or permanent — is entitled to maternity leave with pay and to job protection. The Court also restrained all employers from terminating a female employee/worker on account of her pregnancy or from depriving her of her paid leave rights. Any such order, whether under law, constitutional guarantee, or International Covenant was considered illegal, and the concerned employee/worker was held entitled to compensation in addition to her substantive financial rights. The Court further directed that no notice of termination from employment could be issued by an employer during a female worker's maternity leave, nor would any notice period be considered valid during her pregnancy.</p> <p>24. The case law referred to above clearly supports the claim and cause of the Complainant with respect to her termination through letter dated 24-04-2025, issued during the subsistence of her maternity leave.</p> <p>25. As regards the contention of the Accused that the Complainant joined another company during maternity leave and thereby waived her right against Embrace IT, the same is unwarranted and devoid of merit in light of the case law cited above. The Complainant's subsequent joining of another company, after her termination from Embrace IT vide letter dated 24-04-2024, cannot be treated as a</p>
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		<p>disqualification to file the instant complaint for redressal of her grievance against Embrace IT.</p> <p>26. Consequent upon the discussion above, the act of the Accused in terminating the employment of the Complainant during her maternity leave is considered gender/sex discrimination within the meaning of Section 2(h) of the Act, 2010. Accordingly, this act is punishable under the provision of Section 4(4) of the said Act. In the given circumstances, I deem it just and appropriate to impose a fine of Rs. 10 lacs upon the Accused, out of which Rs. 8 lacs shall be paid to the Complainant as compensation, while the remaining amount shall be deposited in the national exchequer under the head of "Fine".</p> <p>27. Since the termination order dated 24th April, 2024 was a nullity in the eyes of law, it has no bearing on the employment of the Complainant. Consequently, it shall be deemed as if no such order was ever passed against the Complainant, and she continued to remain an employee of the company till 14-06-2024 and thereafter. For the lawful termination of the Complainant's service contract, the company is required to adopt and follow the due process of law and the applicable rules on the subject. Until the Complainant is relieved of her duties in accordance with due process, she shall be considered an employee of the company, entitled to all benefits attached to her employment.</p> <p>28. Now that it stands admitted and proved on record that the Complainant was issued a termination letter dated 24-04-2024 during the subsistence of her maternity leave — approximately two months prior to expiry — it is necessary to examine the implications and legal effect of such an action on the part of the company.</p> <p>29. While parting with the order, I deem it appropriate to remind all concerned, to whom the Act, 2010 is applicable, to ensure strict adherence to and implementation of the constitutional provisions relating to the fundamental rights of women, as well as the obligations arising from international instruments such as CEDAW, ICESCR, UDHR, ILO conventions and the SDGs. These must be observed in letter and spirit to demonstrate that we are a civilized and responsible society showing due respect and</p>
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		<p>regard for our working women by providing them with a pleasant, conducive, and favorable working environment. Such an environment necessarily includes security, protection, fair-remuneration, maternity and leave rights, dignity, self-respect, and other economic and social rights along with due recognition in job hierarchy. This observation is also in response to the prayer made by the Complainant in her complaint.</p> <p style="text-align: right;">FEDERAL OMBUDSPERSON</p>
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