THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Salahuddin Panhwar, &
Mr. Justice Adnan-ul-Karim Memon

C.P. Nos. D -4596, 4603, 4777, 4938,4943, 5072, 5193, 5229, 5275 and 4885 of 2021

Date of hearing : 2nd, 7th, 8th, 13th and 15th September 2021.

Date of Announcement : 15th October 2021.

APPEARANCE

Mr. Khalid Mahmood Siddiqui, advocate for the petitioners in C.P. Nos. D – 4596/2021, 4777/2021

Mr. Khalid Javed, advocate along with Ms. Farkhunda Shaheen, Mr. Yousuf Makda and Munawar Juna, advocates for the petitioners in C.P. No. D – 4603/2021

Mr. Abid S. Zuberi, advocate, Mr. Ayan Mustafa Memon, advocate and Mr. Hassaan Nadeem Qamar, advocate for the petitioners in C.P. No. D – 5193/2021.

Mr. Zaheer-ul-Hassan Minhas, Mr. Asif Ali and Mr. Kamran Ahmed, advocates for the petitioners in C.P. Nos. D – 5072/2021, 5229/2021, 4596/2021 and 4777/2021.

Mr. Faiz Durrani, Mr. Ghulam Muhammad and Mr. Gharib Shah advocates for the petitioners in C.P. Nos. D – 4943/2021, 5275/2021 and 5369/2021

Mr. Fasih-ul-Karim Siddiqi, advocate for the petitioners in C.P. No. D – 4938/2021

Syed Mohsin Ali, advocate for the petitioners in C.P. No. D – 4885/2021.

Syed Shoa-un-Nabi, advocate and Ms. ShaziaZafar, advocate for the intervener in C.P. No. D – 4596/2021

Mr. Nabeel Ahmed Khan and Mr. Shoaib Ali Khatian, advocates for interveners in C.P. Nos. D – 4596/2021 and 4603/2021.

Ms. Zehra Akbar Khan, Member Minimum Wages Board from workers' side

Mr. Karamat Ali, Executive Director, Pakistan Institute of Labour Education & Research

Mr. Ali Safdar Depar, AAG along with Mr. Abdul Rasheed Solangi, Secretary Labour, Government of Sindh, Ms. Shaheen Nisar Mangi, Secretary Sindh Minimum Wages Board and Mr. Muhammad Naeem Mangi, Superintendent Minimum Wages Board.

Mr. Jawad A. Sarwana, advocate, learned amicus curiae.

Mr. Saleem Baloch, Additional Secretary Labour / Chairman Minimum Wages Board, Mr. Liaquat Ali Sahi, Member Minimum Wages Board, Mr. Nasir Mansoor, Ex-Member, Minimum Wages Board, Mr. Ahmed Shoaib,

Research & Statistical Officer, Minimum Wages Board and Jan Muhammad Khaskheli, worker in person.

J U D G M E N T

SALAHUDDIN PANHWAR J. Through captioned **petition**s, the petitioners have **challenged Notification** dated **09.07.2021** issued by respondent No.1/ Province of Sindh through Secretary Labour & Human Resources Department in exercise of powers conferred under Section **4(1)** read with section **6(1)(a)** of The **Sindh Minimum Wages Act, 2015**, which reads as under:

"GOVERNMENT OF SINDH
LABOUR & HUMAN RESOURCES
DEPARTMENT
Karachi dated the 9th July, 2021

NOTIFICATION

No: L-II-13-3/2016: In pursuance of the provisions of Section 4(1) of the Sindh Minimum Wages Act, 2015 and in exercise of the powers conferred by Sub-Section (1) (a) of Section 6 of Sindh Minimum Wages Act 2015, Government of Sindh is pleased **to declare the minimum rates of wages Rs.25000/-per month** for unskilled adult and juvenile workers employed in all industrial/commercial establishments in Sindh shall be as given in the schedule appended to the minimum rates of wages, with effect from 01.07.2021.

The minimum rates of wages for unskilled adult and juvenile workers employed in all the industrial/commercial establishments in the Sindh province on reference from Government of Sindh under Section 4 of Sindh Minimum Wages Act, 2015.

1. The minimum rates of wages shall apply to all unskilled adult and juvenile workers employed in all industrial/commercial establishments of any sort (registered or unregistered) located in Sindh and minimum rates of wages shall be applicable uniformly throughout the Province.

II. These minimum rates of wages shall be applicable as per provisions of the Sindh Minimum Wages Act, 2015 and **shall come into force with effect from 01.07.2021**, after approval and Notification to be issued by Government of Sindh, under Section 6 of the said Act.

III. A female worker of the category shall get the same minimum wages as allowed to a male worker of the category of such work.

IV. The daily/weekly working hours and conditions of overtime work and work on weekly days of rest and on paid holiday, etc. in respect of the unskilled adult and juvenile workers of the given category shall be

regulated by the Sindh Factories Act, 2015, Payment of Wages Act, 2015 and other relevant Labour law.

V. The minimum rates of wages of other categories of workers (skilled and semi skilled) employed in any industry shall in no case be less than the minimum rate of wages, now for unskilled adult and juvenile workers in the Sindh province.

VI. The employers in all industries whether registered or unregistered shall pay to the adult unskilled and juvenile workers at the rate not less than that proposed in the schedule appended herewith.

VII. The wages will mean "wages" as defined in section 2 (xix) of the Sindh Minimum Wages Act, 2015.

VIII. The employers shall revise, where necessary the rates of remunerations for piece rated workers so as to ensure that the worker in each piece rate occupation is enabled to earn not less than Rs.120.00 per hour in any working day.

IX. The minimum rates of wages shall not be regarded as maximum rates and existing wages, higher than the minimum wages now fixed, shall not be reduced. The Employers shall, however be free to pay higher wages either unilaterally on their initiative or by collective agreement in view of any special consideration, including experience or higher cost living to a particular locality or other reasons.

X. The minimum rates of wages shall be applicable to time rated/whole time workers including temporary piece rated workers with effect from the date of Notification issued by Labour & HR department, Government of Sindh, of these minimum rates of wages under Section 6 of the Sindh Minimum Wages, Act, 2015.

XI. The workers shall continue to enjoy such facilities like free accommodation/house rent, water, electricity, conveyance, free medical gratuity, pension, bonus, any kind of insurance, provident fund, recreation, free food, subsidized food, education, holidays and leave with pay, attendance allowance and any other benefit **already provided by the employers.**

XII. No variable or incentive allowance or value of welfare facilities as mentioned above shall be adjusted against the minimum rates wages.

XIII. The schedule of minimum rate of wages for unskilled adult and juvenile workers is appended below:

SCHEDULE

S.NO.	CATEGORY OF WORKER	MINIMUM RATES OF WAGES	
		PER DAY	PER MONTH
1.	Unskilled Adult & Juvenile workers employed in Industrial/commercials Undertakings in Sindh	Rs.961.00	Rs.25000.00

	Province.		

All industrial, commercial and other establishments registered under any law shall pa wages to the employees through cross cheque/bank transfer, under section 6 of the Sindh Payment of Wages Act, 2015."

As identical issue is involved in all the above captioned petitions, therefore, we dispose of captioned petitions through common judgment.

2. The grievance of the petitioners is that **minimum** rates of **wage** for unskilled adult and juvenile workers *employed* in all the industrial/commercial establishments in the province of Sindh has been **increased** from **Rs.17500/-** per month to **Rs. 25,000/-** per month with effect from 01.07.2021 through the impugned Notification. **Nonetheless** in pursuance of 18th Amendment to the Constitution, the legislative and executive powers with regard to '**Labour and Manpower**' have been **devolved** upon the **Provinces**, as such respondent No.1 enacted the **Sindh Minimum Wages Act, 2015** (Sindh Act No. VIII of 2016) and published the same in the Sindh Gazette on 12.04.2016. The **prime** purpose of the Act is to *regulate* minimum **wages** and other **allowances** for different categories of workers, working in certain industrial/commercial establishments. However, The **Act of 2016** was **amended** vide Sindh Minimum Wages (Amendment) **Act 2018**. In pursuance of **Section 3** of the Act as amended, the Respondent **No.1** *constituted* **Sindh Minimum Wages Board** (respondent No.2). Whereas, The Board *comprises* of members representing the organization of employers and such direct *participation* of the *representatives* is mandatory requirement under the law. Moreover, the respondent **No.2** upon a *reference* made to it by respondent **No.1**, after inquiry as deemed fit, may **recommend** to the respondent **No.1** the minimum rates of the **wages** for adult, skilled and unskilled **workers** and juvenile and adolescent workers *employed* in the industrial establishments or commercial establishments or both. That the scope of *recommendations* to be made have been provided under **Sections 4&5** of the **Act,** and under **Section 6(1)(a)**, and Respondent **No.1** upon receipt of recommendations by respondent **No.2** under **Sections 4** & **5** of the **Act**, may either by **notification** in the official Gazette, declare that the **minimum** rates of **wages** *recommended* by the respondent No.2 for the various workers shall

subject to such **exceptions** as may be **specified** in the **Notification** be the minimum rates of wages or as per section **6(1)(b)** or if it *considers* that the *recommendations* are not in any respect, **equitable** to the **employers** or the **worker**, within **30 days** of such receipt, refer it back to the respondent **No.2** for *reconsideration* with such *comments* thereon and giving such information relating thereto as **Respondent No.1** may deem fit to **make** or **give it**. However, section **6(2)** of the Act *provides* that where the *recommendations* are referred back to Respondent **No.2** under Section **6(1)(b)**, Respondent **No.2** shall *reconsider* it after taking into account the comments made and information given by Respondent **No.1** and if necessary, shall hold further *inquiry* and *submit* to the respondent **No.1**, a revised *recommendation* or if it considers that no revision or changes in the recommendations is called for, make report to that effect stating reasons thereon. Moreover, under **Section 6(3)**, upon receipt of the recommendation under **sub-section 2**, Respondent **No.1** may through **notification declare** the **minimum** rates of **wages** for workers as recommendations subject to such **modifications** and **exceptions** as may be *specified*. It is further submitted that **section 6** *makes* it absolutely **clear** that the '**recommendation'** under section **6(2)(a)** are binding upon the respondent **No.1** and words '*subject to such modifications and exceptions*' by no stretch of interpretation allow the respondent No.1 to **reject** or **substitute** the minimum rates of **wages** recommended by the respondent **No.2**,and Respondent **No.1** in *exercise* of powers *conferred* under sections **6(1)(a)** or Section **6(3)** of the **Act** must be **published** in the official Gazette and can only take effect from the date of its **publication**.

3. **It is** further stated that pursuant to the *provisions* of **the Act**, on the *recommendation* of Respondent **No.2**, the proposed minimum wage rate was **notified** and **published** by respondent **No.1** in the official **Gazette** of Sindh on **08.08.2019**, whereby objections were *invited* from the *affected* parties and **suggestions** on the proposed minimum **wage** rate of **Rs. 17,500/-** per month for unskilled workers employed in the industrial/commercial **sectors** within the province of Sindh. However, no objections were brought forward, *hence* the rate of **Rs.17500/-** per month or **Rs.675/-** per day was **notified** within Sindh province vide **Notifications** dated **19.09.2019** with effect from **01.07.2019** respectively. However, owing to **purported** inflation, Respondent

No.1 decided to **revisit** the minimum **wage** rate and Respondent **No.2** held a meeting on **03.12.2020**, *deliberating* a new proposed minimum wage at the rate of **Rs.19,000/-** per month for unskilled workers for the province of Sindh, wherein following decision was made:

> "*After detailed deliberation on the matter all the members of the Board agreed to increase & fix Rs.19,000/- per month the minimum wages for the un-skilled workers of the province of Sindh.* ***It was also decided to publish the recommended wage rates in the official Gazette for inviting objections/suggestions***."

4. **Thereafter**, the respondent No.1 **published** recommendation **wage** rate of **Rs.19000/-** per month in the official Gazette of **Sindh** on **17.12.2020**, *inviting* objections/suggestions from all stakeholders **affected 9% increase** within **30 days**. In pursuance thereof, various **objections** were submitted by the affected stakeholders. Whereas, on **22.04.2021**, the respondent **No.2** held a meeting, wherein such **objections** were *considered* **thereafter, it was decided to increase the minimum rates of wages from Rs.17,500/- per month to Rs.19000/- per month for unskilled workers with effect from 01.04.2021** and *forwarded* the **recommendation** to the respondent **No.1** for **adoption** by issuing of the **Notification** under **section 6** of the **Act**. It is further **submitted** that on **01.06.2021**, a *summary* was placed before **The Chief Minister** by placing the recommendation of respondent **No.2** to **increase** the minimum rate of wage to **Rs.19000/-** and for issuance of the **Notification**, **but the same was not issued**. However, Sindh Assembly while *announcing* the **budget** for the financial year **2021-22**, **increased the rate of wages for unskilled workers to the tune of Rs. 25,000/- per month.** But according to the petitioners, such *announcement* is not and could not have **formed** part of the **financial** budget or any **money bill**. It is further submitted that instead of **adopting** the binding **recommendation** of the respondent **No.2** under Section **6(1)(a)** of the **Act** or *referring* the matter **back** to the respondent **No.2** in terms of sub clause **(b)** of Section **6(2)**, **the respondent No.1 on 09.07.2021 issued the impugned Notification whereby minimum rate of wages of unskilled adult and juvenile workers employed in the industrial/commercial sectors in the province of Sindh has been fixed at Rs. 25,000/- per month** or **Rs. 961/-** per day and *according* to the petitioners, such **increase** of **43%** is completely **unjustified** and *untenable*.

5. **According** to the petitioners, the *impugned* **Notification** has been purportedly issued in *pursuance* of the provisions of Section **4(1)**of the Sindh Minimum Wages Act, 2015 and in *exercise* of **powers** conferred by **sub-Section(1)(a)** of Section **6** of Sindh Minimum Wages **Act**, 2015 whereas it could not have been **issued** under Section **6(1)(a)** as the Respondent **No.2** has never *recommended* increase in the rate of **wages** to the tune of **Rs.25,000/-** and the only *recommendation* was before the respondent **No.1** for **increase** of the rate of the **wages** to **Rs.19,000/-** per month which rate was neither notified nor referred back, as such, it is submitted that in absence of any recommendation, **the increase of rate of wage to Rs.25,000/- per month or Rs.961/- per day through impugned Notification is without jurisdiction, null and void**. It is further submitted that no **notification** was **published** to invite public objections which clearly *stipulates* that the *impugned* **Notification** was **issued** in **haste** manner in complete **violation** of the **law** and further the Sindh Finance Act, 2021 does not provides any *increase* in the minimum rate of the wages. Even otherwise such rate of **wages** could not have been **increased** through **Money Bill**; that in the impugned **Notification** it is *mentioned* that it was issued **under Section 6(1)(a) on the recommendation of respondent No.2 made under Section 4, whereas, there was no recommendation has ever been made**. It is further **asserted** that respondent **No.2** held meeting on **22.04.2021**, when the *minimum* rate of **wages** for the unskilled adult and juvenile workers was **recommended** at @ **Rs.19000/-,** which was *confirmed* by the members of Respondent No.2 in pursuance to the *responses* made by certain trade *associations*, as such the impugned **Notification** is liable to **set aside**. The petitioners have further submitted that after issuance of the impugned Notification, there is substantial difference surfaced between the rate of the wages in the Sindh and in other provinces of the Pakistan, which is reproduced as under:-

Area	Previous rate	New rate	Percentage increase
Federal Territories	Rs.17,5000/-	Rs.20,000/-	14.2%
Punjab	Rs.17,500/-	Rs.20,000/-	14.2%
KPK	Rs.17,5000/-	Rs.21,000/-	20%
Baluchistan	Rs.17,5000/-	Rs.21,000/-	20%
Sindh	Rs.17,500/-	Rs.25,000/-	43%
Export Processing Zones in Sindh	Rs.17500/-	Rs.20,000/-	14.2%

6. **It is** further stated that the **quantum** of other *contributions* such as **social security** etc. are also **calculated** on the basis the minimum **wages** as such *devastating* effect of such **increase** is not limited to the **wage,** but also to other contributions as well, that are bound to *substantially* increase as a result, which *unjustified* burden is sought to be **imposed** through the impugned **Notification**. It is lastly *contended* that the impugned **Notification** has not yet been **published** in the official **Gazette** as such the same is not **binding** upon the petitioners, therefore, through the captioned petitions, the petitioners have *prayed* to **declare** the impugned **Notification** as illegal, arbitrary and without **jurisdiction**.

7. **We** have heard Mr. Khalid Mahmood Siddiqui, Mr. Khalid Javed, , Mr. Abid S. Zuberi, , Mr. Ayan Mustafa Memon, , Mr. Zaheer-ul-Hassan Minhas, Mr. Faiz Durrani, , Mr. Fasihul Karim Siddiqi, Syed Mohsin Ali, advocates for the petitioners and Syed Shoa-un-Nabi, Mr. Sarwar Jamali, and Mr. Shoaib Ali Khatian, advocates as well as learned Assistant Advocate General Sindh and M/s. Zehra Akbar Khan, Karamat Ali, Liaquat Ali Sahi, Jan Muhammad Khaskheli, representative of various Labour Organizations and Mr. Jawwad A. Sarwana, learned Amicus and *meticulously* examined their contentions.

8. **In all** captioned petitions the **Notification** dated **09th July 2021** has been impugned by the *employers* on the plea that as per the Notification, the Wages Board recommended wage at the rate of Rs.**19000/-** per month with **effect** from **01st April 2021**, *conversely*, the **Cabinet** disagreed, and it is contended that, while violating the **mandatory** provisions under Sections **4&5** of the Sindh Minimum Wages Act, 2015, **notified** minimum wages at the rate of **Rs.25000/-** per month in the Province of Sindh. Accordingly, the learned counsel for the petitioners *contended* that **determination** of the **wages** cannot be *pronounced* by the judicial Act and they can be *regulated* by the **Legislative Act** only; Whereas the legislative assembly *promulgated* minimum **wages Act 2015** in view of **ILO 1970**, which *provides* existence of mechanism between the **employer** and the **employee** respectively, hence, the Minimum Wages **Act 2015**, provides that the **Board** having equal *representation* of the **employer** and **employee**, apart from the *independent* Board Members. **All** members recommended **Rs.19000/-** per month, however, two members *dissented* and one member namely Ms. Zehra *recommended* **Rs.20,000/-**.It is

argued that the recommendations of the Board are binding upon the government **and government was not competent to announce wages without recommendations**. However, Government if was of the **view** that wages are **improper**, recourse is provided while *referring* the matter again to the **Board**. They have relied upon decisions reported as 2014 SCMR 1015, PLD 2014 SC 1, PLD 2016 SC 570, PLD 2021 (C.S) 420, PLD 2016 SC 995, PLD 2013 Sindh 285, 1967 PLD 229 DACCA, 2006 PLD SC 697, 2014 SCMR 676, 36 (1994) SCC 651, PLD 2012 SC 1, PLD 2007 SC 277, PLD 2021 ISL 144, 2010 SCMR 1301, PLD 1990 SC 1092, PLD 1993 SC 341, 1991 SCMR 1041 and PLD 2005 SC 193.

9. **On** the other hand, the learned Assistant A.G. Sindh while *refuting* the *contentions* raised by the learned counsel for the respective parties *contended* that **the Board's** decision is *advisory* in nature and the Government was not bound to act upon the *recommendations* of the Board; that matter relates to the policy *framed* by the Government in welfare of the Labour class, *hence*, the policy cannot be *challenged* in the writ jurisdiction in view of the law laid down in the case reported as **PLD 2014 SC 01**. He has *emphasized* over definition as provided in section **2(1)** of the Sindh Minimum Wages **Act** 2015,while *reading* with section **6** and further accentuated that the **sections 4&5** refer word "**may**" therefore, here key word is "**may**", which is not *mandatory* in nature and that is only **advisory** in nature, hence, the Government has *rightly* taken the **decision** while **announcing** minimum rate of the wages to the tune of **Rs.25,000/-** per month. He has also *referred* the reported judgment of the Hon'ble apex Court passed in CP.No.1554-L to 1573-L of 2020 dated 26th November 2020 and the unreported judgment passed in Civil Appeals No. 429, 430 and 442 of 2020 dated 20.08.2020.

10. **Conversely** Ms**.** Zehra Akbar Khan, Karamat Ali, Liaquat Ali Sahi, Jan Muhammad Khaskheli, *representative* of the various **Labour Organizations** *contended* that the laborers are facing *miseries* and there is *chequered* history that always **employer** is not ready to **enhance** the minimum **wages**. They have *emphasized* that there is **trend** of third party *contractor* hiring, therefore, only **15%** workers are *registered* with **EOBI** and **SESSI** that is a gross violation; they have submitted *various* documents as well as *contended* that this **announcement** of the Government shall be read as right to life as

enshrined under **Articles 37** and **38** of **the Constitution** of Islamic Republic of Pakistan 1973.

11. **It is** further *contended* that the prices of basic **commodities**, **utilities** and other *expenditure* have been **increased** many times in the last few **years**, which has been made the lives of the working class **miserable**, effect of this **inflation** on the workers is *severe* as there has been no *significant* rise in their **wages**. Besides, the above mentioned they further submitted that the **owners** of the **factories** and the commercial *entities* are **opposing** the minimum Wage of **Rs.25000/-** per month and have forced are *forcing* their workers to accept **Rs.19000/-** per month against **Rs.25000/-** per month *announced* by the Provincial Government; that on the contrary, the expenditures of these *wealthy* **businessmen** are more than **Rs.25000/-** per day which is thirty times or **300** per cent **more** than the minimum wages for the poor and *unfortunate* workers who produce wealth in the country by taking **pain**, and hard work. They have been also opposed the minimum **wages** on the pretext of **COVID-19** *situation*, on the contrary, they received**Rs.400 billion** from the Federal Government, *interest* rates of which was **lowered,** but they even did not pay *workers* for the days they were **unable** to work.

12. **Besides** above submissions, it is also *contended* that the price of the **dollar** has *increased* from **Rs.130/-** to **Rs.168/-**; that all the *materials* used in the production are locally *produced,* thus the price and incomes of the employers have been *increased* **significantly**; that **monthly** expenditures of the workers i.e rent of the accommodation, utility bills, other households, and conveyance expenditures etc. have also been **increased** many folds. It is further submitted that the **Provincial Government** has powers to fix the minimum **wages**; that after **18th amendment** minimum wages were also announced by the provincial government without the wage board approval.

13. **Moreover, the Secretary,** the Sindh Minimum Wages Board appeared and *contended* that the main **aim** and **objective** of the **Act** is to *regulate* the minimum rates of the **wages** and *various* **allowances** for different *categories* of the workers *employed* **in different** industrial and **commercial** organization. She also *contended* that there is difficulty to call meetings and make consensus as employers are reluctant to attend the meetings. She has also **submitted**

documents *pertaining* to the **Notification** with regard to *composition* of the board, minutes of *meetings* dated **15.07.2020**, **19.08.2020**, **16.11.2020**, **03.12.2020**, **12.02.2021 and 22.04.2021**, history of the Minimum Wages of Board of unskilled workers, list of **42** *Industries* in the Sindh Province, wherein minimum rate of the **wages** are to be fixed. Such documents reflect that a **meeting** of the minimum **wages** board was held on **10.07.2020**. However, in that meeting the parties failed to *reach* on consensus, *hence*, adjourned for **24.07.2020**,thereafter, the meeting of the Board was *held* on **19.08.2020**, but the same also ended with same fate. **Subsequently**, working papers were *prepared* with regard to the scheduled meeting on 16.11.2020, being relevant the same are reproduced herewith:

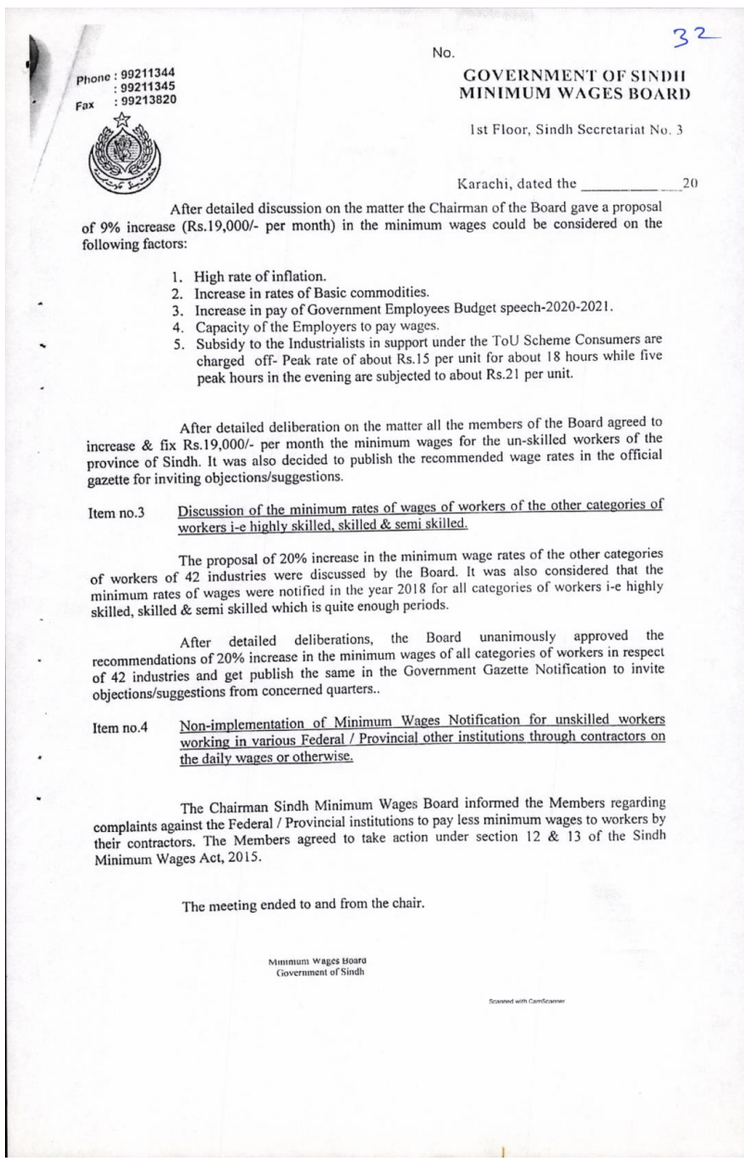
> "**WORKING PAPER FOR THE MEETING OF THE BOARD SCHEDULED ON 16-11-2020**
>
> 1. *To increase the minimum wage rates of the un-skilled workers category the Board may consider an increase of 13.81% in existing notified minimum wage rates on the basis of increase of Cost of price index in 2020 compare to 2019 as per figure provided Federal Bureau of Statistics (Flag-A).*
>
> 2. *As per the recommendation of increase of 13.81% in the minimum wages rates unskilled workers it would be raised up to Rs.20, 000/- per month which compare to approximately equivalent to the monthly salary of a Government employee who is appointed in BPS-1 (Flag-B).*
>
> 3. *As per the family Budget of 5 members (Flag-C) the minimum requirement is Rs.32,000/- per month to incur essential expenses.*
>
> 4. *The Board therefore recommitted an increase of 13.81% in the wage rates of unskilled workers of Industrial & Commercial establishments under section 8(2) of Sindh Minimum Wages Act, 2015.*
>
> 5. *To increase the minimum wage rate of the Skilled category of workers the Board may consider an increase of 20% in existing notified minimum wage rates under Section 8(2) of Sindh Minimum Wages Act; 2015 because the wage rates of skilled categories of workers have not been increased since 2 years.*
>
> 6. *The Board under section 8(4) of Sindh Minimum Wages Act, 2015 may consider recommending /allowing 10% adhoc relief to such workers or class of workers who qualified 5 years service and not entitle for increment in their establishments."*
>
> *"Calculation of increase in Cost of price index on the basis of figures provided by Federal Bureau of Statistics.*
>
> *C.P.I = October, 2019 126.86%*

C.P.I = October, 2020 140.67%
C.P.I increase by 13.81%

By applying 13.81% on existing notified minimum rates of wages
*17,500*13.81% = 2,417*
17,500+2,417 = 19,917 (By Round off Rs 20,000/-)

Therefore Rs.20,000/- per month may be considered to recommend minimum wage rates of unskilled workers."

14 **Nonetheless** the representatives of the workers were of the view in the meeting **dated 16.11.2020**, the minimum wages shall be at the rate of **Rs.20,000/-** per month, whereas, the *employers* demanded same wages as **Rs.17,500/-**, however, subject meeting was also ended with no result, hence, another meeting was held on **03rd December 2020.** Being relevant minutes of the meeting are *reproduced* herewith:



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No.

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GOVERNMENT OF SINDH
MINIMUM WAGES BOARD

1st Floor, Sindh Secretariat No. 3

Karachi, dated the _____20

After detailed discussion on the matter the Chairman of the Board gave a proposal of 9% increase (Rs.19,000/- per month) in the minimum wages could be considered on the following factors:

1. High rate of inflation.
2. Increase in rates of Basic commodities.
3. Increase in pay of Government Employees Budget speech-2020-2021.
4. Capacity of the Employers to pay wages.
5. Subsidy to the Industrialists in support under the ToU Scheme Consumers are charged off- Peak rate of about Rs.15 per unit for about 18 hours while five peak hours in the evening are subjected to about Rs.21 per unit.

After detailed deliberation on the matter all the members of the Board agreed to increase & fix Rs.19,000/- per month the minimum wages for the un-skilled workers of the province of Sindh. It was also decided to publish the recommended wage rates in the official gazette for inviting objections/suggestions.

Item no.3 Discussion of the minimum rates of wages of workers of the other categories of workers i-e highly skilled, skilled & semi skilled.

The proposal of 20% increase in the minimum wage rates of the other categories of workers of 42 industries were discussed by the Board. It was also considered that the minimum rates of wages were notified in the year 2018 for all categories of workers i-e highly skilled, skilled & semi skilled which is quite enough periods.

After detailed deliberations, the Board unanimously approved the recommendations of 20% increase in the minimum wages of all categories of workers in respect of 42 industries and get publish the same in the Government Gazette Notification to invite objections/suggestions from concerned quarters..

Item no.4 Non-implementation of Minimum Wages Notification for unskilled workers working in various Federal / Provincial other institutions through contractors on the daily wages or otherwise.

The Chairman Sindh Minimum Wages Board informed the Members regarding complaints against the Federal / Provincial institutions to pay less minimum wages to workers by their contractors. The Members agreed to take action under section 12 & 13 of the Sindh Minimum Wages Act, 2015.

The meeting ended to and from the chair.

Minimum Wages Board
Government of Sindh

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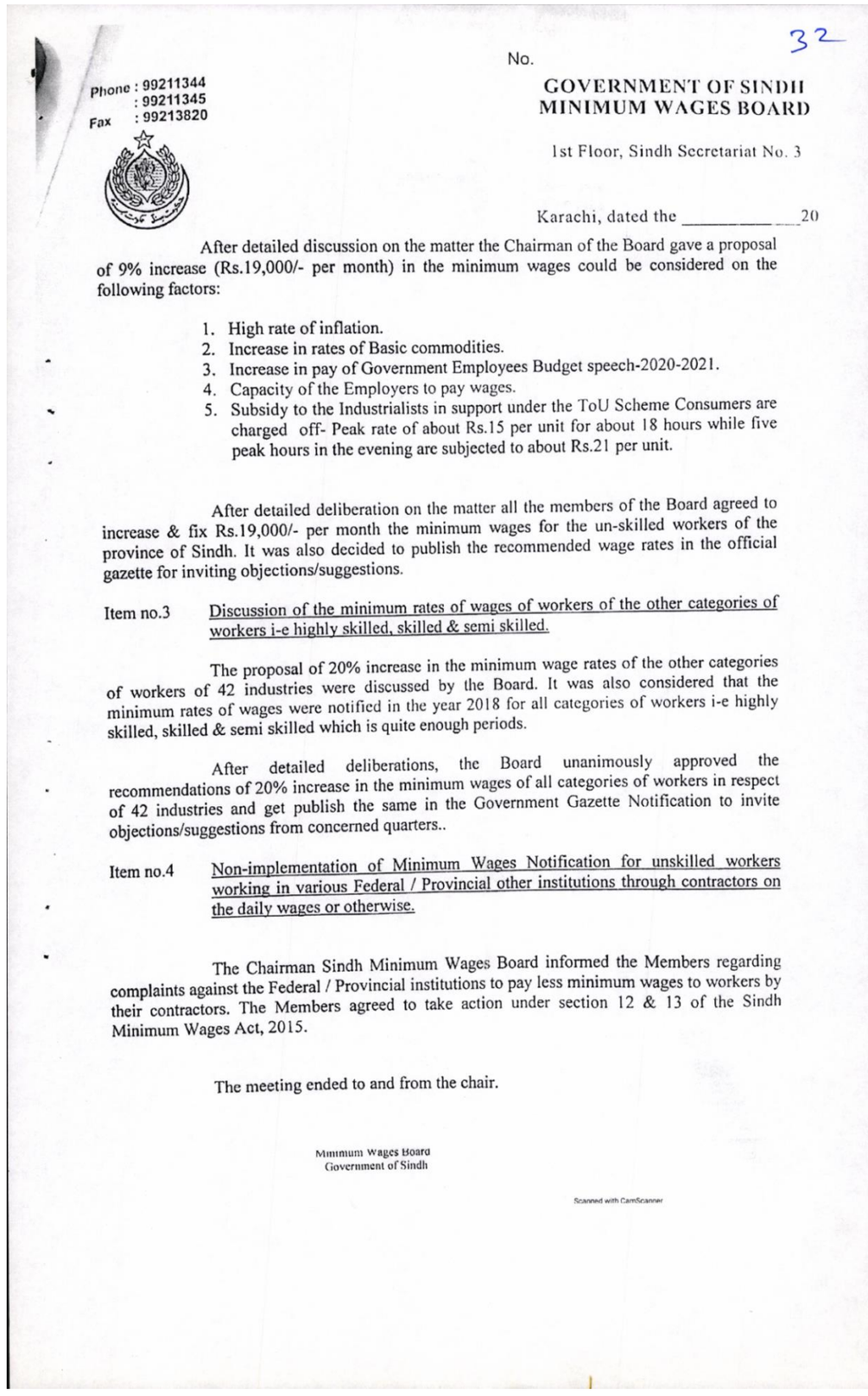

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GOVERNMENT OF SINDH
MINIMUM WAGES BOARD

1st Floor, Sindh Secretariat No. 3

Karachi, dated the _____ 20

After detailed discussion on the matter the Chairman of the Board gave a proposal of 9% increase (Rs.19,000/- per month) in the minimum wages could be considered on the following factors:

1. High rate of inflation.
2. Increase in rates of Basic commodities.
3. Increase in pay of Government Employees Budget speech-2020-2021.
4. Capacity of the Employers to pay wages.
5. Subsidy to the Industrialists in support under the ToU Scheme Consumers are charged off- Peak rate of about Rs.15 per unit for about 18 hours while five peak hours in the evening are subjected to about Rs.21 per unit.

After detailed deliberation on the matter all the members of the Board agreed to increase & fix Rs.19,000/- per month the minimum wages for the un-skilled workers of the province of Sindh. It was also decided to publish the recommended wage rates in the official gazette for inviting objections/suggestions.

Item no.3 Discussion of the minimum rates of wages of workers of the other categories of workers i-e highly skilled, skilled & semi skilled.

The proposal of 20% increase in the minimum wage rates of the other categories of workers of 42 industries were discussed by the Board. It was also considered that the minimum rates of wages were notified in the year 2018 for all categories of workers i-e highly skilled, skilled & semi skilled which is quite enough periods.

After detailed deliberations, the Board unanimously approved the recommendations of 20% increase in the minimum wages of all categories of workers in respect of 42 industries and get publish the same in the Government Gazette Notification to invite objections/suggestions from concerned quarters..

Item no.4 Non-implementation of Minimum Wages Notification for unskilled workers working in various Federal / Provincial other institutions through contractors on the daily wages or otherwise.

The Chairman Sindh Minimum Wages Board informed the Members regarding complaints against the Federal / Provincial institutions to pay less minimum wages to workers by their contractors. The Members agreed to take action under section 12 & 13 of the Sindh Minimum Wages Act, 2015.

The meeting ended to and from the chair.

Minimum Wages Board
Government of Sindh

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15. **Wherein** board agreed at Rs.19000 per month as minimum wages, **hence draft recommendations regarding fixation of minimum rates of all category workers were notified**, which speaks that "The Minimum Wages Board has decided to 20% increase in the minimum rates of wages **notified** vide Labour& Human Resources Department, Government of Sindh

notification no. **L-II-13-3/2016** dated **21st December, 2018** of all categories of workers." Such handout was released with regard to increase of wages from **Rs.17500/-** to **Rs.19000/-** per month with effect from **December2020**. Accordingly, objections were *invited* by the Official Gazette in **December17, 2020**as required under **Wages Act** as well as **Notification**(Notification regarding objections) was issued on **17thDecember2020** in terms of The Board meeting. Being relevant same is reproduced herewith: -

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The Sindh Government Gazette

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KARACHI THURSDAY DECEMBER 17, 2020

PART-I

GOVERNMENT OF SINDH
MINIMUM WAGES BOARD

Karachi dated the 2020

NOTIFICATION

NO: MWB/R&S/US/1(1)/88-2020: The following recommendations (on the basis of 9% increase on existing minimum wage rate i.e Rs.17500/-) which the Minimum Wages Board proposes to make under Section 4 of the Sindh Minimum Wages Act, 2015 in respect of adult unskilled and juvenile workers employed in industrial / commercial establishments in the Sindh Province are hereby published as required under the said Act for information of persons likely to be affected by it. Notice is hereby given that the proposed rates together with objections and suggestions with respect thereto which may be received by the Secretary Minimum Wages Board Sindh, Karachi within a period of thirty days from the date of publication of this notification in the official Gazette shall be taken into consideration by the said Board. Any objection, suggestion received after the expiry of said period of 30 days will not be considered.

Recommendations regarding fixation of minimum rates of wages for adult unskilled workers and juvenile workers employed in all the Industrial / Commercial establishments in the Province of Sindh on reference from Government of Sindh under Section 4 of the Sindh Minimum Wages Act, 2015.

I. The recommended wages shall apply to all adult unskilled and juvenile workers employed in all Industrial / Commercial establishments of any sort (registered or unregistered) located in the Province of Sindh. The minimum rates of wages shall be applicable uniformly throughout the province.

II. These recommendations shall be applicable as per provisions of the Sindh Minimum Wages Act, 2015 and shall come into force with effect from month of December, 2020 after their approval and notification by Government of Sindh under section 6 of the said Act.

III. A female worker of the category shall get the same minimum wages as allowed to a male worker of the category of such work.

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IV. The daily / weekly working hours and conditions of overtime work and work on weekly days of rest and on paid holidays, etc. in respect of the adult unskilled and juvenile workers of the given category shall be regulated by the Sindh Factories Act, 2015 (Sindh Act No.XIII of 2016), Payment of Wages Act, 2015 and other relevant Labour laws.

V. The minimum rates of wages of other categories of workers (skilled and semi skilled) employed in any industry shall in no case be less than the minimum rate of wages, now for adult unskilled and juvenile workers in the Sindh Province.

VI. The employers in all industries whether registered or un-registered shall pay to the adult unskilled and juvenile workers at the rate not less than that proposed in the schedule appended herewith.

VII. The wages will mean "wages" as defined in Section 2(xix) of the Sindh Minimum Wages Act, 2015.

VIII. The employers shall revise, where necessary the rates of remuneration for piece rated workers so as to ensure that the worker in each piece rate occupation are enabled to earn not less than Rs.91.00 per hour in any working day.

IX. The proposed minimum wages shall not be regarded as maximum rates and existing wages, higher than the minimum wages now fixed, shall not be reduced. The Employers shall, however be free to pay higher wages either unilaterally on their initiative or by collective agreement in view of any special consideration, including experience or higher cost of living to a particular locality or other reasons.

X. The recommended rate shall be applicable to time rated/whole time workers including temporary piece rated workers, ~~Government~~ unskilled workers with effect from the date of notification by the Government of Sindh, of these recommendations under section 6 of the Sindh Minimum Wages Act, 2015.

XI. The workers shall continue to enjoy such facilities like free accommodation / house-rent, water, electricity, conveyance, free medical aid, gratuity, pension, bonus, any kind of insurance, provident fund, recreation, free food / subsidized food, education, holidays and leave with pay, attendance allowance and any other benefit already provided by the employers.

XII. No variable or incentive allowance or value of welfare facilities as mentioned above shall be adjusted against the minimum wages recommended by the Board.

XIII. The schedule of proposed minimum rate of wages for adult un-skilled and juvenile workers is appended below:-

Minimum rate of wages for un-skilled workers

Schedule

S. No	Category of worker	Recommended minimum rate of wages			
		8 working hours Per day	26 working days Per month	Per working hour	Over time per working hour
1.	Adult unskilled Workers employed in Industrial / Commercial Establishments in Sindh Province.	Rs.730/-	Rs.19,000/-	Rs.91/-	Rs.182/-
2.	Juvenile Workers employed in Industrial / Commercial Establishments in Sindh Province.	Rs.730/-	Rs.19,000/-	Rs.91/-	Rs.182/-

(ZAHID HUSSAIN KHEMTIO)
Chairman
Minimum Wages Board
Government of Sindh

16. **Thereafter**, meeting was held on **16thFebruary2021** to confirm the minutes of the meeting dated **03.12.2020**, thereafter, again *meeting* of the wages Board was **held** on **22.04.2021** to *discuss* the objection raised by the **Employer** side with regard to rise in minimum wages. Minutes of meeting held on 22.04.2021, being relevant is produced herewith:-

Minutes of the meeting held on 22-04-2021 to finalize the minimum wages of un-skilled workers & other skilled categories of workers in respect of 42 Industries

A meeting of Sindh Minimum Wages Board was held on dated 22-04-2021 at 11.00 am in the Committee room of Labour & HR Department, Government of Sindh, 2nd floor, Sindh Secretariat no.2 under the chairmanship of Chairman of the Board to discuss and finalize the agenda items circulated vide letter no.MWB/R&S/US/1(1)/88-21/55 dated 14-04-2021.

Following attended the meeting:

1.	Mr. Muhammad Saleem Baloch	Chairman, Sindh Minimum Wages Board
2.	Syed Nazar Ali	Member Representing Employer (E.F.P)
3.	Mr. Khalid Junejo	Member Representing Employer (E.F.P)
4.	Ms. Zehra Akbar Khan	Member Representing Workers (HBWF)
5.	Mr. Mehboob Ali Qureshi	Member Representing Workers (APWLAF)
6.	Mr. Muhammad Asif Khatak	Member Representing Workers (MLF)
7.	Mr. Ghulfam Nabi Memon	Independent Member
8.	Syed Ahmed Shoaib	Research & Statistical Officer, SMWB

The meeting started with the recitation of the Holy Quran by the Research & Statistical Officer of the Board.

Chairman, Mr. Muhammad Saleem Baloch welcomed the members of the Board and gave a briefing on the objections raised by the Employers.

Item no.1 To discuss the objection raised by the Employers.

1. Syed Nazar Ali objected to not to raise the minimum wages because Employers can not give rise wages.
2. Mr. Khalid Junejo, agreed to raise the minimum wages but it should be effected from 1st July, 2021.
3. Ms. Zehra said that wages should be raised according to change in the dollar position.
4. Mr. Mehboob Ali Qureshi & Mr. Asif Khattak said that wages should be raised from 1st January, 2021.
5. Mr. Mehboob Ali Qureshi further said that no factory remained closed during this Covid-19 period.
6. Syed Nazar Ali said that call all the representatives from Employers side & heard them all individually before taking any decision.

7. Chairman Muhammad Saleem Baloch said that we have received many complaints from workers side too. They can not lives in such little wages. He further pointed out that according to the Sindh Minimum Wages Act, 2015 , we are not the Court to hear every complainant who have reservations in raising the minimum wages. Chairman deliberately told that rising of inflation & high prices of basic commodities affects all corners of life. We have to protect the lower class people & unskilled workers.
8. Mr. Gulfam Nabi, Independent Member said to take out the middle way which do not affect employers and workers.
9. Chairman said that we have considered all the objections raised by the Employers side and lower class is seen more affected.
10. Therefore by the majority of the Board members & Chairman unanimously decided that minimum wages of unskilled workers of the Sindh should be raised from Rs.17,500/- per month to Rs.19,000/- per month from 1st April, 2021 & forwarded the same to the Government of Sindh for adoption by notification.

DESCENDING NOTE

All members agreed to raise the minimum wages from Rs.17,500/- per month to Rs.19,000/- per month to the unskilled workers of the province but Syed Nazar Ali & Mr. Khalid Junejo, Members representing Employers said that it is better if heard all employers complaints. Both members are also agreed to raise the minimum wages from Rs.17,500/- per month to Rs.19,000/- per month with effect from 1st April, 2021.

Item no.2 To discuss the various complaints lodge by workers from Karachi SITE & interior of Sindh.

The matter already discussed by the Board with complaints of Employer side.

Chairman, Muhammad Saleem Baloch announced that minimum wages for unskilled workers of the province of Sindh is raised from Rs.17,500/- per month to Rs.19,000/- per month with effect from 1st April, 2021.

MINIMUM RATE OF WAGES FOR UNSKILLED WORKERS IN SINDH
SCHEDULE

Sr. No.	Category of Workers	Recommended Minimum Rates of Wages	
		Per day	Per month
1.	Adult worker employed in Industrial / Commercial Undertakings in Sindh Province.	Rs.731.00	Rs.19,000.00
2.	Juvenile workers employed in Industrial / Commercial Undertakings.	Rs.731.00	Rs.19,000.00

NOTE: The minimum rates of wages include all allowances including statutory allowances as notified by the Government from time to time and other non statutory allowances/payments for un-skilled adult and juvenile workers in the province of Sindh.

The Minutes *

Syed Nazar Ali
Representative of Employer Federation of Pakistan

Mr. Khalid Junejo
Member Representing Employer

Mr. Rafiq Ahmed Dossani
President Sukkur Chamber of Commerce & Industry,
Member Representing Employer

Mr. Khalil Ahmed Baloch,
Kotri Association of Trade & Industry

I m signing this but my suggestion is to increase the MW upto 20000/- PKR

Mr. Liaquat Ali Shahi
President, State Bank Democratic Workers Federal Pakistan
Member Representing Employees

Ms. Zehra Akbar Khan
President, Home Based Workers Federation
Member Representing Employees

Mr. Mehboob Ali Qureshi,
Member Representing Employees

Mr. Muhammad Asif Khatak
Member Representing Employees

Mr. Gulfam Nabi Memon
Independent Member
Sindh Minimum Wages Board

Mrs. Shaheen Nisar Mangi
Secretary

(Muhammad Saleem Baloch)
Chairman
Minimum Wages Board
Government of Sindh

* do not reflect the discussion and viewpoint made by the representatives of EFP. Kindly reflecting our views as attached.

17. **Learned** counsel for the intervener while *supporting* the impugned **Notification** contended that the Sindh Minimum Wages Act **2015**, being a **beneficial** legislation for the welfare of the labourers/employees may be *interpreted* accordingly. He, however, while *referring* **Section6 (5)** of the said **Act**, also maintained that this matter could be remanded to the Wages Board for *reconsideration*.

18. **We** would take no *exception* to the fact that *controversy*, involved in these captioned petition (s) relate to fixation of ***'the minimum wage'*** for a **particular** class of the people who, we shall *insist*, is not *considered* to be falling within ***'the middle class'*** even, but was/is falling in that category which is living their ***'lives'*** below the **poverty** line. These ***'hands'*** are always great in number which, if pleasingly moving, shall always push the wheels of the ***economy*** and ***development*** with more power than those showing pushing without any *real* effort. No known ***'Religion'*** or the ***'Constitution'*** on ***'earth'*** creates any discrimination among the people because of their caste, colour, creed and status, when the question relating to the ***fundamental rights*** of an individual comes for an ***'answer'***. Thus, whenever any ***'question'*** relating to the fundamental rights of an individual or particular class of the people is raised, this fact shall always be kept in view else any *composition* of *beautiful* words shall fail towards its conclusion.

19. Keeping said in view, we shall insist that there had/has always been a **'need'** for fixing of the **'minimum wages'** for a worker / labourer which, *normally,* remained / remains a matter of debate for all ***'systems'*** of the civil society (ies). The existence of such ***debate*** or room for such ***'debate'*** was / is always sufficient to *safely* conclude, that this *directly* has its own effects and *consequences* not only upon the **particular** class of the people, but also upon the ***'economy'*** as well ***'development'*** of the Society (ies). Here, referral to a ***'Hadis'***, for proving that a *just, fair* and *equitable* wage is the **'right'** of the worker / labourer, is made hereunder:-

قَالَ النَّبِيّ ﷺ " قَالَ اللَّهُ تَعَالَى ثَلاَثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ رَجُلٌ أَعْطَى بِي ثُمَّ غَدَرَ، وَرَجُلٌ بَاعَ حُرًّا فَأَكَلَ ثَمَنَهُ، وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا فَاسْتَوْفَى مِنْهُ وَلَمْ يُعْطِهِ أَجْرَهُ "

(صحيح البخاري)

*"The **Prophet(ﷺ)** said, "**Allah** said, 'I will be an opponent to three types of people on the Day of Resurrection: -1. One who makes a covenant in My Name, but proves treacherous; -2. One who sells a free person and eats his price; and -3. One who employs a laborer and takes full work from him **but does not pay him for his labour**."(Abu Hurayrah, Sahih al-Bukhari Hadith No.3.430)*

20. The gravity of disliking for those who take **'full work'** but do not pay **'due'** was/is sufficient. The **'due labour amount'** can't be interpreted to any other meaning except what satisfies the term (s) ***'fair; just;*** and ***equitable*** *least* to meet the daily necessities. Since, there can be no denial to the fact that ***'fair'*** and ***'just'*** can't be confined to a fixed amount because these shall remain changing with ***'inflation'*** therefore, it shall always be subject to present (existing) ***'inflation'*** in basic need (s) without which the term ***'life'*** is incomplete. Here, it is conducive to add that the term ***'life',*** as guaranteed by the Constitution, shall not find its true meaning if the man / woman is compelled to live a life without possibility of chances of ***'progress'; 'peace';*** and ***'welfare'*** as was / is annunciated in the case of **Arshad Mehmood v. Govt. of Punjab** *(*PLD 2005 SC 193) as:-

> *'It is to be born in mind that this Court has held that the Constitution is a living document which portrays the aspiration and genius of the people and aims at creating progress, peace, **welfare,** amity among the citizens, and the nations abroad. It is the basic structure on which the entire edifice is built, therefore, it has to be interpreted in a manner to keep it alive and blossom under all circumstances and in every situation. See. Government of Balochistan through Additional Chief Secretary v. Azizullah Memon & 16 others (PLD 1993 SC 341)*

20. **The word** *'life'* used in this Article of the Constitution has been defined in the case of Shehla Zia v. WAPDA (PLD 1994 SC 693), according to which 'life' includes all such amenities and facilities **which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally**'. It is further explained therein that the word 'life' in the Constitution has not been used in a limited manner. **A wide meaning should be given to enable a man not only to sustain life but to enjoy it**. Moreover, under the objective

resolution which is a part of the Constitution, it is the duty of legislature to **ensure an egalitarian society, based on Islamic concept of fair play and social justice, as held in the case of Shoukat Ali v. Government of Pakistan (PLD 1997 SC 342)**.

21. *Legally,* no work is big or small unless the same was/is not restricted by the law, *therefore*, mere "**nature**" of the job/work, we shall insist, can't be of any consideration for hurting the ***'dignity'*** and ***'honour'*** of the man or his *family*.In the last sermon, the Holy Prophet Hazrat Muhammad (ﷺ) sealed the fact as:-

> "*A white has no superiority over black, nor a Black has any superiority over White except by Piety and Good Action.*"

22. Even, our Constitution also **affirms** this fact in **Article-25** of the Constitution which reads as:-

> "***Equality of citizens:***
>
> ***25.*** ***(1)*** *All citizens are equal before law and entitled to equal protection of:*
>
> ***(2)*** *There shall be no discrimination on the basis of sex alone;*
>
> ***(3)*** *Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*"

23. We would add that despite above *legal* position, the *unfortunate* and *undeniable* fact is that *normally,* the **'master'** was / is always in a commanding position to control his servant (s) in all matters including determining the ***'wage'*** but since a ***civil society*** recognizes no such authority of the **'master'** requires every **'master'** to behave in such a way so that his all acts and omissions could help in ***rules of law and order*** therefore, his such authority as **'master'** was / is always subject to the policies of the **State/Government** in all matters, including rights of the **'labourer / worker'.** Therefore, at all material times, it was / is the **'need'** of the time that there should be a fixed criterion of **minimum wage** which, we shall add, is applied in all countries at their own level (s) so as to bring an assurance to what the **'worker / labourer'** shall receive against the **labour / work** which he / she shall perform. Since,

this was / is, as discussed, subject to *inflation,* hence the **'minimum wage amount'** has no **universal application,** but varies *materially* because of circumstances and existing position of that particular area (Country/State) etc. One seeks *employment* so that one can attain a **'decent'** or **dignified** standard of *living*. The **wage** or **income** that one obtains from one's work is therefore, what enables one to *achieve* a **fair** standard of *living*. One seeks a **fair wage** both to fulfill one's basic needs and to feel *reassured* that one receives a fair portion of the wealth that one **works** to generate for the society. The Society, in its turn, feels that it has a duty to ensure a fair **wage** to every worker, to ward off starvation and poverty, to promote the **growth** of the human resources, and to ensure social justice without which *continuous* threats to law and order may **undermine** economic progress. They have to come from the **economic viability** and **profit** of undertakings. So those who are concerned with their capacity to pay the wages that are considered to be fair both in terms of individual needs and the social responsibility to citizens.

24. The history, *too,* shows that there had been effort (s) on the subject which, *even,* had / has been **part** of our **Constitution,** whereby it is the responsibility of the State to create an **economic** order in which every citizen finds **employment** and receives a '**fair wage**'. One of the earliest decisions taken by the Government after partition was to set up a **Committee** to **define** a **fair wage**, and indicate the economic and legal means for ensuring a fair wage to every employed citizen. An examination of this question established the integral relation between the **quantum** of the **fair wage** and the **capacity** to pay the **wage**, and the need to balance and constantly upgrade both to ensure a fair standard of life, social security and social justice. **Ever** since then, many attempts have been made to define the concept of a **fair** wage, a

minimum wage, a **floor** wage, and a **living wage**. One can also try to *identify* how far the **capacity** to pay can be *allowed* to **determine** the **minimum** wage, and at what point the capacity to **pay** should be taken into **account** and should be regarded as the main **determinant**. The meandering Progress that we have been made is *reflected* in the reports of The Committees, Conferences, Commissions, and the Judgments of the Hon'ble Supreme Court of both India & Pakistan. They can also be *traced* to the **Fundamental Rights** and Principles specified in our **Constitution** and the International Conventions we have accepted or ratified. One can therefore, begin *observations* with a *review* of the thinking and the legislation on the wages in our country, and an ideas and attempts at making wage differentials more equitable.

25. The above discussion and back-ground was / is sufficient in *safely* concluding that ***'minimum wages'*** must ensure a ***'balance'*** between the *two* i.e (i) ***obligation of the employer to pay a fair wage without prejudice to his right of earning a reasonable profit*** and that of ***(ii) right of the labourer / worker to live a dignified life through minimum wage amount.*** Since, both the ends i.e ***'employer'*** and ***'worker/ labourer'*** were / are subject to no restrictions or limitations, but those chalked out by the **State/ Government** therefore, they *both* are to be believed to be subordinate to the ***State/Government.*** The position, being so, help in concluding that it is the **State / Government** which has to introduce a **mechanism** for bringing the required ***'balance'*** in the relations of the '**employer'** and **'worker'.** The '***mechanism,*** we shall add, was / is always subject to bring a coordination and confidence among these *two* on question of ***'minimum wage'*** which, none can believe to be achieved, if two do not come on *table* for discussion whereby the one, required to play a role of *bridge,* shall explain all

circumstances required to be appreciated by both. We would, however, add that the **role** of the ***Government / State*** shall always be **decisive** because *normally* it is *always* hard to **swallow** anything hurting / itching, even if, in reality the same is **'balancing'** *justly* and *fairly*. One of us (Mr. Justice Adnan-ul-Karim Memon), while dealing with entirely different issue, *did* touch such aspect in CP No.D-852 of 2019, the operative part whereof reads as:-

> *"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."*

26. These have been the reasons because of which the ***Government / State*** was / is, under an undeniable obligation to ensure that things, drawn for benefits, must be enforced in true sense i.e serving the purpose and objective thereof which, *too,* by assuring balance between two by framing law (s).

27. **Having** said so, it is, *now,* time to address the ***'mechanism'***, so framed / chalked out by the Government / State. **Needless** to add that we are very much aware that such responsibility, earlier, was of the ***Federal subject*** but after the 18th Amendment it is, now, become the provincial subject. All the provinces, at their own levels, are very much competent, within defined

legislation (s), to declare / determine the **'minimum wages'.** Since, the subject matter relates to **Sindh Province,** therefore, we shall prefer confining ourselves to such *legislation* only i.e "Sindh Minimum Wages Act 2015". Hereinafter, be referred to as **'the Act'.**

28. **Before** going to address the ***'mechanism'***, provided by the Act, at the outset, it would be conducive to refer ***'preamble'*** thereof which reads as:-

> **"*WHEREAS*** *it is expedient* ***to provide for regulation of minimum rates of wages*** *and various allowances for different categories of workers employed in certain industrial and commercial undertakings and establishments and for matters connected therewith and ancillary thereto;"*

29. The above preamble shows that enactment of the Act was / is to regulate the minimum rates of wages and other allowances of different categories of workers, employed in industrial; commercial undertakings and in establishment. The ordinary meaning of the ***'regulate'*** is :-

> "*Control or maintain the rate or speed of (a machine or process) so that it operates properly."*
>
> *"control (something, especially a business activity) by means of rules and regulations."(give reference if available)*

30. Thus, object of the *preamble* needs not be *discussed* any further because the purpose of **the Act** was / is to control / maintain a balance, thereby making it assured that relations between the *two* could operate / function properly. Nonetheless the word ***'regulate'***, was / is to give its due and *ordinary* meaning, whenever things, arise of **the Act**, for *discussion* and interpretation respectively.

31. While proceeding further, it is now conducive to refer definition of minimum wages, as provided under **clause XV** of **section2 (1)** of the Sindh Minimum Wages Act 2015, which stipulates that:-

> *"(xv) "minimum wages" means minimum rates of wages announced, declared, adopted or notified* ***by Government from time to time*** *which shall include the basic pay and statutory allowances that is to say cost of living allowance, dearness allowance and adhoc relief."*

32. The above definition, *prima facie,* leaves noting *ambiguous,* that it ought to be the ***Government*** alone which shall be **competent** to '**announce'**; '**declare'**, **adopt',** and notify the ***'minimum wages'***. The plain definition of the above *term* leaves no room for any other authority to play a role as ***'competent authority'*** for such declaration / announcement, therefore, this shall always be kept in view while making discussion in relation to such ***'subject'.*** The term ***'Government'*** is itself defined by the Act, per Section 2(1)(xi) as:-

> **Section 2(1)** "In this Act, unless there is anything repugnant in the subject or context -
>
> (xi) "Government" means the Government of the Sindh;

33. The bare perusal of **the Act** shows the *mechanism,* so envisaged by the Government for bringing the desired balance without prejudice to its authority, whereby per **Section 3** of the **Act**, the ***'Minimum Wages Board'*** was / is to be *constituted*. The **Section 3**, being relevant, is referred hereunder:-

> **(1)** As soon as may be after the commencement of this Act, **Government shall constitute a Minimum Wages Board** consisting of the following, namely:-
>
> **(a)** The Chairperson;
> **(b)** one member to represent the employers;
> **(c)** one member to represent the workers;
> **(d)** one member to represent the employers connected with the industry or trade concerned; and
> **(e)** one member to represent the workers engaged in such industry or trade.
>
> **(2) The Chairperson and the members shall be appointed by Government**.

> (3). The Chairperson shall be appointed from persons with **adequate knowledge of industrial, labour and economic conditions of the Province**, who is not connected **with any industry or associated with any employers' or workers' organization**.
>
> (4) The member to represent the employers and the member to represent the workers under sub-section (1), shall be appointed after considering nominations, if any, of such organizations **as Government considers to be representative organizations of such employers and workers respectively**.
>
> (5) The member to represent the employers connected with and the workers engaged in the industry concerned, shall be appointed after considering nominations, if any, of such organizations **as Government considers to be representative organizations of such employers and workers respectively**.
>
> (6) The term of office of the Chairperson and the members, the manner of filling casual vacancies therein, the appointment of its committees, if any, the procedure and conduct of the meetings of the Board and its committees and all matters connected therewith, including the fees and allowances to be paid for attending such meetings, and other expenses, including expenses for the services of experts and advisers obtained by the Board, shall be such as may be prescribed."

34. *Prima facie,* the said provision makes it quite clear that the ***Minimum Wages Board*** shall not find its true meaning if the representation (s) of all the stake-holder is not there. Hence, it can *safely* be concluded that the Government while providing mechanism for achieving *balance* did appreciate the need of representation (s) of all stake-holders.

35. Now, what is to be seen is the role of the ***Minimum Wages Board*** which is provided in **Section** (s) **4** to **6** of the **Act**, the same read as:-

> 4. (1) The Board shall, **upon a reference made to it by Government**, **recommend to Government**, after such enquiry as the Board may deem fit, the minimum rates of wages for adult, skilled and unskilled workers and juvenile and adolescent workers **employed in industrial establishments or commercial establishments or both**.

36. The subsection **(1)** of Section**-4** of the **Act**, *supra,* makes it quite clear that the *responsibility* of the Government continues in fixation of the ***minimum wages*** for which it (Government) has to make a **reference**. It shall be the

reference by the **Government,** which shall bring the role of the ***Board*** into play, which is not **limited** to a decision in ***'office'*** but requires an ***'enquiry'*** which the ***Board*** finds proper and **adequate**. The use of the phrase ***'may deem fit'*** was/is indicative that it is the *prerogative* of the ***Board*** to adopt any manner of enquiry. **However**, it is time to add that since representations of all the stake-holders have been *emphasized* and purpose and objective whereof is nothing, but to ensure a balance between the *two* who shall face *consequences* of conclusion of such ***enquiry*** therefore, the ***Board*** was / is always under legal and moral obligation to do a *little* more than discussion by:-

i) appreciating the *inflation,* existing at such time, for fixing minimum rate of wages;

ii) taking into confidence the worker of the *least* amount (wages) which could satisfy the term ***'life',*** as defined at number of times;

iii) taking into consideration the output of labour for the employers' benefit / profit;

iv) taking into consideration what the employers are to bear to run their establishment (s);

We shall not feel hesitant in adding that though the prerogative of choosing manner of ***enquiry*** was / is with the **Board** but this shall not exempt them from detailing the manner of ***'enquiry'*** while submitting recommendation (s), so that all, not limited to stake-holders alone, can feel satisfy that there had not only been proper representation but consideration of objection (s)/ suggestions; proposal (s) as well reasons for conclusion, so arrived by the ***Board.***

37. Suffice it to say that since the effect of fixation of ***minimum rate of wages*** shall govern the ***life*** of the worker which is the *ultimate* aim and object of such legislation, therefore, an ***edge*** shall always be given in favour of the workers while fixing the ***minimum rate of the wages*** because, again insist, it

shall have its effects upon the term ***'life'*** which, otherwise, was / is assured / guaranteed by the Constitution; to which not only the ***Board*** but also the Government is subordinate. Whereas the subsection **(2)** of Section-**4** of the Act reads as:-

> "In its recommendations under sub-section (1), the Board shall indicate, whether the ***minimum rates of wages should be adopted uniformly*** throughout the Province or with such local variations and for such localities as specified therein."

38. The subsection **(2)** of Section **4** of the **Act** also *affirms* the above discussed position that all effort (s) are to be made to bring ***uniformity*** which, again insisted, can't be *achieved* if efforts are not made to bring all *representations* on one ***page*** which, *too,* with reasons and defining the rights and obligation (s) of all.

> "5. (1) Where in respect of any particular industry for which no adequate machinery exists for effective regulation of wages, **Government is of the opinion that**, having regard to the wages of the workers employed in the undertakings engaged in such industry, it is expedient to fix the minimum rates of wages of such workers, **it may direct the Board to recommend, after such enquiry as the Board may deem fit, the minimum rates of wages either for all such workers or for such of them as are specified in the direction.**
>
> (2) In pursuance of a direction under sub-section (1), **the Board may recommend minimum rates of wages for all classes of workers, including skilled and unskilled**, in any grade and in such recommendation, may specify –
>
> (a) the minimum rates of wages for –
>
> (i) time work;
> (ii) piece work;
> (iii) overtime work; and
> (iv) work on the weekly day of rest and for paid holidays;
>
> (b) the minimum time rates for workers employed on piece work ***so as to guarantee minimum wages on a time basis for such workers***.
>
> (3) The time rates recommended by the Board may be on hourly, daily, weekly or monthly basis.
>
> (4) The rates recommended under this section for overtime work and work on paid holidays shall not be less **than the minimum**

> **rates fixed for such work under any other law for the time being in force**.

39. The section 5 of the Act provides that the ***Board*** after resorting to detailed criterion may **'recommend'** minimum rates of wages. Here, it is worth hammering that deliberate use of word ***'recommend'*** needs to be given its due meaning which is *ordinarily* defined as:-

> "**to suggest that someone or something** *would be good or suitable for particular job or purpose, or* **to suggest t***hat a particular action should be done."*

40. Such recommendation, we shall add, can't be given the status of ***'binding decision'*** or an ***'award'***, so is passed by an authority within competence to pass such an **'award'.** The **'award'**, per Black's Law Dictionary means:-

> "A final judgment or decision, esp. one by an arbitrator or by a jury assessing damages."

41. In the case, so relied by learned counsel for the petitioners, i.e ***All Pakistan Newspapers Society & Ors v. Federation of Pakistan & Ors*** PLD 2012 SC 1, wherein the matter was that of competence of the ***Wages Board***, under News Employees (Conditions of Service) Act (LVIII of 1973), had passed the ***'Award'*** for which it was competent hence referral to such case, we are of the clear view, is not of any help for the petitioners in instant issue. The relevant portion whereof reads as:-

> "41. The essential difference between their structure and that of statutory wage authorities is that the representative members of the latter are chosen from within the industry concerned, whereas employers and workers on arbitration tribunals come from outside the industry whose disputes they have to resolve; if in any case technical knowledge of a particular industry is required, this is normally supplied by the help of assessors who take no part in the final Award. This difference between the constitution of wage boards and that of arbitration tribunals clearly implies a corresponding distinction between the legislative function of the former and the judicial function of the latter. The wage board drafts law for its own industry, whereas the arbitration court gives judgment on matters

> submitted by others. The choice of industrial arbitrators unconnected with the industries the merits of whose claims they must pledge, is evidently intended as a guarantee that they, like other judges, will be free from bias arising from personal interest. "Schwartz in his book "Administrative Law", says, "If a particular function is termed "legislative" or "rulemaking" rather than "judicial" or "adjudication", **it may have substantial effects upon the parties concerned**. If the function is treated as legislative in nature, there is no right to notice and hearing unless a statute expressly requires them. If a hearing is held in accordance with a statutory requirement, it normally need not be a formal one…. … The characterization of an administrative act as legislative instead of judicial is thus of great significance… … … … The key factor in the Holmes analysis is time: **a rule prescribes future patterns of conduct**; **a decision determines liabilities upon the basis of present or past facts**."

42. **The Act** provides procedure for the Board in recommending the ***minimum wages rate*** while it is *only* the Government to declare the same or even was/ is competent to take **exceptions** (see Section **6(1)(a)** of the **Act**) which, *even,* includes returning the same back to the Board for re-examination (see Section **6(b)** of the **Act**), therefore, we are of the view that the ***'recommendation'*** of the Board, can't be termed as ***binding*** upon the competent authority which, per law, is competent to make such declaration**. In view** of above legal position, we would take no *exception* to the legal position that ***'fixing of minimum wages'*** is a legislative act and will reiterate that the competence thereof was / is lying with the **Government** and not with the ***Board.*** Things shall become more clear from section **6** of the **Act** which reads as:-

> 6. (1) Upon receipt of a recommendation of the Board under section 4 or section 5, **Government may** –
>
> > (a) by notification in the official Gazette, declare that the minimum rates of wages **recommended by the Board** for the various workers shall, subject to such exceptions as may be specified in the notification, **be the minimum rates of wages, for such workers**; or
> >
> > (b) if it considers that the recommendation is not, **in any respect**, **equitable to the employers or the workers**, within thirty days of such receipt, refer it back to the Board for reconsideration with such comments thereon and giving such information relating thereto **as Government may deem fit to make or give**.

> (2) Where a recommendation is referred back to the Board under clause (b) of sub-section (1), the Board shall reconsider it after taking into account the comments made and information given by Government and, **if necessary, shall hold further enquiry and submit to Government** –
>
> (a) a revised recommendation; or
>
> (b) if it considers that no revision or change in the
>
> (3) Upon receipt of the recommendation of the Board under sub section (2), Government may, by notification in the official Gazette, declare that the minimum rates of wages recommended under that subsection by the Board for various workers shall, **subject to such modifications and exceptions as may be specified in the notification**, **be the minimum rates of wages for such workers.**
>
> (4) Unless any date is specified for the purpose in the notification under sub-section (1) or sub-section (3), the declaration thereunder shall take effect on the date of publication of such notification.
>
> (5) Where after the publication of a notification under subsection (1) or sub-section (3) or after the minimum rates of wages declared thereunder have taken effect, it comes to the notice of Government that there is a mistake in the minimum rates of wages so declared, or that any such rate is inequitable to the employers or the workers, **it may refer the matter to the Board and any such reference shall be deemed to be a reference under sub-section (2)**.
>
> (6) The minimum rates of wages shall not, except with the previous approval in writing of Government, be declared under subsection (1) or sub-section (3) in respect of persons **employed in any undertaking under the management or control of the Federal Government**, including those employed by a Port Authority.
>
> (7) The minimum rates of wages declared under this section shall be final and **shall not in any manner be questioned by any person in any Court or before any competent authority**.

43. The above provision and subsection (s) thereof, *prima facie,* makes it clear that it shall be the ***Government*** alone to **agree** and **disagree** with such ***'recommendation'*** and even after such declaration / notification, if the government finds that "***any such rate is inequitable to the employers or the workers***" the government can *competently* refer the matter back to the ***Board*** for re-examination of the ***'question of inequitable of such fixed amount not only for workers but also for employer(s) too'***. This, *prima facie,* shows that question of any grievance, even after publication of notification, can well be redressed by approaching the Government within meaning of said subsection. Here, it is worth to add that such referral back to the ***Board*** shall, *ipso facto,* would not operate as suspension of the declared / notified ***minimum wages rate.***

44. **The** above discussion makes it quite clear and obvious that the **mechanism**, so provided by the **Act**, is reasonable and appears to be worked well so as to achieve the required ***balance*** between the two i.e ***'employers* and *workers'*** which does not come to an end even by **publication** of the **Notification**. In short, the responsibility continues upon the Provincial Government for fixing minimum rates of wages as well examining ***inadequacy*** or ***otherwise*** even after publication (enforcement of ***minimum wages rate)***, so was affirmed in the case of **Khulna Textile Mills Ltd. V. Govt. of East Pak.** (PLD 1967 Dacca 229), so relied upon by the counsel for the petitioner(s), in following words at relevant Page-237 as:-

> "Reading the Ordinance as a whole, particularly the provisions of the Ordinance quoted above **it is patent that the Provincial Government has primarily been made responsible for fixing minimum rates of wages in certain industrial undertakings** and **it is the Provincial Government that takes cognizance of circumstances requiring fixation of minimum rates of wages and then sets the ball rolling by either referring the question of fixation of minimum rates of wages to the Minimum Wages Board under section 4 of the Ordinance or directing the Board under section 5 thereof to make recommendations on the said rates of wages**. ….

45. **Thus**, we are not inclined to hold that the Government was / is left with no option, but to *blindly* accept the recommendation(s) of the ***Board*** else the provision of Section 6(3) would not have *deliberately* added with :-

> (3) Upon receipt of the recommendation of the Board under sub section (2), Government **may**, by notification in the official Gazette, declare that the minimum rates of wages **recommended** under that subsection by the Board for various workers shall, **subject to such modifications and exceptions as may be specified in the notification**, be the minimum rates of wages for such workers.**"**

46. Nor the Government could be held responsible for obligation / duty in fixing the ***minimum wages,*** as was / is held in referred case as well in the Act *itself.* Here, it is worth adding that even the case of **Rana Muhammad Tajammal Hussain v. Rana Shaukat Mahmood** (PLD 2007 SC 277), referred by the learned counsel for the petitioners in support to their plea of use of word ***'may'*** for Board as ***'shall'*** is also of no help because even if it is taken as ***'shall'*** yet the deliberate use of the word ***'recommendation'*** continues holding

field. Be that as it may, such taking of word ***'may'*** as ***'shall'*** does not cause any prejudice to **authority** of the **Government**, as provided in subsequent subsection (s) of the **Section-6,** therefore, even the key, provided in said case as:-

> "8. it is the duty of the Courts to get the real intention of the Legislature by carefully attending to the every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as whole…"

allows us to say that ***Board*** was / is only to **recommend** the minimum **wages** rate to the **Government** while it is the government which is responsible for such duty / obligation.

47. We would also add that such obligation / duty can't be termed as a mere matter of ***policy,*** but was / is a legislation with *sole* **aim** and **object** to enforce its due purpose and objective, as detailed above which includes organizing the unorganized workers. In such like matters, we would insist, this Court while exercising powers of judicial review will not scrutinize the policy decisions or to substitute its own opinion in such matters the Court (s). Guidance is taken from the case of **Wattan Party v. Federation of Pakistan** PLD 2006 SC 697 (Rel. P-737), relied by counsel for petitioner, as:-

> "56. All the above provisions have been tested by us at the touchstone of Article 8 of the Constitution in the light of the arguments put forward by the parties' counsel. But we fail to find any provision in the Ordinance 2000 to be contrary to any of the fundamental rights. Besides it has got constitutional protection under Article 270-AA and adhering to the principles laid down in Mehmood Khan Achakzai v. Federation of Pakistan (PLD 1997 SC 426) it was promulgated competently by the Chief Executive and it has not been shown to us that either it has been framed by an incompetent authority, **or that it suffers from mala fides and lack of jurisdiction**. In as such much in the post revival period of the Constitution when the Court's powers were restored for judicial review to examine the legislation at the touchstone of the Constitution nothing has been identified or pointed out lacking or against the mandate of the Constitution as has been discussed hereinabove. Therefore, it is held that the Privatization Commission Ordinance, (LII) of 2000 is not ultra vires of the Constitution.
>
> '57. The next question is in respect of the judicial review of the policies of the government. **It is well settled that normally in exercise of the powers of judicial review this Court will not scrutinize the policy decisions or to substitute its own opinion in such matters as held in Messrs Elahi Cotton Mills ibid**. Likewise in

> the case of Balco Employee ibid, the Supreme Court of India observed as follows:--
>
> "Process of disinvestments is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognized that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies… "

48. It is pertinent to mention here that none can take an exception to the fact that question of ***minimum wages***, since directly affects the rights of the workers which, as discussed above includes **fundamental** rights within meaning of **Article 9** of the **Constitution**, hence can't be left hanging for indefinite period in the name of the technicalities or procedural requirements *alone.* The Government may take exceptions to such procedural *formalities* till such exceptions are claimed to be *bona fide,* particularly when such delay or compliance of procedural formalities was / is likely to cause serious prejudice to fundamental rights of a particular class or appears to be operating as ***neck-breaker. The g***uidance can well be taken from the case of **Abdul KarimNausherwani v. State** (2015 SCMR 397) wherein it has been observed as:-

> '8. True that elected governments are required to follow the policy once formulated by it for the benefit of public at large but policy cannot be placed on high pedestal than a binding law more so, such policies are framed and formulated so that the public at large get the benefit of the same. If at any point of time the policy becomes neck breaker or absolute hurdle to manage the crises like situation where public at large is the victim of the policy in a newly emerged situation, **then such government has a right and privilege to make a departure from the police and even to suitably amend the same**. For this very reason if any departure has been made from the policy then laid down, it would not attract penal provision."

49. **It is matter** of record that process for declaring ***'minimum wages rate'*** was **initiated** in the year **2019** which remained pending determination till ***'2021'*** hence it was / is quite safe to say that during such period the *misery* of the workers was continuing. Thus, during such period or *time taking* process, the workers were left with no option but to continue under *prerogative* of the establishment or the middle man (contractor) regarding ***wages***, to be determined by the establishment or the middle man which, *too, at* their choice. **Needless** to add that need of money for bringing the bread for

children or family is such a compelling threat for the man that he (man/head of family) shall go to any extent which is not limited to work at miserable amount. Such *misery,* we shall **emphasis**, can't be allowed to continue in the name of completion of formalities *alone* or allow relax to the Government towards its *mandatory* obligation in not only fixing a ***balanced*** minimum wages, but also enforcement thereof without any break in continuity of such obligation/duty. Since, the mechanism, so provided in the Act for ***enquiry*** before making **recommendation**, is reasonable therefore, *normally* the procedural requirement be not ignored but be followed but where things, involving fundamental rights, are delaying (kept hanging) in name of procedural formalities, then the government, in discharge of its mandatory obligation, may take exception. We make it clear that this shall always be taken as an *exception* which (*exception*) is legally not available to be given as example because exception is always for exception (s), therefore, at all material times the Government shall continue assuring timely declaration of the notification of ***minimum wages rate*** which, too, in accordance with procedure, provided by **the Act** *itself.* It is worth adding that it also surfaced that post of "Chairperson" remained vacant for considerable which, we shall add, is not a good sign, particularly when the question of ***'wages'*** was / is always important for both ***employer*** and ***employee.*** The Government, accordingly, in future, shall ensure complete composition of the ***Board.***

50. Now, we would take up the plea of learned counsel for the petitioners regarding ***'discrimination'*** for which reliance is placed on the case (s) of **Government of Balochistan through Additional Chief Secretary v. Azizullah Memon & 16 others (**PLD 1993 SC 341) and **I.A Sharwani & Ors v. Govt. of Pakistan & Ors (**1991 SC 1041), it would suffice to say that we have already insisted that a ***'balance'*** was / is to be maintained not only by the ***Board*** while making the ***recommendation,*** but also by the Government while declaring / fixing minimum wages which, *plea* for both the workers and the employers, is available even after declaration of the ***minimum wages rate*** by the Government. We would also add that whenever it is matter of giving and taking by *two,* it is always hard to bring them *both* on one page which, *normally,* was / is cause of delay, therefore, the role of the ***Authority*** (Government in instant issue) can't be denied as that of ***Arbitrator,*** because it

shall *only* be the Government *alone* which shall be responsible for starvation / deprival of its ***citizen (s)*** of basic need (s), completing ***life.***

51. In view of what has been discussed above, we are of the clear view that this shall not be appropriate to allow reprocess of the matter of fixation of ***minimum wages rate*** from its beginning because the same shall be at the cost of ***misery*** of the workers / labourers, therefore, the Government shall, *immediately,* publish the notification as required in term of the notification *itself* as :-

> "II. These minimum rates of wages shall be applicable as per provisions of the Sindh Minimum Wages Act, 2015 and shall come into force with effect from 01.07.2021, **after approval and Notification to be issued by Government of Sindh, under Section 6 of the said Act**."

52. **Needless** to add that application thereof, however, shall be from the date of publication thereof. It is, however, add that since the grievance of the ***employer (s)*** has come on record therefore, the government regardless of enforcement of the notification, shall treat the matter as falling within meaning of **Section 6(5) (1)** of the **Act** which reads as:-

> "(5) Where after the publication of a notification under subsection (1) or sub-section (3) or after the minimum rates of wages declared thereunder have taken effect, it comes to the notice of Government that **there is a mistake** in the minimum rates of wages so declared, or that any such rate is **inequitable to the employers** or **the workers**, it may refer the matter to the Board and any such reference shall be deemed to be a reference under sub-section (2).

53. This **process** shall not take time more than a **week** from the **publication** of the **Notification** in the official gazette, wherefrom the notified minimum wages rate is to be applicable. The Government, nevertheless, shall also give reasons for increase of the minimum wages rate from that as was recommended by the ***Board.*** The ***Board*** shall ensure completion of the process not beyond a period of ***two months*** and shall submit the *recommendation* to the **Government** which, without any unnecessary delay, shall ensure **compliance** of **Section 6(3)** of the Act. The representation (s) of either sides and all stakeholders, nonetheless, shall ensure their participation coupled with presentation of their all *plea (s)* which shall be considered by the ***Board*** while examining the reference by the Government.

54. **While** parting, it is necessary to add that since the Government while disagreeing with the recommendation has declared the ***minimum wages*** as Rs.25,000/- per month which, *too,* from 01.7.2021 therefore, the Government can't take an exception to such declaration of ***'minimum wages rate'*** while employing the "***daily wages worker***" or those working on "***contingency".*** Accordingly, the Government shall ensure payment of such ***minimum wages amount*** to all such workers from **01.07.2021** till the time it (government) reviews such ***declaration.***

J U D G E

Mr. Adnan-ul-Karim Memon. I have had the benefit of going through the judgment, rendered by my learned senior brother Justice Salahuddin Panhwar. I am in agreement with the conclusion but since the subject is of importance therefore I intend to add a little further.

2. The important question involved in the instant petition, which requires determination that whether the Government of Sindh was/is competent to fix/enhance the Minimum Wages on its own accord or bound by the recommendation of the Minimum Wages Board, constituted under Section 3 of the Sindh Minimum Wages Act, 2015.

3. To appreciate the aforesaid legal proposition, it is essential to have a glance at the different kinds of wages. Primarily there are three kinds of Wages i.e. Living Wage, Minimum Wage, and Fair Wage. Living Wage represents a standard of living that provides not merely for a bare physical subsistence but the maintenance of health and decency the measure of economic comfort and some insurance against the more important misfortunes. Minimum Wage must provide not merely for the bare sustenance of life, but the preservation of the efficiency of the worker providing for some measure of education medical requirements, and amenities. Fair Wage lies in between with minimum wage as the lower limit and living Wage as the upper limit and it depends on factors like the productivity of labor, prevailing rates of wages, level of national income and its distribution, and the place of the industry in the economy of the country.

4. Primarily, we are more concerned about the enforcement of the Labor Law, which is twofold, firstly, to provide amenities of life for workers and secondly to secure industrial peace. It is for achieving these two objectives the concept of minimum wages had come into the field to prevent the employment of Labor on starvation wages and to further protect the working class against the exploitations of the employers. It is with these objects that the Government in pursuance of the principle of State policy fixes the minimum rates of wages. The concept of minimum wage does not imply that there should be an absolute uniform rate of wage for all workmen. There can be variation in the rate of minimum wage according to diverse factors like the nature of work, the degree of education, training, and skill required for the job, the degree of responsibility and disadvantageous of the job the conditions under which the workman works and the hazards of the occupation, which, in addition to being relevant facts, have also a bearing on the efficiency of the workman. What may be an appropriate rate of minimum wage for an unskilled worker may not be one appropriate for a skilled worker: what may be an appropriate rate of minimum wage for a manual laborer may not be appropriate for the category of employees like Clerks, Typists, Cashiers, and Store-keepers.

5. Coming to the term 'minimum wages', which means all remuneration, expressible in monetary terms, and payable to a person on fulfillment of the express or implied terms of the employment contract but does not include contributions paid by the employer on behalf of the worker under any scheme of social insurance, pension fund or provident fund; traveling allowance or value of any traveling concession; amount paid to defray special expenses incurred by the worker in respect of his employment; any sum paid as an annual bonus, or any gratuity paid on contract termination. Primarily, Minimum wages for semi-skilled, skilled, and highly skilled workers are determined by the Minimum Wage Board constituted under the Minimum Wages Act, 2015. The same term is defined under Section 2 (xv) & (xix) of the Sindh Minimum Wages Act, 2015 as under:-

> (xv) "minimum wages" means minimum rates of wages announced, declared, adopted or notified by Government from time to time which shall include the basic pay and statutory allowances that is to say cost of living allowance, dearness allowance and adhoc relief;

> (xix) "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 basic pay and all statutory and non-statutory allowances, any bonus or other additional remuneration of the 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) any contribution paid by the employer to any pension fund or provident fund;
>
> (b) any traveling allowance or the value of traveling concession;
>
> (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
>
> (d) any gratuity payable on discharge.

6. We have noticed 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/workman 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. Unskilled adult and juvenile workers 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.

7. Besides, as per record, the competent authority of the respondent-department vide letter dated 10.08.2020 addressed to the Chairman Sindh Minimum Wage Board Karachi advised to schedule a meeting of the Minimum Wages Board for recommending / fixation of Minimum Rate of Wages for unskilled of a juvenile worker employed in an industrial or commercial establishment in the province of Sindh and pursuance of the advice the Chairman convened its first meeting on 19.08.2020 and, the second meeting on 06.11.2020 third meeting on 03.12.2020, fourth meeting on 12.02.2021 which was postponed and fifth meeting on 22.04.2021 and finally the board recommended to the Government Minimum Wages at the rate of Rs.19000/- per month for unskilled adult and juvenile workers, however, the competent authority did not agree with the rate fixed by the Board and enhance the same up to Rs.25,000/- vide Notification 09.07.2021. It is well-settled law that if an entity has been established under a statute and the Provincial Government has administrative or financial control over it, then unless such statute has expressly made the recommendation of the entity binding upon the Government, the decision making authority shall be at liberty to formulate a policy of its own.

8. The impugned notification dated 09.07.2021 explicitly show that the powers exercised by the Government of Sindh are based on rationale due to high inflation in rates in all essential commodities, therefore, the question as raised by the learned counsel for the petitioners that if Minimum Wage is increased their export industries will face severe crises and will be competitive globally and within Pakistan. Prima facie, this assertion may not be maintained for the reason that the Government must control inflation by lowering the cost of essential items/commodities and the workers shall not suffer on that account therefore it will not be feasible in its true perspective to allow the petitioners to continue with the old rates to pay the wages to the workers rather than accommodating them to coup-up their essential commodities in their daily life.

9. To deal with the question as discussed supra, the proper mechanism is given under the Minimum Wages Act, 2015. It is essential to have a look at the various provision of the Act 2015. Section 3 of the Act 2015, which provides the constitution of Minimum Wages Board, consisting of the Chairman, one Member to represent the Employees, one Member to represent the worker, one Member to represent the Employers connected with the Industry or trade concerned, and one Member to represent the workers engaged in such Industry of trade. This provision also provides a mechanism for the appointment of the Chairperson and the Members of the Board and their tenure of service, by the Government. When we see Section 4 of the Act 2015, which explicitly speaks about the recommendation of Minimum rates of Wages for workers, more particularly upon a Reference made to it by the Government, after such inquiry, which is primarily advisory whereas Section 5 provides recommendation of the minimum rate of workers concerning, particularly industry upon the direction of the Government. To look at Section 6, which states that about powers of the Government to declare Minimum rates of Wages, which is final and shall not in any manner be questioned by any person in any Court or before any competent authority, thus makes it abundantly clear the binding effect of that declaration until that is against the fundamental rights as enshrined under the Constitution. When we see Section 7, which also empowers the Board to review Minimum rates of Wages periodically that's why it could not be said to final as it varies from time to time due to inflation in the rates of essential commodities. Section 8 empowers the Government to adopt minimum rates of wages for unskilled workers, notifying cost of living allowance, dearness allowance, and Adhoc relief. Section 9 prohibits paying wages at a rate below the minimum rates of wages. Section 10 provides hearing a decision of claims arising out of nonpayment and delay in payment of wages to workers. Section 11 provides the mechanism of appeal against the direction made or order passed under subsection (3) of Section 4 of Section 10 to the Labour Court within thirty days. Section 12 empowers the Board to collect information. Section 13 provides powers of the Board to collect evidence. Section 14 speaks about the appointment of Inspectors and Section 15 provides a penalty for abstracting Inspectors. Section 16 says about the cognizance of offenses. Section 17 speaks about public servants. Section 18

protects against discrimination. Section 19 states the removal of difficulties. Section 20 empowers the Government to make rules and Section 21 speaks about repeal and savings.

10. The above scheme of the Sindh Minimum Wages Act, 2015 primarily, aims at making provision for the statutory fixation of minimum rates of wages in several industries wherein labor is not organized and dreaded labor is more prevalent or where there is a big chance of exploitation of labor. Worth to that the fixation of wages under this Act is not on the application of the employee nor is it dependent on the existence of any dispute. The Act 2015 casts on the Government of Sindh, the duty of fixing Minimum rates of Wages, payable to employees in employment specified in the Schedule to the Act 2015.

11. On scanning the record as discussed in the preceding paragraph, it has come on record that the Government of Sindh labor Department vide letter dated 10.8.2020 consulted the Minimum Wages Board constituted under Section 3 of the Act 2015, regarding the fixation of minimum rates of wages for employees in employment specified in the Schedule to the Act 2015. At its meeting held on 22.4.2021, the Board made certain recommendations to the Government of Sindh, inter alia, the Board suggested that having regard to the rise in the cost of living, the rates of Minimum Wages might be fixed at Rs.19000, payable to workers. After considering the recommendations of the Board, the Government of Sindh issued the Notification dated 09.07.2021, enhanced certain rates of Minimum Wages for unskilled adult and juvenile workers employed in petitioner's industrial/commercial establishments in Sindh. The rates shown in this Notification were higher than those recommended by the Board as discussed supra.

12. I am unable to take an exception to legal position that this Court can't enforce the beneficial legislation if it does not involve infringement of any of the fundamental rights as guaranteed by the constitution. Besides above, as per the Ministry of Planning Development and Reforms Pakistan Bureau of Statistics, Press Release on Consumer Price Index (CPI), prima-facie, Inflation for July 2021 seems to be very high as such it could not be said

that the Minimum Wages fixed for unskilled adult and juvenile workers employed in petitioner's industrial/commercial establishments in Sindh is irrational.

13. During arguments, we have been informed that the Minimum Wage of unskilled workers has been increased from time to time with effect from 25.05.1981 till issuance of impugned notification dated 09.7.2021 whereby the minimum wage of unskilled workers has been fixed at Rs.25000/-. The report submitted by Chairman Sindh Minimum Wages Board Karachi to the Government of Sindh vide letter dated 14.4.2021, explicitly shows that the recommendation of the Board is subject to the final approval of the Government of Sindh.

14. Dealing with that contention of the learned AAG that the Board constituted under Section 3 of the Act 2015, was only an advisory body and the Government was not bound to accept its recommendations, and consequently could not vitiate the notification dated 9.7.2021, which fixed the Minimum Wage of Rs.25000/. Essentially, Minimum Wage is the wage level set by Government, either after consultation with the social partners i.e. worker organizations and employer associations or unilaterally below which it is illegal for the employer to pay his/her employees.

15. To go ahead with the aforesaid analogy, the petitioners fall within the ambit of the commercial/industrial establishments and the aforesaid law on the subject is 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. In principle, the law has fixed the responsibility for payment of wages upon every employer, including a third-party contractor, for the payment to persons employed by him; 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 pay slips, showing the details. It is noted that The Sindh Terms of Employment (Standing Orders) Act, 2015, The Sindh Payment of Wages Act, 2015 also applicable to the Industrial and Commercial

employment in the Province of Sindh and for matters connected therewith or ancillary thereto.

16. Primarily, there is no controversy that the determination of Minimum Wages, affects parties namely the employers and the employees. But there is controversy over the question of whether such determination affects only the petitioners' legal rights. I am in agreement with the view that the determination of Minimum Wages in no manner affects the legal rights of the petitioners alone as it varies from time to time. An important criticism of the procedure adopted by the respondent department was that they fixed higher rates of Minimum Wages than proposed by the Board. This assertion is without any substance, principally, the notification contains proposals and is liable to be further revised by reduction or increase in the proposed rates of Minimum Wages.

17. 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. 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 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 an employee of the company". In the instant case, the employees of the contractor were involved in running the affairs of the Respondent-company such as drive, 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.

18. Keeping in view the rule of parity and equity, all unskilled adult and juvenile workers even if considered to be the employees of the contractor, which is not the correct position, have been performing duties of permanent nature ought to have been on regular strength of petitioner-management. 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". 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. 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. BakhtSiddiq 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.

19. Keeping in view the aforesaid factual as well as the legal position of the case, all contentions raised by the respondents must fail, therefore, I agree with the conclusion, so drawn by my learned Senior brother Mr. Justice Salahuddin Panhwer, whereby he disposed of the petition (s). The pending applications are also disposed of in the above terms.

Adnan-ul-Karim Memon

JUDGE

Nadir*