

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C.P No. D-805 of 2021

Project Implementation Managers
(Private) Limited and others.....Petitioner

Versus

Government of Sindh and others.....Respondents

C.P No. D-1687 of 2021

Tehreem Muneeba.....Petitioner

Versus

Governor of Sindh and others.....Respondents

Muhammad Vawda, Advocate, for the Petitioners in C.P No. D-805 of 2021 and the Respondents Nos. 3 to 10 in C.P No. D-1687 of 2021.

Sara Malkani, Advocate, for the Petitioner in C.P No. D-1687 of 2021 and Respondent No.2 in C.P No. D-805 of 2021. Shahryar Mahar, Assistant Advocate General, Sindh.

Date of hearing : 31.01.2023

ORDER

YOUSUF ALI SAYEED, J. - The Petitions impugn the Order of the Governor of Sindh dated 25.01.2021 and underlying Decision dated 19.05.2020 made by the Provincial Ombudsman (the “**Ombudsman**”) appointed under the Protection Against Harassment of Women at the Workplace Act, 2010 (the “**Act**”), ensuing from a complaint of harassment made on 15.11.2018 by Tehreem Muneeba (the “**Complainant**”) against Project Implementation Managers (Private) Limited, the proprietor of radio SAMAA FM (the “**Company**”), as well as 7 of its employees identified herein below (the “**Employees**”), which was registered by the Ombudsman under Section 8 of the Act as Complaint No. 35(KHI)/2018 (the “**Complaint**”).

2. The backdrop to the matter is that the Complainant had been an employee of the Company from 17.02.2014 until her resignation on 30.09.2018, with the substance of the Complaint being that she had been verbally abused within the precincts of the studio at the premises of the Company on 21.10.2018 by two of its employees, namely Muhammad Naveed and Muhammad Shoaib (the “**Studio Incident**”). Additionally, it was alleged that she had also otherwise been subjected to harassment at the hands of five other employees on various occasions, with it being said that they all created an intimidating, hostile and offensive atmosphere, making it impossible for her to work.

3. The Complaint proceeded, with the Ombudsman recording the evidence of the parties and their respective witnesses, and culminated in the Decision dated 19.05.2020, whereby the Company was exonerated but the seven employees implicated in the matter were found guilty of misconduct and were penalized under section 4 (4) (l) (e) of Act with a fine of Rs. 100,000/- each to be paid as compensation to the complainant within 30 days. The operative part of the Decision reads as follows:

“29. It is worthwhile to mention that in present complaint misconduct of the management has been established by adducing sufficient confidence inspiring evidence, but the Company cannot be implicated as accused by the complainant. However, the discriminatory role and behavior of the accused persons against the complainant under the Act has been clearly established in the light of evidence produced by the complainant, therefore, she can avail such remedy by approaching the proper forum for redressal of her grievances.

30. In the light of the facts and circumstances referred supra, I am of the firm view that accused persons have caused sexual harassment, mental agony and created hostile and intimidating environment for the complainant at the workplace as envisaged under section 2(h) of the Act, 2010.

Consequently, accused persons namely (i) Muhammad Shoaib (ii) Muhammad Naveed (iii) Noman Butt (iv) Adeel Akhtar (v) Rizwan Chaudhry (vi) Ayaz Abro (vii) Zunair Shah are penalized under section 4(4) (j)(e) of Protection against Harassment of women at the Workplace the Act, 2010, and directed to pay fine of Rs. 1,00,000/-(one lac) each as compensation to the complainant within 30 days from passing of this order through the office of this forum without fail. In case, accused persons fail to deposit the fine amounts within the above prescribed time, said amount shall be recovered in terms of the Land Revenue Act, 1967, through the concerned Deputy Commissioner. This order is self-executory and copy of the same may be transmitted to the Chairman SAMAA FM with directions to deduct the above referred fine amounts from the salaries and other service benefits of the above accused persons instantly and transmit the compliance report of this order within 30 days from the receipt of its copy through the Registrar of this office without fail. It is made clear that in case of any delay on the part of the Chairman in compliance of this order, appropriate contempt proceedings shall be initiated under section 10 (vi) of the Protection against Harassment of women at the Workplace Act, 2010.”

4. Representations under Section 9 of the Act were then filed before the Governor Sindh on 02.06.2020 by the Company and Employees (collectively the “**C&E**”) on the one hand and on 13.07.2020 by the Complainant on the other, with the former seeking that the Decision be set aside and the latter that damages also be awarded against the Company while the quantum of damages awarded against the employees be enhanced. After hearing the parties, vide the Order dated 25.01.2021 the Governor was pleased to uphold the Decision while dismissing the representation of the C&E as meritless and the representation of the Complainant as time barred, hence their recourse to the present Petitions for similar relief.

5. Learned counsel for the C&E argued that the Ombudsman had erred in proceeding on the Complaint as the Complainant had already resigned from the Company prior to filing the same, hence there was no subsisting relationship of 'employer' and 'employee', which, per learned counsel, was a *sine qua non* for purposes of the Act. Furthermore, he argued that the allegations of harassment levelled by the Complainant were false and contrived, and that those allegations remained unproven in the absence of corroborating evidence. It was pointed out that while Naveed and Shoaib had denied that the Studio Incident had taken place, per the Complainant, the same was witnessed by another employee, namely Osama Nadeem, however he too had denied such an occurrence. As to the further allegations against the other Employees, it was pointed out that the same had not been mentioned by the Complainant in the emails addressed by her to the Company prior to filing the Complaint, nor was any date, time or place of occurrence even mentioned in the Complaint in that regard. In fact, the Complainant had admitted during her cross examination that she had never previously lodged any protest/objection in respect of those other Employees. Moreover, the only witness produced by the Complainant was one Danish Ameer, a former employee of the Company who was no longer even in service at the time of the Studio Incident and had only made general assertions as to prevalence of a toxic work environment but had himself in fact contrarily sought to secure employment for a female relative, whereas two female witnesses produced as witnesses by the Company had denied the existence of a toxic work culture for females, but their testimony was not considered. It was argued that the Complainant had conceded in her Cross Examination that there was nothing sexual about the Studio Incident or the words that were allegedly used

by Naveed and Shoaib, hence even if it were assumed that the same were uttered, they did not constitute "harassment" as per Section 2(h) of the Act. He argued that the Complaint had thus warranted dismissal, and prayed that the Order dated 25.01.2021 and underlying Decision dated 19.05.2020 be set aside.

6. On the other hand, learned counsel for the Complainant submitted that numerous incidents of harassment had been faced by the Complainant while she had been employed by the Company, as described in the Complaint, and the Studio Incident was the final such instance, with the failure of the Company to investigate the same leaving the Complainant with no option but to tender her resignation. It was argued that the Act did not prevent former employees from approaching the Ombudsman and that the acts complained of fell within the definition of "harassment" set out in Section 2(h) of the Act, hence the Complaint had been competent and was properly proceeded upon. It was submitted that the Complainant had presented sufficient evidence to prove her allegation regarding the Studio Incident and that she had otherwise been repeatedly subjected to harassment at the hands of the Employees during the course of her employment with the Company, all of which transpired due to its apathy if not its tacit approval. It was pointed out that the witness produced by the Complainant, namely Danish Ameer, a former employee of the Company, had testified that the workplace environment was deeply sexist and hostile for women and that some of the Employees would pass objectifying comments as to the dressing and looks of the Complainant and use demeaning language of a sexual connotation. It was submitted that the Ombudsman had accorded the parties a full and fair hearing and then considered all the evidence presented, despite none of the affidavits-in-

evidence presented by the C&E's witnesses being sworn before an Oath Commissioner, so as to correctly conclude that the Employees were liable for workplace harassment. However, it was argued that the Ombudsman erred in holding that the Company could not be held liable and penalized, and the Governor had then erred in refusing to condone the delay on the part of the Petitioner in filing her representation on that score.

7. In an endeavour to explain the delay in making the representation to the Governor, beyond thirty (30) days of the Decision of the Ombudsman, as was required under Section 9 of the Act, it was argued that the Complainant was handicapped in that regard because her movement was severely restricted due to the onset of the Covid-19 pandemic, which was at its peak around that time, which prevented her from preparing a representation and filing it in the office of the Governor within the prescribed timeframe.
8. We have considered the arguments advanced in light of the material on record.
9. Turning firstly to the objections raised as to the maintainability of the Complaint on the touchtone of the Complainant having ceased to be an 'employee' and that the acts complained of did not constitute 'harassment' for purpose of the Act as they were not a sexual nature, we are not persuaded in that regard as in the case reported as Muhammad Rizwan Dalia & Others v. Ombudsman Sindh & Others PLD 2022 Sindh 213 it has earlier been held by us that former employees are not barred from filing complaints under the Act, with it having been observed on a similar objection being raised that "we are not convinced by the submission that a complainant cannot invoke the jurisdiction of the Ombudsman

regarding harassment that occurred during the course of employment after such relationship has been terminated". Needless to say, restricting the scope of the Act to current employees would frustrate the purpose thereof as it would preclude employees who have been forced to resign due to repeated harassment and the creation of an intimidating, hostile or offensive work environment or those who have been terminated from their jobs in retaliation for making a harassment complaint from seeking recourse and relief. Furthermore, in the case reported as Uzma Naveed Chaudhry v. Federation of Pakistan PLD 2022 SC 783, the Honourable Supreme Court has explained "harassment" under the Act as follows:

Although it is evident from the words "demeaning attitudes" that the expression "sexually demeaning attitudes" used in the definition of "harassment" means demeaning attitude on the basis of sex, the (2021) Amendment Act has further clarified it by providing that it includes "any gesture or expression conveying derogatory connotation" that causes "interference with work performance or creating an intimidating, hostile or offensive work environment", and covers conduct that discriminates against persons because of their gender and creates an intimidating or hostile work environment. Any conduct that is rooted in gender based discrimination and creates an abusive and hostile work environment is harassment under the act, which is not restricted only to conduct that is related to the act of sex. (para 11)

10. Turning then to the substance of the Complaint and the proceedings that unfolded before the statutory fora, it merits consideration that on a reading of the Complaint, the allegations advanced by the Complainant can be bifurcated into two subsets, one relating to the Studio Incident and the other to the assertion of a general course of conduct throughout the tenure of her employment, with the relevant excerpts from the Complaint reading as follows:

“5. That cat calling was a norm in the office and the complainant has never created any such comfort zone with any employee which has given them a reason to pass inappropriate comments on her. Rather most of the employees of the Company have made this the culture. As the job was important to the complainant she has always ignored these and just concentrated on work. It is also important to submit that it is a general mindset that media industry is open and there is nothing which can be done to change it. Thus, it is best to ignore these actions and survive in this environment. The list of call calling at different occasions is a follows:

Serial No.	Name	Comments
1.	Noman Butt and Adeel	Jannat tou aurat ka qadmon ka beech main hoti hai
2.	Rizwan Chaudhry	Chkni lagri ho
3.	Ayaz Abro	1. You wore this parso bhi, haina? This is like ghalib ka pajama and looked down. (comment on my trouser) 2. Aj to hap bachi lag rahi hai college ki. (College on two braids)
4.	Zunair Shah	Always addressed to me as ‘Jacqueline Fernandes’ and used to confirm the same with other staff member and Ap kya chahti hai? Aj hum ghar na jayain?

6. That these uncomfortable and unwarranted comments on the complainant's clothes and her looks have created an offensive and hostile work environment which directly affected the work performance of the complainant and made it extremely uneasy to come to office on daily basis and work with the same people who objectified the complainant.

7. That the habit of passing objectifying comment on the complainant was a pattern of the employees and all the seniors were informed and aware of this behavior even then no steps were taken to provide a safe work environment to the complainant and other women employees.”

“11. That on 21.10 2018, the complainant entered the On Air Studio to present her show, she found a pair of shoes in the studio due to which the studio was badly stinking. The complainant informed about it to the Admin Head, Ali Ahtraam, who said he would sort out the matter as to who has placed the shoes there in the On Air Studio despite the fact that it was strictly prohibited to do so.

12. That the complainant then returned to the Off Air Studio adjacent to On Air Studio and took a seat there. After a short while, she clearly heard Muhammad Naveed and Muhammad Shoaib Khan (the employees of the Company who work during same hours as complainant to provide technical support from the Master Control Room) hurling filthy abuses at her and also were making mockery of her for reporting about the shoes. There was another employee present there with Muhammad Naveed and Muhammad Shoaib Khan who is a witness to this incident, was closer to Muhammad Naveed and Muhammad Shoaib Khan but he remained silent during the entire incident.”

“16. The Station Manager, Ayaz Abro, to whom the complainant directly reports for her programs and who was aware of the incident, sent an email to the complainant on 21.08.2018 (the day of incident) at 09:16 pm whereby he only mentioned the date and time of the next show.”

“17. That the complainant was so affected by the abusive incident that she was not in the right state of mind to present her next show due on 23.08.2018. On the same night i.e. on 23.08.2018 around 11:22 p.m she received a text message from Station Manager, Ayaz Abro, that, "Tomorrow normal show. Thank you". These five words coming from Station Manager were evident that the abusing is very normal for people working at the Company office and that no one is taking this matter seriously. Also because for them it was a not a very big deal. However, the complainant could not work were she is abused and cat called and any woman is expected to be respected and not abused in her office.”

11. As is apparent, whilst the basic particulars marking the Studio Incident have been stated in the Complaint, the same is bereft of any details as to the date, time or place of occurrence of the other instances of harassment that Complainant claims to have been subjected to at the hands of the Employees during the course of the employment with the Company. As it transpires, even at the time that the Studio Incident was reported by the Complainant, there was no reference to any such prior events. Indeed, the emails addressed by the Complainant to the functionaries of the Company on 24.08.2018 and 25.08.2018 are also confined to that one matter and do not speak of a systematic course of harassment over a

protracted period. Whilst we concur with the assessment of the Ombudsman that it may often not be possible for female employees to immediately raise their grievances due to fear of reprisal or other societal factors, it merits consideration that such a consideration would no longer have applied once the Complainant had come out with her grievance regarding the Studio Incident. Yet, no mention of past events was made prior to filing of the Complaint, and that too without specificity.

12. Furthermore, on the evidentiary side, while there is material to reasonably suggest that an incident of some sort involving the Complainant did take place on the date and time and place of the Studio Incident and support the conclusion of harassment drawn by the Ombudsman against Naveed and Shoaib in that regard, nothing tangible was brought on record by way of correspondence or other material to substantiate the generalised allegations of the Complainant against the other Employees regarding the assertion as to past events, nor was any admission or incriminating statement drawn from them during the course of their cross-examination. The only supporting witness of the Complaint, namely Danish Ameer, also never lodged any report regarding the events that he claimed to be witness to, either during or after his tenure of employment with the Company. Even otherwise, his testimony was also couched in general terms, bereft of the relevant particulars as to dates, with reliance instead being placed merely on the terms “once”, “once again” and “one day”. Furthermore, despite professing to consider the work environment as misogynistic and toxic, incongruously, he conceded that he had sought to secure employee at the Company for his step-sister. Furthermore, the two female employees of the Company who deposed on its behalf stated that they had never experienced such harassment at the workplace.

13. Under the circumstances, whilst cognizant that we are not sitting as an appellate forum and ought not to set aside a decision of the statutory fora or substitute it for our own where the view taken is plausible and could reasonably have been arrived at, we are constrained to note that, in the matter at hand, the conclusion drawn by the Ombudsman in respect of the allegations advanced by the Complainant beyond the Studio Incident are not properly supported by evidence and are wholly unsustainable.

14. As to the contention of the Complainant that the Company was also liable to have been censured, we are not inclined to concur with that view in light of our overall assessment of the matter, as aforementioned. Furthermore, as the record reflects, the Complainant did not make a timely representation on that score and only came forward after lapse of the prescribed time period in the wake of the representation forthcoming on the part of the C&E. Whilst an attempt has been made to explain that delay on the ground of Covid-19, we are not persuaded in that regard as we have observed that the representation is itself bereft of any such explanation and as the Complainant was otherwise pursuing the matter before the Ombudsman after the onset of the pandemic.

15. In view of the foregoing, we dispose of the captioned Petitions by setting aside the Decision of the Ombudsman to the extent of the Petitioners Nos. 4 to 7 in C.P No. D-805 of 2021. Before parting with the matter, we would like to record our appreciation for learned counsel, both of whom argued their brief meticulously and well.

JUDGE

CHIEF JUSTICE

Karachi, Dated