

President's Secretariat (Public)
Aiwan-e-Sadr, Islamabad

ABID HUSSAIN IMAM

VERSUS

MARIUM KHAWAJA

Subject: **REPRESENTATION AGAINST DECISION/ ORDER/ FINDINGS/ RECOMMENDATION OF THE FEDERAL OMBUDSMAN FOR PROTECTION AGAINST HARASSMENT OF WOMEN AT WORKPLACE DATED 16.10.2014 IN APPEAL NO. 1(87)/2014-FOS VS MST. M (I) V.C (II) ENQUIRY COMMITTEE AND (III) MR. A**

I am directed to refer to your Representation dated 13.11.2014 on the above subject and to say that the President has been pleased to pass the following order:

2. Being aggrieved of and dis-satisfied with the judgment dated 16.10.2014 by the Federal Ombudsperson passed under the Protection against Harassment of Women at the Workplace Act 2010 (**the Harassment Law**), the present Representation has been filed by Mr. A, who was arrayed as Respondent No.3 in an Appeal before the Ombudsperson and a sole Respondent in the original complaint before the Inquiry Committee constituted by the LUMS. Operative part of the impugned judgment is as under:

“in view of the above discussion I imposed a major penalty of removal from service of respondent No.3 under Section 4(ii)(c) of Act 2010. LUMS authorities are directed to implement the order without any loss of time and report to this forum within a period of 15 days about the action taken by them”.

3. Relevant facts for deciding the present Representation are that a complaint was filed by the Complainant– Ms. M, who was a final year law student at Lahore University of Management Sciences (**LUMS**) against one of the faculty members–Mr. A, who at that time was employed as an Assistant Professor in the Department of Law and Policy, alleging that the latter (A) had sexually harassed the Complainant. For the sake of reference the present Representationist / Appellant–A will be referred to as the Respondent and the above named student as the Complainant.

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4. The relevant portion of the original complaint before the Inquiry Committee is reproduced herein under_

“Dear Sir,

I am writing to you about an instance of sexual harassment that I have faced at the hand of a professor. The professor in question is Mr. A. Last Friday, on January 31st, 2014 after jummah namaz. I was walking into the law department. In order to get in, I had to pass Mr. office which is directly at the mouth/opening/front of the department. At that moment he was standing right outside of his office and noticed me walking by.

He told me “You look very fashionable today M”

To which I replied “thank you”. Then however, he proceeded to reach over and grab onto the 3 inch zipper detail on my shoulder saying “is that real” without giving me the opportunity to reply, he pulled it down and exposed me shoulder and bra strap to everyone present”. [underlining is added for emphasis].

5. This incident was reported to LUMS Administration by the Complainant and initially when informal mediation attempt by the Vice Chancellor to resolve the issue failed, the matter was referred to the Inquiry Committee, before which the Complainant submitted her complaint which was replied to by the Respondent vide his detailed response dated March 10, 2014, wherein the Respondent while denying the charges also raised number of legal issues, *inter alia*, pertaining to the applicability of the said Harassment Law, the complaint being afterthought and other procedural lapses. However, on the factual side of the above incident the contents of Para-23 of the afore-said Reply (of Respondent) is of relevance and relevant portion whereof has been reproduced hereinunder, wherein the Respondent has partly admitted the allegation of touching the Complainant’s shoulder_

Para-23. “The Respondent submits that at most his action could be seen as an innocent mistake but neither his comment nor his touching of the complainant’s clothed shoulder constitutes sexual harassment in any way. As noted itself by the Draft LUMS Sexual Harassment Policy as well as the Act of 2010, incidents of harassment usually occur when the offender and the victim are alone”. [underlining is added for emphasis].

6. The Inquiry Committee conducted the proceeding and provided opportunity to the parties concerned to present their case and finally concluded its Report dated April 25, 2014 followed by the Decision dated April 30, 2014 by the VC—the Competent Authority. Though the Inquiry Committee and subsequent Decision (of April 30, 2014) **did not find the Respondent guilty of causing sexual harassment to the**

Complainant, but at the same time, it had given the Findings that the act of the Respondent was **highly unprofessional conduct and conduct unbecoming as a LUMS faculty member** and the latter should submit a written apology to the Complainant, which should clearly and unequivocally demonstrates his (Respondent) contrition and repentance and this letter will be placed in the personal file of Respondent, maintained by LUMS. In addition to this, it was also decided that Report of the Inquiry Committee would also be placed in the personal file of the Respondent and Vice Chancellor would counsel the Respondent about his overall behavior towards the students. A very serious observation was also given in the concluding paras of the said Inquiry Report that as a teacher/faculty member, the Respondent cannot abuse his authority and cross limits, while interacting with students.

7. The matter did not end there, but subsequently the said Decision of the Inquiry Committee was challenged by way of an Appeal before the learned Federal Ombudsperson bearing Appeal No.1(87)/2014-FOS dated 11th July, 2014, though in terms of Section 6 of **the Harassment Law**, an Appeal has to be filed within thirty days, whereas the above referred Appeal was time-barred by almost forty days as the Decision appealed against is of 30.04.2014. In the intervening period, another development took place, when the Respondent **tendered his resignation on April 9, 2014, while the inquiry proceeding was still pending**, but said resignation eventually got accepted by the LUMS on 12th May, 2014, that is, after announcement of the afore-referred Decision of the competent authority viz. Vice Chancellor of LUMS.

8. The Respondent submitted a exhaustive Reply to the aforesaid Appeal and raised number of legal issues as to the maintainability of the said Appeal, *inter alia*, the Appeal being time-barred and Harassment Law cannot be invoked in the present case. The Respondent in his Reply to the Appeal had reiterated his stance about the allegations of sexual harassment, that he did not sexually harassed the Complainant, he also apologized to Respondent then and there, besides, agitating few procedural lapses on the part of the Inquiry Committee of LUMS. Both the parties were heard and CCTV footage was also examined and the impugned judgment has been handed-down on 16th October, 2014, in which the Respondent was held to be guilty of causing sexual harassment to the Complainant and consequently major penalty of removal from service was imposed on him.

9. In the subject Representation also the parties have by and large reiterated their earlier pleadings and submissions, though some contradictions in the respective stance of the parties have also surfaced, for instance, the Complainant in her Appeal before the Federal Ombudsperson has omitted (as mentioned in her original complaint) her response of saying “thank you” to Respondent in response to his comments that the Complainant is “looking very fashionable today”. Similarly, the specific allegation of the Complainant against the Respondent that the latter (Respondent) reached over the

Complainant and unzipped the zipper detailed/stitched on the shoulder of her shirt, was not categorically rebutted by the Respondent. This very act of the Respondent has also been mentioned in the afore-referred Inquiry Report of LUMS in Paragraph-2 under the heading “Key Findings” in the following manner_

“Key Findings

2. *The event under investigation can be construed as a case of sexual harassment under a fairly broad definition of sexual harassment. However, in the case of single event all policies talk about looking at the severity of the event and some pattern. On both of these criteria it seems that while an extremely unfortunate event did occur which severely embarrassed M, the presence of other students, the apology, howsoever weak, made by Mr. A at the time, his readiness to seek apology again, and lack of any pattern of sexual harassment with either M or any other student, lead us to label this event as that of ‘highly unprofessional conduct’ and ‘conduct unbecoming’ of a faculty member at LUMS. There is no excuse of touching a student’s shoulder and tampering with the zip. M was not a buddy of Mr. A and he should have demonstrated better sense”.*
3. *There seems to be a pattern of behavior with Mr. A, which is both very sad and very worrisome. While many students like him as a teacher and as someone who forces them to think critically and is very strict with students who do not come prepared, there are many complaints as well. The three areas where, according to students, Mr. A uses extremely poor judgment, insensitivity, and crosses the limits of appropriate behavior are as follows:*
 - *Use of inappropriate jokes, many times with sexual innuendos and undertones, and obnoxious language. Almost all students felt that these jokes are extremely inappropriate for two reasons. First, there are female students in class, and second Mr. A is a faculty member and not a fellow student. The students seem to behave in a far more mature fashion than their teacher. They do not like his “too friendly” and “too frank” approach.*
 - *Habitual targeting of students who depict a religious leaning. Some of his comments about Islam and other religions are highly inappropriate (and can even lead to serious consequences for the faculty member and LUMS) even if these comments are made in jest. Many students are seriously hurt by his remarks.*

- *Making fun of and ridiculing students ostensibly belonging to the underprivileged sections of Pakistan. Hence, NOP students, so called non-burger students, and even their families were made fun of both in public and private”.*

10. Even though the observations as mentioned in Para-15 of the impugned judgment about the role of a teacher in the society are relevant, but at the same time there are more than one grounds on which the impugned judgment has to be interfered with and cannot be sustained.

11. The impugned judgment did not follow the legal principle with regard to law of limitation and has wrongly held that delay of more than a month in filing the Appeal was merely a technicality, which can be over looked considering the facts of the case. In addition to this, the foremost questions and issues before the learned Federal Ombudsperson were that; whether the aforementioned Harassment Law is applicable to the facts of the present case, where admittedly the Complainant was a student and not an employee of LUMS and Respondent was a teacher/Assistant Professor at LUMS and, secondly, after Respondent's resignation and leaving the job at LUMS, can any Appeal of the nature be at all preferred and should have been proceeded. An answer to the above questions and issues is in negative, that is, neither Harassment Law is applicable in its present form to the case at hand, nor the Appeal before the learned Ombudsperson was maintainable. But at the same time, it is also observed that had the Respondent not resigned from his employment and relieved of all his responsibilities and left LUMS, it would be a fit case where a disciplinary proceeding should have been taken against Respondent as per the applicable Service Rules of the Organization–LUMS, as the very act of the Respondent in coming closer/approaching the Complainant and touching her shoulder is an admitted fact and obvious in video/CCTV footage also. This act is unacceptable and unjustifiable, particularly from a Muslim society perspective.

12. An earlier Decision of this Secretariat was also placed in the proceedings before the Federal Ombudsperson, but was not considered by her as also evident from Para-17 of the impugned judgment. The Harassment Law imposes various penalties on a person found guilty of sexual harassment, therefore, this Law **is to be strictly interpreted and its definition cannot be widened** rather overstretched as is done in the present case. The definition of harassment is also mentioned in Section 2, Sub Section (h) of the Harassment Law and is reproduced herein under for a reference_

“harassment” means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment”.

In these circumstances the afore mentioned earlier precedent of this Secretariat given in the case of Quaid-e-Azam University, having Case No.1/WO/2013 is applicable to the present case, as after scrutinizing definitions of the words “Complainant”, “Employee”, “Harassment”, “Organization” and “Workplace” as mentioned in the Harassment Law, it was held that the applicability of Harassment Law cannot be extended to the complaint of a student [of Quaid-e-Azam University] against Ex-Controller of Examination.

13. In addition to the above, it is also relevant to mention **doctrine of proportionality**, that is, **sentence has to suit the offence of the Offender**. In this regard, there are two very relevant judgments of our Courts, one is reported as *2013 SCMR page 817*, handed-down by the Hon’ble Supreme Court of Pakistan and other is *2008 PLC page 40* given by the Sindh High Court. In the latter judgment, the learned Judge has interpreted this concept of proportionality from the Islamic Jurisprudence point of view, whereas, the Supreme Court of Pakistan in the above cited judgment has held in Para-16 that the punishment/sentence should not be vindictive and unduly harsh, but if it is, then it would not be immune from correction. These judicial precedents squarely apply to the present case, specially, in view of fait accompli situation. It is a trite law that Decisions should not be given in vacuum. However, considering peculiar nature of the case, it would be just and proper that the present Respondent should at least write a letter to the Complainant, *inter alia*, showing regret. At the same time LUMS as an educational institution is clothe with an obligation to take concrete measures to forestall such incidents in future.

14. That the application of a judicious mind to the issues at hand, subsequent development during the proceedings that the Respondent had already resigned from and left his job from LUMS, adverse observations against him has been made part of his service record and inapplicability of Harassment Law to the present set of facts and peculiar circumstances of the case, the conclusion is that the impugned judgment cannot be affirmed and is liable to be set-aside, however, as observed above, the Appellate Authority is disposing of the Representation in the following terms:

- (i) The conduct of Mr. A was not appropriate for a responsible academic. Mr. A should, therefore, write a letter to the complainant and her family, inter-alia, showing regrets for his improper behavior.

- (ii) As established by the Inquiry Committee constituted by LUMS itself, the conduct of Mr. A had been objectionable even prior to this particular incident, of which LUMS Management did not take any notice of, either by oversight or by design. The responsibility of the proper and decent conduct of a faculty member squarely rests upon the Management of an academic institution and inability to ensure that, at minimum is an act of administrative failure and poor management. LUMS is advised to ensure that the required code of conduct is observed by its faculty members and other officials and that the University environment must remain in consonance with the social and moral requirements of our society.

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No.08/WO/2014 dated 16th Oct. 2015

Copy for information to:

1. The Registrar, Federal Ombudsman Secretariat for Protection against Harassment of Women at Workplace, 11-A, Main Agha Khan Road, F-6/3, **Islamabad**.
2. The Vice Chancellor, Lahore University of Management Sciences (LUMS), DHA **Lahore Cantt**
3. Dr. Sohail H. Naqvi, Head of Enquiry Committee Lahore University of Management Sciences (LUMS) DHA **Lahore Cantt**.
4. Ms. Mariam Khawaja, D/o Farrukh Kamal Khawaja R/o House No. 317, Street No. 66 Sector E-11/3, **Islamabad**

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