

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C.P. No.D-2436 of 2016

C.P. No.D-352 of 2023

Date	Order with signature of Judge
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1. For hearing of CMA No.6609/2016
2. For hearing of main case.

13.03.2023

M/s. Sohail Ahmed Khoso, Jamshed Ahmed Faiz and Qurban Ali Malano, advocates for the Petitioners
Mr. Ghulam Shabbir Shah, advocate for the Respondents No.1 & 2
Mr. Samiullah Soomro, Advocate for Respondents
Mr. Ali Raza Balouch, AAG alongwith Saeed Ghani, Chairman Workers Welfare Board, Saeed Saleh Jumani, Secretary Workers Welfare Board, Akhtar Ali Qureshi, Commissioner SESSI, Muzafar Ali Shah, Director (Workers Welfare Board), Ahtesham Khan Director WWB, Muhammad Farhat Soomro, Law Officer WWB, Qurban Ali Talpur, Labour Officer, Sukkur, Asghar Ali Pathan, Joint Director Labour on behalf of DG Labour and Secretary (Labour) Government of Sindh

Salahuddin Panhwar, J: Being relevant, last portion of order dated 06.03.2023, is reproduced herewith:-

“On query, Secretary, Workers Welfare Board contends that at present 30 billion of workers fund are lying with the Sindh Bank; however he contends that there is finance investment committee meant for investment of that amount. They also agreed that:-

- i) Recruitments in SESSI and Workers Welfare Board department from Grade-5 to 18 shall be made through third party and in this regard APT/service rules shall be reframed;
- ii) Will notify labour courts as SESSI Courts;
- iii) Finance committee shall be reconstituted joining Secretary Finance and financial advisors from leading financial companies and shall ensure investment of 30 billion with a mechanism provides short term and long term;
- iv) Six billion with regard to scholarships including 4.3 billion for development, which are not utilized, shall be invested in endowment for higher education scholarships while deducting expenditure and also adding sufficient amount from main pool;
- v) That all existing schools of workers welfare board shall be outsourced to reputable educational institutions; fund reserved for scholarship shall be utilized in same manner as by Government of Sindh in college education department, whereby endowment fund has been created and principal amount of endowment fund will not be utilized by the Board and only interest earned on that endowment fund invested in the same manner.

Pursuance to that, Chairman Workers Welfare Board voluntarily appeared along with Commissioner SESSI and submits compliance report, which is taken on record. Being conducive, same is reproduced herewith:-

“STATEMENT

That this report is being submitted in compliance of the order dated 06-03-2023:

1. It is submitted that in compliance of the directions passed by this Honorable Court in CP No.D-2436/2016, mentioned above, vide order dated 06.03.2023, the undersigned being Secretary / C.E.O, Workers Welfare Board Sindh, moved a Note on 08.03.2023 for Chairman, WWBS/Minister for Labour & HR Sindh. Since some of the directions contained in the order dated 06-03-2023 would require appropriate amendments in the WWF as well as the SESSI Act and the rules made thereunder, accordingly necessary amendments would be required hence the matter needed to be placed before the cabinet for the purposes of amendments in the Act and the rules. Accordingly the chairman WWB immediately moved a summary on the same day before the worthy Chief Minister for placement of the matter before the cabinet. The said summary was approved on the same day by the worthy Chief Minister and the matter was placed before the cabinet on the 9-03-2023. At this juncture it is significant to point out that serious and immediate steps were taken by the department in compliance of the aforementioned order dated 06-03-2023 (which was received on 07-03-2023). Minutes of the meeting of the cabinet dated 09-03-2023 are presently awaited.

NICVD

- i) That in relation to NICVD directions this department shall comply with the directions contained in the order. Chairman WWB has instructed secretary labour to issue appropriate letter to Secretary Health so that appropriate arrangement be executed between the department and the NICVD for execution of the directions contained in order dated 06-03-2023.

Recruitments in grade 05 to 18

- (f) The recruitments in grade 05 to 18 are being made through third party. Even at present appointments at SESSI are being made through IBA Sukkur. In this respect the relevant advertisement inviting applications is attached herewith for perusal of this Hon'ble court. At this juncture it is significant to point out that for the purposes of technical posts such as doctors at SESSI the department has created special technical committees consisting of independent experts and technical persons. This process is also carried out transparently and strictly in accordance with the law so that merit based appointments are made.

SESSI COURTS

- (g) This direction will be complied with in letter and spirit. The GOS (cabinet) has already approved this. The relevant notification in this respect shall be placed before this Hon 'ble court.

Reconstitute Finance Committee

- (h) The finance committee (which is known as investment committee) shall be reconstituted as directed by the order dated 06-03-2023. It is however most respectfully submitted that this direction be modified to the extent of replacing the finance secretary with any other official for the sake of expeditious disposal of decisions. As for investments of amounts, it is submitted that the recovery amounts are utilized towards the budget whereas the left over amounts are invested in investment bearing schemes. As for the left over amounts, the short term and long term investments plans will be approved by the investment committee.

Endowment Fund for Hi her education Scholarships:

- (i) That in this respect it is most respectfully submitted that this direction be modified on consideration of the documents and orders

separately attached through a statement and so also on consideration of the following facts and grounds :

- (a) **That primary source of the departments revenues have been stuck on account of interim orders which are passed in matters connected with CP no.1313 of 2013. Before the principal seat at Karachi, various petitions are filed challenging the vires of Sindh workers welfare fund Act (WWF Act) and so also the Sindh Companies Profits (Workers Participation) Act, 2015 (SWPPF ACT).**
- (b) **That CP no. 1313 of 2013 was decided in favour of the department whereby a learned division bench of this Hon'ble court was pleased to hold that the SWPPF Act is intra vires the Constitution. The said judgment was appealed and its operation is suspended by the Hon'ble apex court however the effect of suspension is not in rem only in personam accordingly the SWPPF Act continues to hold the field as good law.**
- (c) **That notwithstanding the DB judgment which continues to remain binding on other DB's, interim orders are passed on SWPPF amounts.**
- (d) **That although the interim orders were conditional on the petitioners making payments before the nazir of this Hon'ble court however (as reflected in the report of the Nazir merely a few petitioners deposited the amounts with the Nazir of the Hon'ble court. Upon agitation of this fact by the department, the learned division bench was pleased to pass a detailed order dated 16-03-2020 whereby the petitioners were directed to deposit the amounts with the Nazir of this Hon'ble court and or in the alternative provide proof of the payments made by them to FBR and or SRB.**

Till date majority of the petitioners/companies continue to evade their liabilities without either depositing the amounts with the Nazir of the court and or providing any proof of the payment as directed in terms of the aforesaid order.

- (e) **That a bare perusal of the Nazir's report reflects that only few companies have deposited some amounts in partial compliance of the orders however no company has deposited entire amounts. The SWPPA and the SWWF imposes a recurring liability and the same is not a one-Time liability whereas most of the companies have only submitted the amounts for one time as if it's a one-time liability. It is shocking to say the least that majority of companies continue to avoid making these payments without making any compliance of any orders whatsoever.**
- (f) **That in light of the aforementioned facts, it is a matter of record that substantial revenue of the**

department (which is over and above ^{One} billions of rupees) is stuck on account of the litigation mentioned above. As a result the department is severely handicapped and cannot effectively launch development schemes as well as effectively pursue the welfare schemes for the benefit of workers.

- (g) That even insofar as the amounts which are deposited with the Nazir of this Hon'ble court and the profits accrued thereon is not utilized in anyway whatsoever for the benefit of the workers. At this juncture it is most respectfully submitted that the two enactments being beneficial legislations and the very purpose of the same is to extend resultant benefit to those workers and their families which have contributed throughout their life and participated towards the success and profits of the establishments. The amounts which have been stuck for over a decade now, have deprived each and every worker the fruit of their hard work/participation which is otherwise envisaged and mandated in terms of the Sindh enactments. Accordingly it is most respectfully submitted that appropriate orders be passed by this Hon'ble court so that the amounts lying with the Nazir of this Hon'ble court may be utilized towards the benefit of the workers and for the expeditious disposal of the matters which have been pending over a decade now.

That in light of the submissions made hereinabove it is most respectfully submitted that compliance of the endowment fund directions be deferred until appropriate directions are issued by this Hon'ble court to the Nazir for release of the payments submitted with him or at least the profits thereof so that workers may also get benefit. It is unfortunate however a fact which must be placed before this Hon'ble court that hundreds and perhaps thousands of workers who otherwise had participated towards the growth and success of respective companies could not enjoy the fruits of their labour and hardwork in their life time as the interim orders have outlived them. Accordingly appropriate orders are humbly solicited for the enforcement of fundamental rights of the workers at large. Accordingly directions in respect of the aforementioned maybe deferred for the time being. The department also requires to move an appropriate summary before the cabinet for suitable amendments in the Act and the rules as at present there is no provision for endowment.

Outsourcing of Schools

- i. The outsourcing of the Schools is a policy matter however this Hon'ble court is apprised that this was already conceived to be done by the department in steps. In this respect, 2 months' time is sought from this Hon'ble court to enable the department to place the proposal already

conceived by the department before this Hon'ble court.

In addition to the aforementioned compliance report, this Hon'ble court is also additionally apprised of the following:

- ii. **The Scholarship from Class-I to Class-X, amounting to Rs. 6,000/- per annum will be increased significantly as the decision in this step has been taken in principal.**
- iii. **The Death Grant of Rs.500,000/- has been increased to Rs. 700,000/-.**
- iv. **The Marriage Grant has been increased from Rs.100,000 to Rs. 200,000/-.**
- V. **The Workers Welfare Board Sindh has constituted the Scrutiny Committees at the Regional Level for transparent and smooth functioning / disbursement of the allocated funds for welfare of the workers.**
- VI. **That in the light of the recommendations/report of learned Mr. Samiullah Qureshi, the then Hon'ble Senior Civil Judge, Shikarpur, the Workers Welfare Board Sindh has launched the official website, i.e. www.wwbs.gos.pk for downloading the Forms of Welfare Schemes, Hajj Forms, Flat / House Allotment Forms and for reforms and full automation.**

- i) After detailed hearing, paragraph No.1 is modified from grade-06 to 15, all recruitments in Workers Welfare Board and SESSI will be filled through third party testing agency.
- ii) It has been submitted that Cabinet has already approved this aspect and SESSI Courts will be notified through notification. Accordingly, such notification shall be placed on record within 15 days.
- iii) With regard to Finance Committee, Chairman Workers Welfare Board contends that at the place of Finance Secretary, any representation of Finance department may be added. Order accordingly.
- iv) With regard to endowment fund, Chairman Workers Welfare Board contends that they will create endowment fund in same pattern of College Education Department by establishment of endowment fund to be registered under the law. Accordingly, two billions, at this juncture, will be invested for higher education scholarship meant for workers' children and simultaneously every year two billions will be added, hence endowment fund shall be created with the principal amount of

two billion within one month in the same pattern of College Education Department.

- v) With regard to outsourcing all workers welfare schools, it has come on record that Governing body will examine this aspect and will ensure to outsource / improve the capability of schools at the level of English medium schools. Chairman, Workers Welfare Board contends that as per budget, there is huge amount is incurred on every student, therefore, accordingly they will negotiate with private partners and will outsource the schools. Besides, Chairman Workers Welfare Board contends that they will launch a campaign to register every worker through NADRA having digital card without fail.

Last portion of report is reproduced herewith:-

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Above amount as referred shall be provided through cross-cheque and videos shall be prepared while handing over the cheques to the workers to maintain the record.

With regard to recruitment from grade-1 to 5 & 16 and above, Chairman Workers Welfare Board and Commissioner SESSI contends that there is already CCTV cameras during interview. Accordingly, CCTV having capability of voice recording shall be maintained as record and in case any one disputes, the interview authority/ selection board shall be in a position to demonstrate the transparency by placing that CCTV footages and videos. Compliance report shall be filed within one month without fail.

With regard to maintainability of instant petition, Counsel for the petitioner contends that he will file amended title whereby he will join EOBI as Respondent No.3 as well as petitioner will approach to SESSI. Accordingly, SESSI shall examine if he qualifies within the ambit of workers definition shall proceed in accordance with law.

JUDGE

Faisal Mumtaz/PS

JUDGE