

Amended title vide Order Dated: 05.08.2020

A

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
(CONSTITUTIONAL JURISDICTION)

Constitution Petition No.D-852 of 2019

1. Naeem Sadiq,
Son of Mohammad Sadiq Malik,
Muslim, Adult,
Resident of F-15/2, 4th Gizri street,
Phase IV, DHA, Karachi
2. Mirza Asad Hasan Kizilbash,
Son of Mirza Aftab-I-Alam Kizilbash,
Muslim, Adult,
Resident of 14-K, 9th Gizri Street,
Phase IV, DHA, Karachi
3. Ayesha Sasha Abdul Monem,
Wife of Abdul Monem AlAdawy,
Muslim, Adult,
Resident of 4/A, 10th South Street,
Phase II, DHA, Karachi.
4. Rumana Mukhtar Husain,
Wife of Mukhtar Husain,
Muslim, Adult,
Resident of 76/2, 12th Street,
Off Khayaban e Badar, Phase VI,
DHA, Karachi
5. Romana Khan,
Daughter of M. Nasrullah Khan,
Muslim, Adult,
Resident of 10/1,
9th Zamzama Street, Phase V,
DHA, Karachi
6. Karamat Ali,
Son of (Late) Amanat Ali,
Muslim, Adult,
Resident/office at 143-A, Sector X-5,
Gulshan-e-Maymar,
Karachi.
7. Pakistan Institute of Labour
Education & Research,
Registered as an Association under Section 42,
Companies Ordinance, 1984,
Through its authorized person,
Having its registered office at PILER Centre,
ST-001, Sector X, Sub-Sector V,
Gulshan-e-Maymar,
Karachi.....

Petitioners



1. Federation of Pakistan
Through Director,
Directorate of Projects, Industries and Labor Welfare,
Islamabad Capital Territory Administration,
2nd Floor, ICT Agriculture Complex, Mauve Area,
G-11/4, Islamabad.
2. Clifton Board Cantonment,
Through Cantonment Executive Officer
A body corporate established under the
Cantonment Act, 1924,
Having its office at
Cantonment Board Clifton, Khayaban-e-Rahat,
Phase VI, DHA Karachi.
3. Province of Sindh
Through the Secretary,
Department of Labor and Human Resources,
Government of Sindh,
Having its office at
Block No 86, Sindh Secretariat IV-B,
Court Road, Karachi
4. Sindh Minimum Wages Board,
Through its Chairman,
Constituted under the
Sindh Minimum Wages Act, 2015,
Having its office at
Block No 86, Sindh Secretariat IV-B,
Court Road, Karachi
5. M/s. Nisar Jan & Company
Through its Chief Executive,
Resident/ office at
57-C, Al-Murtaza,
Commercial Lane 2,
Phase VIII, D.H.A,
Karachi
6. M/s. Amir Sawab & Brothers (Pvt.) Ltd
Through its Chief Executive,
Resident/ office at
Inset Lane 3,
Phase II Extension, D.H.A,
Karachi.

.....Respondents



**CONSTITUTION PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

Karachi
Dated: 7th August, 2020

[Signature]
Advocate for the Petitioners

Judgment Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -852 of 2019

Naeem Sadiq and 06 others

Versus

Federation of Pakistan and 05 others

Date of hearing : 10.03.2021

Date of Judgment : 10.03.2021

Mr. Faisal Siddiqui assisted by Ms. Palvasha Shahab, advocates for petitioners.

Mr. Ashraf Ali Butt, advocate for Clifton Cantonment Board.

Dr. Raana Khan, advocate for respondents 5 and 6.

Mr. Muhammad Aslam Choudhry, advocate for respondent No.4.

Mr. Muhammad Nishat Warsi, DAG.

Mr. Ali Safdar Depar, AAG.

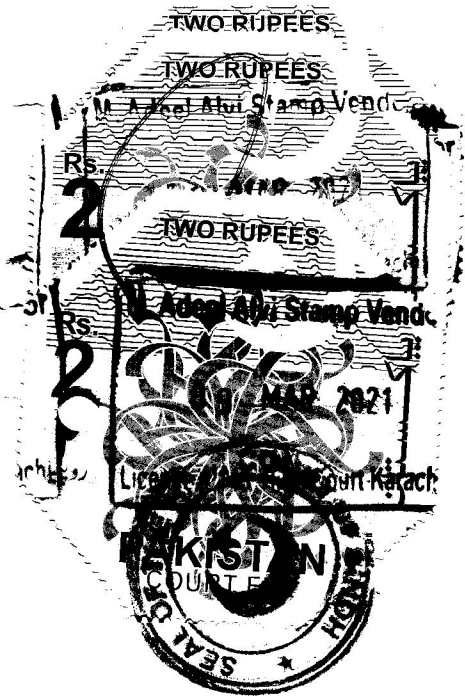
Zahid Hussain Khemtio, Chairman Sindh Minimum Wages Board.

JUDGMENT

ADNAN-UL-KARIM MEMON, J. Through this constitutional petition, the petitioners have sought the following relief(s):

- a) Declare that the omission of the respondent No.2 to ensure that payment to the CBC janitorial staff of minimum wage of Rs.15,00/- as stipulated under the Federal Government Notification No.ADLW-2(3)/ICT/2016-657 dated 2nd August 2017, or the Sindh Minimum Wage of Rs.16,200/- as stipulated by the Notification No.L-II-13-3/2016 under the Sindh Minimum Wages Act, 2015, on the principle of consistency, is illegal, malafide, and violative of the fundamental rights of the janitorial staff.
- b) Declare that the Federal Minimum Wage of Rs.15000/- as stipulated by Federal Government Notification No.ADLW-2(3)/ICT/2016-657 dated 2nd August 2017 or the Sindh Minimum Wage of Rs.16, 200/- as stipulated by the Notification No.L-II-13-3/2016 under the Sindh Minimum Wages Act, 2015, on the principle of consistency, will apply to the CBC janitorial staff.
- c) Declare that the CBC janitorial staff have a right to, and entitled to be paid all wages from the date of their initial employment as per the minimum wage effective on such dates as prevalent time to time.
- d) Direct respondent No.2 to pay all wages to the CBC janitorial staff in terms of the minimum wages as prevalent from time to time including all wages due from the date of their initial payment.

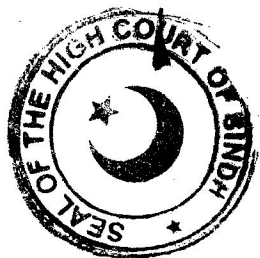
2. The subject matter of this present petition is the unconstitutional and illegal denial of the basic minimum wage to the janitorial staff employed by the Clifton Cantonment Board (*hereinafter referred to as 'CBC'*). Through the present petition, the petitioners seeking *inter alia* the enforcement of the minimum



wages for the CBC janitorial staff based on The Minimum Wages Ordinance, 1961 (*hereinafter referred to as 'Ordinance'*) or the Sindh Minimum Wages Act, 2015. It is urged that the minimum wage is required to be paid to the janitorial staff of CBC, under the Sindh Minimum Wages Act, 2015. In principle they are seeking the enforcement of fundamental rights, guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973, so far as janitorial staff of CBC are concerned. Petitioners have averred that in pursuance of the Sindh Minimum Wages Act 2015, the Government of Sindh vide notification dated 19th September 2019, revised the minimum rates of wages for unskilled adults and juvenile workers employed in all industrial/commercial establishment in Sindh with effect from 1st July 2019. An excerpt of the Schedule is as under:-

S. NO.	CATEGORY OF WORKER	MINIMUM RATES OF WAGES	
		PER DAY	PER MONTH
1.	Adult worker employed in Industrial / Commercial Undertakings in Sindh Province.	Rs.675.00	Rs.17,500.00
2.	Juvenile workers employed in Industrial /Commercial Undertakings.	Rs.675.00	Rs.17,500.00

3. At the outset, Mr. Faisal Siddiqui, learned counsel for the petitioners, has submitted that most of the questions involved in the present petition have been resolved in the light of findings of the Chairman, Minimum Wages Board, vide his report dated 14.12.2020. He seeks disposal of this petition in the light of the said report. The learned counsel representing the respondents concede the legal position of the case and seek disposal of this petition in the terms of the aforesaid report. However, learned DAG has reservations about the maintainability of this petition on the premise that the petitioners have the remedy before the appellate forum and Labour Court constituted under the Industrial Relations Act, 2013 as well as before the Commissioner Compensation under the Payment of Wages Act, 1936. At this stage, we confronted him with the legal position that petitioners simply seek enforcement of the fundamental rights of the janitorial staff of CBC, though he reluctantly concedes the legal position of the case, however, insisted that this petition cannot be heard and decided without availing and exhausting the remedy as provided under the law. We have considered his point of view in the aforesaid context, however, we do not agree with his assertions on the aforesaid analogy for the reason that this Court under Article 199 of the Constitution can enforce the law of the land if



any *lis* is brought before this Court if it involves infringement of any of the fundamental rights of citizens and as guaranteed by the federation, could be heard and decided under the provisions of the Constitution and the law

4. We have heard learned counsel for the parties and perused the material available on record.

5. Before proceeding ahead on the subject, primarily the Sindh Payment of Wages Act, 2015, applies to all factories, industrial and commercial establishments in the Province of Sindh, whereas, Section 2(g) deals with the Industrial Establishment as well as the establishment of third party contractors.

6. to appreciate the legal position of the case, it is essential to have a glance at the term the minimum wages, the same term is defined under Section 2 (m) of the Sindh Payment of Wages Act, 2015 as under:-

(m) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied were fulfilled, be payable whether conditionally upon the regular attendance, good work or conduct, or other behavior of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment and includes any bonus or other additional remuneration of nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include -

(a) the value of any house accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of Government;

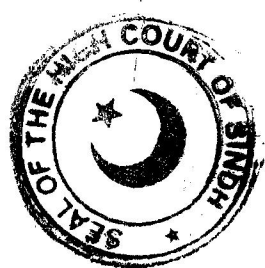
(b) any contribution paid by the employer to any pension fund or provident fund;

(c) any traveling allowance or the value of traveling concession;

(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(e) any gratuity payable on discharge.

7. Section 3 of the Act 2015, has fixed the responsibility for payment of wages upon every employer, including a contractor for the payment to persons employed by him. Section 6 also provides that all wages shall be paid to the employed persons in current currency through cross cheque or bank transfer of any scheduled bank or commercial bank along with the payslips showing the details. It is noted that The Sindh Terms of Employment (Standing Orders) Act,



2015, is applicable to the Industrial and Commercial employment in the Province of Sindh and for matters connected therewith or ancillary thereto. Prima-facie, the respondent-CBC falls within the ambit of the commercial establishment and the aforesaid laws are fully applicable in such scenario. Prima facie, Minimum wages protect workers against unduly low pay. It helps to ensure a just and equitable share of the fruits of progress to all, and a minimum living wage to all who are employed and in need of such protection.

8. Before going ahead, we have observed that before the 18th Amendment was enacted in 2010, minimum wages for unskilled workers in organizations with more than 20 workers were fixed by the Minimum Wage Board constituted under Ordinance 1961. The ordinance was amended in 1969 and 2001 with new legislation introduced. Now, the Federal and Provincial Governments have determined the quantum of minimum wages respectively. Unfortunately, the subject laws are not being implemented in their letter and spirit which are for the welfare and improvement of the financial condition of unskilled workers. Shockingly, the minimum wage policy has not helped raise the income of domestic workers and protecting them from exploitation by their employers. They are in low-paid and insecure work. The financial condition of these people is dismal. They have been living hand-to-mouth lives. Janitorial staff (sweepers) working on daily wages or a contract get a little amount per month. Enforcement of minimum wage law is not the only problem for the time being. The sheer injustice and massive exploitation of the legal rights of hardworking unskilled minimum wage workers. The Federal and Provincial governments must contemplate the rationale of the minimum wages in light of the law and keep raising the amount to adjust for inflation and other factors. The minimum wages should be fixed for both formal and informal sectors. There is a need to evolve a mechanism of stringent legal actions for the violation of the law by some industry, factory, or other business entity.

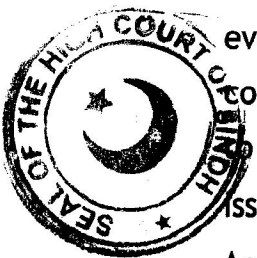
9. We have also noticed that before the 18th Constitutional Amendment, the Payment of Wages Act, 1936 applied to the whole of Pakistan, but since labor matters were entrusted to the provinces, as such, the Sindh Government enacted its law on the subject as discussed supra.

10. As regards the question of employees of a third-party contractor, suffice it to say that it is a normal practice on behalf of such employer to create a pretense and on that pretense to outsource the employment against



permanent posts. This all seems to be a sham pretense and therefore it is not a case of any disputed fact and no evidence is required to record finding on the issue. Moreover, we have seen from the para-wise comments filed on behalf of respondents and the documents attached therewith, which shows that the janitorial staff are employees of the 3rd Party Contractor and are being paid their salaries from the account of Respondent-cantonment Boards. The Honorable Supreme Court in the case of FAUJI FERTILIZER COMPANY LTD. through Factory Manager Versus NATIONAL INDUSTRIAL RELATIONS COMMISSION through Chairman and others (2013 SCMR 1253) has considered the case of Mian Munir Ahmad supra and held that normally, the relationship of employer and employee does not exist between a company and the workers employed by the Contractor; however, in the case where an employer retains or assumes control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of the company; under the direct supervision and control of the company; working within the premises of the company, involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company". In the instant case, the employees of the contractor were involved in running the affairs of the Respondent-company such as driver, helper office assistant, etc.; therefore, for all intents and purposes, they are employees of the company through the contractor and the aforesaid judgment of the honorable supreme court fully applies to the case in hand.

11. Keeping in view the rule of parity and equity, all the janitorial staff even if considered to be the employees of the contractor, which is not the correct position, they have been performing duties of permanent nature ought to have been on regular strength of respondent-cantonment boards. A similar issue came under consideration before the Honorable Supreme Court in Civil Appeal No.1549/2014 vide order dated 24.5.2019 has observed that "the above arrangement" in the facts and circumstances of the case, is merely a vehicle of oppression and exploitation of the poor helpless employees, who on account of widespread unemployment, economic and social disparities and for their bare survival, are compelled to accept the job offered to them suiting the organization".



11. We have noticed that the review was sought in the aforesaid order and the Hon'ble Supreme Court in Civil Review Petition No.276 of 2016 in Civil vide order dated 23.01.2017 dismissed the petition as being frivolous and directed the Petitioner-Bank to deposit a cost of Rs.15000/- within 15 days.

12. We have noticed that the Honorable Supreme Court vide order dated 29.10.2018 in Civil Petitions No.4609 to 4614 of 2017 has already settled the issue of outsourced employees. A similar view was also taken into the consideration by the Honorable Supreme Court in the case of M/s. State Oil Company Limited vs. Bakht Siddiq and others (2018 SCMR 1181); therefore the stance of the Respondents cannot be taken into consideration in the light of findings of the Honorable Supreme Court in the aforesaid judgments.

13. Keeping in view the aforesaid factual position of the case, this Court vide order dated 19.11.2020 directed Mr. Zahid Hussain Khemtio, Chairman Sindh Minimum Wages Board, to submit a detailed and comprehensive report, which has been submitted now is taken on record, thus this petition is disposed of along with the pending application(s) in the terms of the report dated 14.12.2020. Chairman Sindh Minimum Wages Board is directed to continue his endeavor on the subject and submit periodical reports to this Court to implement the aforesaid laws for the betterment of janitorial staff of respondent-cantonments. The competent authorities of the cantonments Boards are directed to cooperate with Chairman Sindh Minimum Wages Board as and when he needs their help for enforcement of subject laws. Resultantly, the respondents are directed to implement the recommendations of the Chairman, Minimum Wages Board, Government of Sindh, under law.

for Adnanur Karim Nemon

Judge

for Muhammad Shafi Siddiqui

Judge

