

**KASHMALA TARIQ
FEDERAL OMBUDSMAN
Appeal No. 1(417)/2018-FOS**

- 1 The instant appeal has been filed by Seemi Abbas (“complainant/appellant”), Assistant Manager Gym, Islamabad Club, against Sikandar Ismail (respondent no.1/accused), Member, Managing Committee, Islamabad Club and Shahid Khan (respondent no.2), Administrator, Islamabad Club, on being aggrieved by the findings and decision of Inquiry Committee, Islamabad Club vide letter dated 16.02.18, reproduced below: -

“Reference your complaint dated 23.10.17 received in the Club on 27.10.17 on the above noted subject and CA&DD letter No. 12-1/2013-Coord dated 08.02.2018.

You were a contractual employee of the Club up till 21.10.2017. Your complaint under Protection against Harassment of Women at Workplace Act 2010 was examined in light of the provision of ibid Act and it was observed that you do not fall within the category of an employee as provided in Section 2 (g) of the Act. However, the Management of the Club still proceeded with your complaint under section 3 of the ibid Act.

The Inquiry Committee constituted by the Club, as per ibid Act, has thoroughly probed the matter and concluded that no evidence was substantiated/available in support of the allegations levelled by you. Therefore, the Competent Authority has dismissed your complaint being devoid of any merit.”

- 2 Brief facts are that the complainant joined Islamabad Club vide appointment letter dated 22.07.15 as an Assistant Manager Gym on a three-month contract which was extended twice yearly i.e. 22.10.15 and 22.10.16. While respondent no.1 is working on probono/honourary basis as a Convener of Managing Committees for Sports, Discipline, Human Resource and Staff Welfare w.e.f 15.03.17. On 23.10.17, the complainant wrote to the General Manager, Islamabad Club with endorsements to this office and Secretary, Capital Administrative & Development Division (CA&DD) wherein the following allegations were made: -

- i. Respondent no.1 called the complainant a few times to his office over petty issues.
- ii. He shared details of his personal life and used flirtatious and explicit language.
- iii. He offered the complainant to develop sexual relations and asked her to follow his instructions threatening that there will be no place for her in case of refusal.

- iv. On one interaction, whenever she tried to leave the room respondent no.1 would stand up from his seat and the complainant managed to rescue herself after one and a half hour when someone walked into the office.
- 3 In the back drop, on the same day i.e. 23.10.17, a letter of contract completion signed by the Manager HR was handed over to the complainant and also sent through TCS courier on 24.10.17.
- 4 As a result, Secretary, Capital Administrative and Development Division (CA&DD) constituted a three-member inquiry committee to probe into the allegations vide office order dated 27.10.2017 consisting of Joint Secretary (Admn) CA&DD as Chairman, Deputy Director (Admn) and Deputy Director CA&DD as Members. Following which, the inquiry committee issued charge-sheet and statement of allegations dated 27.10.2017 to respondent no.1.
- 5 Respondent no.1 submitted his reply to the charge sheet vide letter dated 06.11.17 jointly signed by the General Manager, Islamabad Club through their Legal Advisor. The following preliminary legal objections were taken: -
- i. The complaint dated 23.10.17 was received by the Club on 27.10.17 addressed to the General Manager.
 - ii. Under Islamabad Club Administration Ordinance 1978, the Administration of affairs of the Club rests with the Administrator.
 - iii. The Club have notified its own five-member HR committee in accordance with the requirements of the Act of 2010 in addition to its Disciplinary Committee comprising of four members.
 - iv. Contract of the complainant was not recommended by the HR Committee of the Club which ended on 21.10.2017.
 - v. Committee notified by CA&AD is violative of Protection Against Harassment of Women at the Workplace Act 2010 (hereafter referred as "the Act of 2010") as complaint is administrative in nature and the complainant was no longer an employee of the Club.
- 6 In the factual reply to the inquiry committee, respondent no.1 denied all charges against him and stated that the complaint is a result of malafide and ulterior motives as there was an inquiry on the complainant for misuse of club facilities i.e. swimming pool wherein she was served a notice on 10.10.17 resulting in an outstanding payment along with five other employee of the Club namely Muhammad Mobeen, Rizwan Inayatullah, Abid Salam Agha, Shahid Bazmi, Khurram Shahzad. Further stated that the

complainant appeared in the office of respondent no.1 six times strictly for professional purposes only which were explained.

- 7 In response to the reply submitted by respondent no.1, on 28.11.17, Deputy Secretary (Admn) CA&DD/ Member, Inquiry Committee sent a letter to the Legal Advisor of the Club reproduced as below: -

"I am directed to refer to your letter No.HK/IC/11/17/R2S dated 16th November, 2017, on the above subject and to state that after promulgation of the Protection against Harassment of Women At Workplace Act 2010 by the Government, all attached departments/autonomous bodies including Islamabad Club working under administrative control of this Division under the Rules of Business, 1973, were requested vide this Division's letter No.10-5/2012-SW dated 28.08.2012 (copy enclosed) to take necessary action to implement the provisions of the aforesaid Act. In this regard, a reminder was also issued to all concerned on 08.09.2017 (copy enclosed). However, in response to the said letters, no reply regarding constitution of inquiry committee was received from the Islamabad Club. Therefore, on receipt of complaint committee was constituted in this Division under the above mentioned Act. Being the administrative Ministry of Islamabad Club under the Rules of Business 1973, this Division can take action on any matter relating to its attached departments/offices/organizations. Accordingly, the Chairman of the inquiry committee issued Charge Sheet to Mr. Sikandar Ismail, Member, Managing Committee, Islamabad Club, being accused person in the matter. However, the Islamabad Club, instead of asking the accused person to give reply of the allegations in his personal capacity, has made the matter as institutional and submitted reply from the Islamabad Club.

Anyhow, the inquiry committee of this Division has decided to consider the said reply and to process the matter further under the provisions of Protection against Harassment of Women at Workplace Act 2010. In this regard, the complainant, accused person and other witnesses will be called to appear before the inquiry committee before finalizing its findings/recommendations. It is further requested that future correspondence in this regard may be carried out directly with the Chairman of the Inquiry Committee instead of the Secretary, CA&DD."

- 8 Meanwhile, on 12.11.17, the complainant lodged a complaint before the Chairman, National Human Rights Commission (NCHR) reiterating her allegations against respondent no.1 and asking NCHR's intervention upon which vide letter dated 27.11.17, Senior Consultant NCHR requested the General Manager of the Club to

investigate the matter and furnish a comprehensive report before 05.12.17. Resultantly, the General Manager vide office order dated 29.11.17 formed a 5 member inquiry committee to probe into the allegations and sent notices to the parties. Similarly, another office order dated 29.11.17 by the General Manager was issued which is reproduced below: -

“A meeting of HR Committee of the Club is scheduled to be held on 30.11.2017 at 02:00 pm in the Conference Room of the Islamabad Club to investigate the complaint, filed by Ms. Seemi Abbas, under Protection Against Harassment of Women at Work Place Act, 2010.

The Committee is required to conclude its proceedings as per law and submit its report by 04.12.2017, for further necessary action. Since the complaint is against the Convener of the HR Committee, therefore, Mr. Sikandar Ismail Khan would join the proceedings, as Convener, in this particular case and the Committee is required to choose its Chairman from amongst its members, for investigation into subject complaint.”

- 9 On 30.11.17, the complainant sent a letter addressed to the General Manager, Islamabad Club inquiring about the composition and TORs of the newly formed committee of the Club. Moreover, she mentioned of the CA&DD inquiry committee looking into her complaint. While respondent no.1 appeared before the committee and submitted his written statement. Subsequently, General Manager of the Club sent another letter dated 30.11.2017 to the complainant, asking her to appear before the committee on 04.12.17. In reply to the letter, the complainant decided not to appear before the inquiry committee vide letter dated 04.12.17 wherein she showed her lack of faith and questioned the impartiality of Islamabad Club inquiry committee as the respondent no.1 was Convener of the HR Committee which was assigned to investigate the matter. In addition, she again gave reference to the committee constituted by CA&DD. Hence, the Islamabad Club inquiry committee decided to proceed ex-parte. On the committee meeting dated 04.12.17, the following persons submitted their written statements: -

- i. Haseena Gul, Manager HR
- ii. Maqbool Ahmed Chaudhry, Assistant Manager (Admn)
- iii. Sehrish, Security Assistant
- iv. Sanobar Iqbal, Guest Relation Officer
- v. Sanaullah, Gym Trainer

- 10 Respondent no.1 submitted his written statement dated 30.11.17 wherein he reiterated his earlier contentions to CA&DD inquiry committee and that his interactions with the complainant were purely for official purposes during business hours and restricted to work. It was stated that the contract of the complainant was not renewed based on her unsatisfactory work performance. Lastly, respondent no.1 agitated that the complaint is frivolous and he reserved the right to file defamation suit against her. Furthermore, all of the above-mentioned witnesses wrote in favour of respondent no.1 on 4.12.17. Thereafter, the inquiry committee reached the following conclusion, relevant part of which is reproduced below: -

“As per provision of the Act, the complainant does not qualify to be an employee as defined under Section (f) of the said Act, as her contract expired on 21.10.2017. No evidence was quoted in support of the allegations, except that she informed HR Manager about the incident dated 21.09.2017, who categorically denied any such report from the complainant. Further, she has not mentioned any advancement or favour as per provision of law and has only tried to malign Mr. Sikandar Ismail Khan and that too after her contract of employment was not extend. Mr. Sikandar Ismail Khan in his defence statement has mentioned that he met with the complainant on six occasions, strictly for official purposes which was documented, as per club’s record. Further, Mr. Sikandar Ismail Khan has no authority to hire or fire any employee of the Club, nor he has exercised any executive authority, as per Club’s record, which otherwise has been assigned to the Secretary/General Manager of the Club. The complaint has been filed just to pressurize the Club management for securing an employment contract as well as protect the employment of other employees, whose services have been terminated by the Club due to their misconduct and unsatisfactory performance. The Committee feels that the complaint is purely of administrative nature, being a service issue, and no circumstantial evidence has been found in support of the complaint and probably for that very reason the complainant is not willing to join the proceedings. “

- 11 In furtherance, the inquiry report by the Club was submitted to NCHR after which the case was closed vide Order dated 12.12.17 by the Chairman NCHR reproduced below:-

“After our reference, an inquiry committee was constituted by the Islamabad Club and a detailed report has been submitted.

According to the report, the allegations made by the lady do not stand established. That rather this was an attempt to defame the person concerned after her services were legally terminated.

Since a fact-finding inquiry has drawn conclusions, this Office is reluctant to interfere in the findings and the case is closed.”

- 12 On the parallel, CA&DD inquiry committee held its meeting on 12.12.17 wherein the following persons were summoned for an interview: -

1. Sheheryar Mirza, General Manager
2. Haseena Gul Manager HR
3. Maqbool Ahmed Ch. Assistant Manager (Admn)
4. Muhammad Mubeen, Assistant Secretary
5. Rizwan Inayatullah, Assistant Manager

- 13 Out of the five persons mentioned above, Maqbool Ahmed, Muhammad Mubeen and Rizwan Inayatullah submitted their written statements in favour of the complainant. Following which, on 27.12.17, the inquiry committee interviewed the complainant, respondent no.1 and Abid Slam Agha, Room Division Manager.

- 14 The inquiry committee concluded its report and the following conclusion was made, part of which is reproduced below: -

“The Inquiry Committee has examined the whole record and analyzed the matter deeply. In this regard, question arises whether Ms. Seemi Abbas was actually harassed by Mr. Sikandar Ismail Khan or she has filed the said complaint due to non-extension on her contract period. Simultaneously, question also arises whether her contract was not extended due to refusal by her to compromise with the wishes of the accused or she was expelled from service on the bases of genuine grounds as per practice in the Club. The inquiry committee has relied upon circumstantial evidence of the case as well as the statements of Mr. Maqbool Ahmed Ch. Mr. M Mubeen and Mr. Rizwan Inayatullah wherein they have given remarks which support the complaint of Ms. Seemi Abbas. Moreover, the Inquiry Committee has reached to the conclusion that Ms. Seemi Abbas was denied extension in her contract period in an abrupt manner without giving any noticed which was also not according to the previous practice of the Club. According to the terms and conditions of her contract appointment, she was required to be informed 15 days before the termination of her contract about non-extension of the same. The only charge against her is that she misused the Club facilities in the past for her daughter of 3-4 years for which she was fined Rs. 7830/- which she did not pay to the Club. Otherwise, her work performance was considered more than satisfactory and the HR Committee of the Club recommended 4 increments for her on 03.07.2017. Earlier, she was awarded Appreciation Letter for her “Excellent Performance” on 23.11.16. The inquiry

committee also noted that Mr. Abid Slam Agha, Room Division Manager of Islamabad Club had also missed the facilities of Islamabad Club. This inquiry committee has also examined the inquiry report submitted by the Committee notified by the Islamabad Club 29.11.2017 for investigating the complaint filed by Ms. Seemi Abbas to National Commission for Human Rights and found that the said Committee has prepared the inquiry report without associating and listening to the complainant. The Inquiry Committee has noted that the penalties like stoppage of increment , reduction to lower post, removal/dismissal from service etc. proposed to be imposed upon the guilty employees as given under the Protection Against Harassment of Women At Workplace Act 2010 are the same as given in the Government Servants (Efficiency and Discipline) Rules 1973 for the Government employees. In this case, Islamabad Club is an autonomous body and Mr. Sikandar Ismail is a retired government officer and was working in the Club in honorary capacity. In view of this scenario, the Inquiry Committee recommends that Mr. Sikandar Ismail may be separated from all the positions assigned to him or held by him on regular and adhoc/honorary basis in the Islamabad Club with immediate effect in accordance with the provisions of the said Act.”

- 15 However, on 08.02.18, Deputy Secretary (Admn)/ Member Inquiry Committee CA&DD, contradicting his own point of view stated earlier in letter dated 23.11.2017, submitted the inquiry report to the Club, declaring their own inquiry as unlawful, part of which is reproduced: -

“This Division had received a complaint by Ms. Seemi Abbas, a former employee of the Club, alleging harassment. Though, a report on the complaint has been prepared by a committee formed in the Division but since “Protection of Harassment of Women at Workplace Act, 2010” vests the authority to conduct an inquiry and to decide the matter with the organization, Islamabad Club in this case, vide Section 3 of the Act, both the complainant and the person complained against has a right of appeal against the decision of that committee to the Ombudsman. It is therefore opined that inquiry by this Division would therefore neither be lawful nor provide recourse to an appeal body.”

- 16 Finally, Islamabad Club prepared another inquiry report dated 15.2.18 adding the abovementioned development and dismissed the complaint. However, the inquiry report by CA&DD was not communicated to the complainant and the same was submitted before this office on 29.05.18 after notices were issued vide order dated 10.05.18 and 23.05.18 of this office.

17 Arguments heard by Mr. Haider Imtiaz, Advocate High Court on behalf of the complainant and Mr. Hasnain Kazmi, Advocate Supreme Court along with Mr. Akram Shaheen, Advocate High Court on behalf of the respondents. Perusal of the record shows that the following facts in issue and points of law, inter-alia, have arose from the instant appeal: -

- i. In the absence of an inquiry committee of an organization as envisaged by the Act of 2010, can the controlling Ministry/Division under Rules of Business 1973, constitute an inquiry committee and inquire upon a complaint under the Act of 2010.
- ii. Whether the findings and recommendations of the Inquiry Committee constituted by CA&DD can be relied upon.
- iii. Whether the Inquiry Committee of Islamabad Club was duly constituted under the provisions of the Act of 2010.
- iv. Whether the findings and recommendations of Inquiry Committee constituted by the Club were impartial, just and fair.
- v. Whether the complainant is an ex-employee for the purposes of the Act of 2010.
- vi. Whether the complaint dated 23.10.17 is an afterthought and was filed with ulterior and malafide intentions.
- vii. Whether the complaint is administrative in nature or it is a case of harassment in the form of '*Quid Pro Quo*.'

18 Although under the Act of 2010, it is mandatory for every organization to have a separate Inquiry Committee which were supposed to be duly constituted within thirty days of the enactment of the Act. As the record shows, Islamabad Club did not have a separate Inquiry Committee at the time of complaint dated 23.10.17 which was addressed to the General Manager, who later became an ex-officio member of the inquiry committee. Islamabad Club and CA&DD both separately fall within the definition of organization u/s 2(1) of the Act reproduced below: -

“organization” means a Federal or Provincial Government Ministry, Division or department, a corporation or any autonomous or semi-autonomous body, Educational Institutes, Medical facilities established or controlled by the Federal or Provincial Government or District Government or registered civil society associations or privately managed a commercial or an industrial establishment or institution, a company as defined in the Companies Ordinance, 1984 (XLVII of 1984) and includes any other registered private sector organization or

institution;

- 19 Whereas, under Rules of Business 1973, the concerned Division/Ministry of Islamabad Club is CA&DD. Moreover, under Islamabad Club Ordinance 1978, the appointment of the Administrator of the Club, who is the Competent Authority of the Club, is made by the Federal Government. Hence, the question arises that in such a scenario, whether constitution of committee by CA&DD was lawful under the Act of 2010. Under section 8 (1) of the Act, any employee has the option to prefer a complaint before the Inquiry Committee or this office. The complaint dated 23.10.17 was also endorsed to this office by the complainant but the same is not available in the office record and neither has been brought on record by the parties. As a general rule, inquiry committee constituted by the controlling Ministry/Division for an organization is not lawful as the Act allows an employee to either prefer the Inquiry Committee of their organization or the Federal Ombudsman. Although, in the instant appeal, the Inquiry conducted by CA&DD has been vitiated by itself vide letter dated 05.02.18 to the respondent no.2. Hence, the findings and recommendations of the inquiry committee cannot be relied upon.
- 20 It is also a matter of record that the Club did not constitute an inquiry committee immediately on the complaint dated 23.10.17, but instead constituted one on the direction passed by NCHR dated 27.11.17, which had no jurisdiction to refer the matter back to the Club in such a manner. In the meanwhile, the Club and respondent no.1 also appeared before the CA&DD Inquiry Committee.
- 21 Section 3 of the Act is reproduced below: -
- “Inquiry Committee. – (1) Each organization shall constitute an Inquiry Committee within thirty days of the enactment of this Act to enquire into complaints under this Act.*
- (2) The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA. One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them.*
- (3) In case a complaint is made against one of the members of the Inquiry Committee that member should be replaced by another for that particular case. Such member may be from within or outside the organization.*
- (4) In case where no competent authority is designated the organization shall within thirty days of the enactment of this Act designate a competent authority*

- 22 Islamabad Club constituted its inquiry committee vide office order dated 29.11.17 comprising of Prof. Dr. Omer Masood as Chairman, Mehnaz Akbar Aziz, Omer Jamil Khan, Tariq Ahmed Lodhi, Shahzad Ahmad and Sheharyar Mirza, General Manager as Ex-officio member. Firstly, the committee of the Club is not gender balanced as required under the above mentioned section, since there should be a male-female ratio of 2:1. The committee by the Club consisted of six members out of which only one was a female. Secondly, Chairman Prof. Dr Omer Masood, Member Shahzad Ahmad and General Manager of the Club were also members of the HR Committee, of which the respondent no.1 was the Convener, which decided against the complainant. Thirdly, the complaint was also made against the competent authority i.e. Administrator of the Club to the extent of protecting the respondent no.1. More importantly, the complainant had shown her lack of faith in the committee and the club did not take any measures to redress the objection taken by the complainant but instead, proceeded ex-parte. Henceforth, the findings and recommendations of the Inquiry Committee constituted by Islamabad Club cannot also be relied upon by this office.
- 23 In 2018 MLD 237, the Honourable Islamabad High Court held that the Act of 2010 does not provide any remedy to an ex-employee in light of section 2 (f) read with section 8 (1) of the Act to the effect that only an employee who is in employment at the time of filing of complaint can prefer a claim of sexual harassment before the inquiry committee or this office.
- 24 Under section 2 (f) of the Act of 2010, the definition of employee is as reproduced below: -
- “ “employee” means a regular or contractual employee whether employed on daily, weekly, monthly or hourly basis, and includes an intern or an apprentice;”*
- 25 Without any disrespect to the demeanor and prestige of the Honourable Islamabad High Court, the present circumstances are distinguishable from the facts in 2018 MLD 327, as it was a case of “coerced resignation”, whereas the instant appeal pertains to an allegation of quid pro quo harassment followed by non-extension of contract. Moreover, a blanket ban on ex-employee in cases of harassment will defeat the intent of the legislature and spirit of the Act as the definition of complainant u/s 2 (e) of the Act of 2010 is a person aggrieved by an act of harassment, which may have been followed by an administrative measure of some kind by the organization. The point of consideration must be whether the complainant is an employee of the organization at the alleged date of occurrence and not date of filing of complaint, as there is no limitation to file a complaint under the Act of 2010. Moreover, the Act of 2010 is also not limited to two

employees/employers working within the same organization. There may be situations where an act of harassment can be caused by an employee to an outsider or vice versa such as in restaurants, shops etc. To this extent, the title of the Act of 2010 is self-explanatory as it is harassment "at" workplace and not "in" workplace. Even otherwise, the complainant has submitted Order dated 07.11.17 passed by Single Bench of National Industrial Relations Commission (NIRC), Islamabad wherein the respondents were directed not to restrain the complainant from joining her duty till further order. Hence, the complainant qualifies to be an employee for the purposes of the Act.

26 It is pertinent to highlight that the contents of the complaint dated 23.10.17 show that the complainant has not mentioned her non-extension of contract in the complaint and neither sought extension as a relief at that time, which proves that the complainant was on duty at the time of filing of complaint. Coupled with the fact that no notice of non-extension of contract was officially served upon the complainant till 24.10.17 by the Club. Hence, there are cogent reasons to believe that complaint dated 23.10.17 was not an afterthought and the complainant was an employee at the time of filing of complaint dated 23.10.17.

27 The notion of 'Quid Pro Quo' is literally translated as "something for something," "a favour for favour", in its ordinary course, in common law it is referred to as mutual consideration between the parties in a contract. In the context of harassment, quid pro quo form of harassment is distinguishable from "creating hostile working environment" as quid pro quo harassment takes place when demands to engage in some form of sexual behavior is made a condition for a job job benefit such as pay raise, a promotion or even continuation of employment. Ordinarily, the accused will be in the position of power or authority and refusal to submit will affect the victims' job as the accused will often abuse his authority and retaliate against the victim by way of an administrative measure.

28 The Code of Conduct u/s 2 (c) of the Act is given in the Schedule of the Act in which harassment is defined as follows: -

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;

The above is unacceptable behavior in the organization and at the workplace, including in any interaction or situation that is linked to official work or official activity outside the office.

Explanation:

There are three significant manifestations of harassment in the work environment:

(a) Abuse of authority

A demand by a person in authority, such as a supervisor, for sexual favors in order for the complainant to keep or obtain certain job benefits, be it a wage increase, a promotion, training opportunity, a transfer or the job itself.

(b) Creating a hostile environment

Any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature, which interferes with an individual's work performance or creates an intimidating, hostile, abusive or offensive work environment.

The typical "hostile environment" claim, in general, requires finding of a pattern of offensive conduct, however, in cases where the harassment is particularly severe, such as in cases involving physical contact, a single offensive incident will constitute a violation.

(c) Retaliation

The refusal to grant a sexual favor can result in retaliation, which may include limiting the employee's options for future promotions or training, distorting the evaluation reports, generating gossip against the employee or other ways of limiting access to his/her rights. Such behavior is also a part of the harassment.

Even though in the instant appeal, findings and recommendations of both the inquiry committees are not relied upon. However, this office has the lawful jurisdiction to confirm, set aside, vary or modify the decision under the Act of 2010 on the basis of available record and reach its own conclusion. Keeping in mind the available record and subsequent series and sequence of events, in the present facts and circumstances, the complainant is alleging that her contract was not extended because she refused to comply with the wishes of respondent no.1 who as a result influenced the Club

management to not extend her contract. Though respondent no.1 has maintained that the HR Committee had decided not to extend her contract due to her unsatisfactory performance and stated that his interactions with the complainant were for professional purposes but as admitted, there were six such occasions. First, on 15.03.17, after nomination as Convener Sports Committee, the complainant was asked to provide names of all male and female trainers of the Gymnasium. Second, on 24.04.17, in the disciplinary case against one member of the Club regarding the entry of his family maid/helper in the spa of gymnasium, the complainant was a witness in it and the committee decided to issue an advisory letter to the complainant. Third, in the month of May, the complainant was called to explain her position on issues pertaining to the Gymnasium equipment, its upkeep and maintenance reflective of her poor performance. Fourth, in the month of August, in order to arrange a meeting with the Gymnasium Staff to improve the standard of the Gymnasium. Fifth, on 21.09.17, to verify the physical disability of the child of an employee of the Club for extension of his membership. Lastly, on the HR Committee meeting dated 20.10.17 wherein it was decided that her contract will not be extended

- 30 In the above mentioned six interactions, four meetings were in private between the complainant and respondent no.1. Out of which two meetings were regarding her poor performance and for upkeep, maintenance and standard of the gymnasium. Although it is not a probative fact in itself, however, it does not attract a reasonable prudent mind as to why an honorary/probono member of the committee will take suggestions from an Assistant Manager for improvements of the gymnasium and evaluate her performance in private breaking the chain of command. More importantly, respondent no.1 did not produce any explanation or warning on record regarding the poor performance of the complainant. Examination of the record shows that on the last meeting in private dated 21.09.17, it is alleged that the complainant was detained for one and a half hour. The respondent no.1 has not denied the meeting and stated that it was to verify the physical disability of an employee's child. It is imperative to mention that respondent no.1 has also not denied the duration of the meeting in any of the documents available on record. Similarly, there is no justification as to why that meeting was held for one and a half hour, which is a considerable amount of time during office hours. However, one of the most important facts is that in the HR Committee meeting dated 20.10.17, it was decided that the contract of the complainant will not be extended on account of use of club facilities i.e. swimming pool by her three-year old daughter and the complainant was fined Rs. 7,830 for the use. The complainant admitted before the committee and stated that it was only a couple of occasions on the verbal permission of the previous General Manager of the Club. It is observed that the penalty imposed on the complainant is not proportionate to the alleged misconduct as the other employees, some of which were not terminated, had fines amounting to Rs. 52, 200, Rs. 136, 822,

Rs. 1,311,960 and Rs. 3,000,920. Most importantly, the complainant was served notice on 23.10.17 whereas according to the Club rules, a prior notice of 15 days was supposed to be given to the complainant before not extending her contract. No such notice has been brought on record by the Club. This office has not relied upon the written statements obtained during the inquiries of CA&DD and Islamabad Club as the same have been vitiated. However, it is a settled principle of law that sole statement of the complainant is admissible in the eyes of law, if the same is confidence inspiring. Ordinarily, occurrence of harassment take place closed doors. The present facts and circumstances support the version of the complainant and hence, the complainant has been successful in making out a case of harassment against respondent no.1.

- 31 Even though, the available record does not show any common intention between respondent no.1 and respondent no.2 to the extent of sexual harassment and neither it was alleged against respondent no.2. However, respondent no.2 by virtue of being the Administrator of the Club cannot evade his responsibility as the same was happening under his nose and he was ought to keep check and balance over the affairs of the Club instead of keeping a blind eye.
- 32 In light of the above discussion, this office disagrees in totality with the conclusion drawn by the inquiry committee of Islamabad Club and therefore, the instant appeal is hereby accepted with the following directions: -
- i. Impugned decision of the Inquiry Committee, Islamabad Club vide letter dated 16.02.18 is liable to be set aside. The appellant/complainant is restored to the position prior to her complaint dated 23.10.17 with all back benefits.
 - ii. As respondent no.1 is holding the position on honorary/basis, it is directed that he must be separated from the portfolio of Member, Management Committee with immediate effect and shall not hold any such position in future.
 - iii. Membership of respondent no.1 shall be suspended for a period of six months with immediate effect.
 - iv. Major Penalty of Fine u/s 4 (4) (ii) (e) of the Act to the tune of Rs. 1,000,000 is imposed on Sikandar Ismail, out of which Rs. 500,000 is payable to Seemi Abbas as compensation.
 - v. Fine u/s 11 (3) of the Act to the tune of Rs. 100,000 is imposed on Islamabad Club for not having a duly constituted inquiry committee under the Act.


KASHMALA TARIQ
FEDERAL OMBUDSMAN