

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.2008 of 2016
Javed Iqbal and another

Versus

Federation of Pakistan through Secretary, Planning and Development
Division and others

Date of Hearing: 23.05.2017
Petitioners by: Mr. Muhammad Aslam Bhangoo,
Advocate,
Respondents by: Mr. Afnan Karim Kundi, learned Additional
Attorney-General, and Ms. Sitwat
Jahangir, learned Assistant Attorney-
General.

MIANGUL HASSAN AURANGZEB, J:- In the instant writ petition, the petitioners, Javed Iqbal and Muhammad Azam, who are teachers in Basic Education Community Schools ("BECS"), have prayed for the following relief:-

"It is, therefore, respectfully prayed that the instant writ petition may kindly be allowed with the direction to the respondents to fix the monthly salary of petitioners as equal to the minimum wages fixed by the Federal Government in the policy i.e. Rs.13,000/- per month.

It is further prayed that respondents also be directed to pay Rs.5000/-per month for providing the rent / utility bills etc to the petitioners, in the interest of justice."

2. Chaudhary Muhammad Aslam Bhangoo, Advocate, learned counsel for the petitioners submitted that the petitioners have been imparting education and training to students at BECS since a few years; that the petitioners are being paid only Rs.5,000/- per month as salary and Rs.1,000/- per month for utility bills; that the petitioners' salaries is far less than the minimum wage fixed by the legislature under the Minimum Wages for Unskilled Workers Ordinance, 1969; that the BECS project is of prime importance, and despite the decision of the Federal Government to discontinue the said project, it continued due to the directions given by the Hon'ble Supreme Court in the case of "Fiaqat Hussain Vs. Federation of Pakistan" (PLD 2012 SC 224); that the respondents' decision not to pay a salary which is equal to the minimum wage of Rs.13,000/- per month is a violation of the

guidelines given to the Executive by the Hon'ble Supreme Court in the case reported as PLD 2011 SC 37; and that even though the petitioners are contractual employees, the respondents are not absolved from paying the petitioners at least the minimum wage fixed by the legislature. Learned counsel prayed for the writ petition to be allowed and for a direction to be issued to the respondents to pay at least Rs.13,000/- per month to the petitioners.

3. On the other hand, the learned counsel for the respondents submitted that since the petitioners were contractual employees, and had expressly agreed to be paid an honorarium (which is below the minimum wage), they cannot seek payment of more than Rs.5,000/- per month as their monthly salary; that the judgments of the Hon'ble Supreme Court relied upon by the petitioners are distinguishable and not applicable to this case; that the BEC Schools are controlled by the Federal Government through the BECS Directorate; and that the BECS management takes decisions regarding the shifting of BEC Schools, their opening and closing, and the hiring and firing of teachers. Learned counsel for the respondents prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The facts essential for the disposal of this petition are that a project by the name of "Establishment of 10,000 Non-Formal Basic Education (NFBE) Schools" was launched by the Prime Minister's Literacy Commission in order to educate the poor and disadvantaged who do not have access to formal basic education. In July 1998, this project was revised and renamed as "Establishment of 82,000 Basic Community Schools." The revised project was initially for a period of five years i.e. 1998 to 2003, and later extended up to June 2006. In 2006, the Ministry of Education and Professional Training, Government of Pakistan, started a new project called "Establishment and Operation of

Basic Education Community Schools in the Country” (“BECS”). The duration of this project has been extended from time to time. BEC Schools are opened in rural areas and urban slums where formal primary schooling facility does not exist. All the required inputs like text books, teaching and learning material etc. are provided free of cost by the Government. The teachers in the BEC Schools are employed through BECS Directorate, and are contract employees of the BECS project. The teachers in BEC Schools are employed from the local community irrespective of age limit, gender, professional qualification, and without an advertisement. Mostly the BEC Schools are run by the teachers in their own houses.

6. After the enactment of the Constitution (Eighteenth Amendment) Act, 2010, the BECS project was to be taken over by the Provincial Governments. The Council of Common Interests in its meeting dated 01.06.2011 decided that the BECS project would be wound up and only its component concerned with the federally administered areas would be retained. The proposed closure of the BECS project was subjected to a constitutional challenge before the Hon'ble Supreme Court in the case of “Fiaqat Hussain Vs. Federation of Pakistan” (PLD 2012 SC 224). In the said judgment, it was held *inter-alia* that the proposed action by the Government to close down the establishment and operation of BEC Schools was without lawful authority and of no legal effect, and in violation of Article 25-A of the Constitution. After the said judgment, the Prime Minister of Pakistan approved the continuation of the BECS project to meet the educational needs of the country. The BECS project is still continuing and its PC-1 has been approved by the Executive Committee of the National Economic Council (“ECNEC”)/ Planning Commission.

7. Although the petitioners in the writ petition have pleaded that their services are liable to be regularized, but they have not sought the relief of regularization. The petitioners’ case is that they should be paid at least the minimum monthly wage notified by the Federal Government i.e. Rs.13,000/- per month. The

petitioners also seek the payment of an additional amount to cater for their utility bills etc.

8. Now the petitioners have been appointed on contract basis. The BECS project falls under the purview and the administrative control of the Ministry of Federal Education and Professional Training. The stance of respondent No.3 (Secretary, Ministry of Education) has been that since the petitioners and other teachers at BEC Schools are contractual employees and have agreed to be paid a salary less than the minimum wage, they cannot seek payment of an amount higher than what they have already agreed to. In order to avoid payment of salary equal to or more than the minimum wage fixed by the legislature, respondents No.3 and respondent No.4 (Director General BECS), in their para-wise comments have pleaded *inter-alia* that the teachers at BEC Schools are paid an honorarium on quarterly basis and not a salary. In contradiction to the said position taken by respondents No.3 and 4, respondent No.5 (Human Resources Development and Former Support Council) in its written comments has pleaded that the petitioners are paid Rs.5,000/- per month along with utility charges of Rs.1,000/-. Be that as it may, on 29.03.2017 Mr. Khan Zeb, Assistant Director at the BECS Directorate, appeared on behalf of respondents No.3 and 4 and submitted that the petitioners' salaries are paid out of the development budget (Public Sector Development Program) which is administered by the Establishment Division, Government of Pakistan. He further submitted that earlier it had been suggested by respondent No.4 that employees working in the BECS project should be paid the notified minimum wage. He submitted that the minimum wage would be paid to the teachers at the BEC Schools only after the approved PC-1 provides for the payment of the minimum wage to such teachers. After the said submissions of Mr. Khan Zeb, the memo of the petition was amended and the Establishment Division, through its Secretary, was impleaded as respondent No.6 in the said petition. The learned Additional Attorney-General was present in the Court

and waived notice on behalf of the newly impleaded respondent No.6. He sought a period of two weeks to liaise with respondent No.6 on the subject matter of this petition. On 26.04.2017, this Court was apprised that in the draft PC-1 submitted by respondent No.4, it was suggested that the salaries of the petitioners should be equal to the minimum wage. In this regard, a copy of the proposed PC-1 along with letters dated 05.05.2015 and 22.04.2016 from respondent No.4 to respondent No.3 were placed on record. Perusal of these documents show that respondent No.4 in the draft revised PC-1 for the BECS project for the period 2015-18 had suggested the payment of honorarium at the rate of Rs.12,000/- per month for teachers of BEC Schools. It appears that the said suggestion of respondent No.4 fell on deaf ears of the decision makers. In the interests of justice, the matter was adjourned to 23.05.2017 but no plausible response came from respondent No.6.

9. The pivotal question that needs to be answered in this case is whether the petitioners are entitled to be paid the minimum wage notified by the Federal Government under the provisions of the West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969. This question needs to be answered in the light of the law laid down by the Hon'ble Supreme Court of Pakistan in the following cases:-

- (i) In Suo Moto Case No.12/2011 (Suo Moto action taken upon the application of Memona Parveen regarding enhancement of salary/stipend of Industrial home Teachers, which is Rs.500 per month) (2013 SCMR 728), the Government of Punjab was releasing Rs.500/- to each teacher imparting vocational training to students in Industrial Homes. The Hon'ble Supreme Court observed payment of such a low salary to the teachers was a clear violation of Article 3 of the Constitution. It was also observed that such teachers deserved to be paid more than the minimum wage, which was ordinarily paid to unskilled workers.

- (ii) In Human Rights Cases No.16360/2009, 1859-S and 14292-P/2010 (Applications of Lady Health Supervisors/Workers etc.) (PLD 2011 SC 37), applications had been filed before the Hon'ble Supreme Court seeking remedies, including the payment of an amount equal to the minimum wage as salary to the Lady Health Workers and Lady Health Supervisors. In the said report, it was held *inter-alia* as follows:-

“6. It is to be noted that under section 6 of the West Pakistan Minimum Wages For Unskilled Workers Ordinance, 1969 (hereinafter 'referred to as "the Ordinance, 1969") no such agreement/order/notification/law/award/contract of service violating the provisions of law with regard to the payment of minimum wages shall be adhered to. To earn livelihood is a fundamental right of every citizen, subject to law, rules, regulations and agreement. Although the Ordinance, 1969 is not applicable on the persons engaged by the Government or any of its organizations but as a State it is bound to follow the same principle, which is applicable to private organizations. If above emoluments cannot be paid under any agreement then it would be in violation of Articles 9 and 25 of the Constitution. In the instant case, painful situation is that the LHWs, LHSs, Accounts Supervisors and drivers were not treated at par with employees of private organizations who are presently entitled to receive minimum wages @ Rs.7000 per month. ...”

“7. It is contended by the learned Attorney-General that LHWs/LHSs being the employees of National Program for Family Planning and Health Care, remained on contract on year to year basis, therefore, they are entitled to receive whatever is agreed upon by them. We do not controvert his stand but at the same time cannot lose sight of the fact that notwithstanding their relationship either as permanent or contractual employee, whatsoever may be, following the law/policy prevailing in the country for fixing minimum wages, they are entitled for the same on the basis of policy, which is presently prevailing i.e. Rs.7,000 p.m. In a welfare States like ours, it is duty of the government to ensure that discriminatory policies are not applied as far as its employees are concerned, either enjoying permanent status or working on contractual basis. The contract though executed mutually, in pursuance whereof LHWs, LHSs, Accountants and Drivers have agreed to accept the, less amount of wages as compared to minimum one fixed under the provision of law, but one of the contracting parties, i.e. government is not supposed to deprive them from their legitimate rights qua the nature of duties being performed by them. A deep study of the

conditions of their contract, already reproduce hereinabove, speaks itself, about the volume of work which they have to perform, besides facilitating health care within their units and such workers or supervisors are also bound to remain available round the clock for the purpose of extending health care to the citizens. Therefore, any agreement, which is against the public policy is not enforceable, as it has been pointed out hereinabove i.e. it is the law of the country that no person/workman being unskilled shall be paid less than Rs.7,000 and this principle/policy may not only on the basis of the Ordinance, 1969 but also on the basis of propriety, shall be applicable to the categories of all the employees who have been engaged by the government departments for rendering special service like health care etc. Thus, keeping in view the above facts and in view of price hike situation prevailing in the country, by an interim arrangement directions were issued to provide Rs.7,000 p.m. to all categories of the employees of health department i.e. LHWs, LHSs, Accounts Supervisors and Drivers and also to ensure that their fundamental rights to earn livelihood are fully protracted without any discrimination in terms of Articles 9 and 25 of the Constitution. We are told that there are about 1,20,000 such like persons of the health department who are not getting their due salaries. We expect that enhancement of their emoluments to the extent of minimum wages of Rs.7,000 p.m. (which has been fixed in pursuance of interim order of this Court dated 7-9-2010) shall be reconsidered for the purpose of making it rational and also to create distinction between the Supervisory Staff, Accounts Staff and the Field Staff depending upon the nature of their duties, as early as possible. In the meanwhile, all the categories of employees stated above shall continue receiving amount of Rs.7,000 per month.”

10. The Hon'ble Supreme Court also held that its judgment reported as PLD 2011 SC 37 *“shall be considered a guideline for all the executive departments in future while fixing the wages of the employees being engaged by the government organizations on contract basis or under any other programme funded by the government or any other agency.”*

11. No one would willingly provide services for another for less than the minimum wage especially when he knows that under the law, he is entitled to get the minimum wage from his employer. Therefore, it may be presumed that when a person provides labour or service to another against remuneration which is less than the minimum wage, he is acting under the force of some

compulsion which drives him to work though he is paid less than what he is entitled under the law to receive. A person would accept a salary less than a minimum wage when he is in no position to bargain with the employer. In doing so, he would be acting under the compulsion of economic circumstances, poverty or destitution.

12. Every person who provides labour or service to another is entitled at least to the minimum wage, and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 9 of the Constitution, as well as transgression by the State of its obligation set out in Article 3 of the Constitution, and ask the Court to direct payment of the minimum wage to him so that the breach of Articles 3 and 9 of the Constitution may be abated. Article 3 of the Constitution provides that the State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability to each according to his work. Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. It is well settled that the word "life" used in Article 9 of the Constitution has not been used in a limited manner. A wide meaning should be given to it to enable a man not only to sustain life but to enjoy it. It has also been held that "life" includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. Reference in this regard may be made to the law laid down in the cases of Shehla Zia Vs. WAPDA (PLD 1994 SC 693), Arshad Mehmood Vs. Government of Punjab (PLD 2005 SC 193). In the case of Adeel-ur-Rehman Vs. Federation of Pakistan etc (2005 SCMR 1), it has been held that it is the duty of the State to see that life of a person is protected so as to enable him to enjoy it within the prescribed limits of law.

13. When the State employs people for doing work or providing services like home based imparting of training and education to students in villages, it must find adequate funds for such

projects. Paying a meager amount or less than the notified minimum wage to teachers of the BEC Schools, in fact, impedes and retards the obligation of the State under Article 25-A of the Constitution, which provides:-

“The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.”

14. Article 25-A was inserted in the Constitution through the Constitution (Eighteenth Amendment) Act, 2010. Prior to this, the Hon'ble Lahore High Court, in the case of Syeda Shazia Irshad Bokhari Vs. Government of Punjab (PLD 2005 Lahore 428), held that the right to education could also be treated as a right to life as contemplated by Article 9 of the Constitution. The State is under an obligation to make an endeavour to provide educational facilities at all levels to its citizens. The right to education is now a fundamental right enshrined under Chapter 1 of Part-II of the Constitution. Opportunity to acquire education cannot be confined to the privileged section of the society. Given the inflation at this day and age, the payment of a paltry amount of Rs.5,000/- per month to teachers of BEC Schools would induce them to quit teaching and seek other pursuits in life.

15. In view of the above, I am constrained to hold that the payment of salary (which is less than the minimum wage) to the petitioners is in violation of the guidelines given by the Hon'ble Supreme Court in the case reported as PLD 2011 SC 37, and a transgression of Article 3 of the Constitution.

16. Consistent with the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove and taking into account the guidelines given to the Executive in the case reported as PLD 2011 SC 37, the respondents are directed to make the necessary financial and administrative arrangements so that the petitioners are paid at least an amount equivalent to the minimum wage fixed or notified from time to time. Presently, under the Minimum Wages for Unskilled Workers (Amendment) Act, 2016, Rs.13,000/- per month has been fixed as the minimum wage. The respondents, jointly and severally, are directed to

comply with the said directions within a period of not more than one month from the date of the receipt of this judgment. This petition is allowed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

APPROVED FOR REPORTING

Sultan*

Uploaded By: Zulqarnain Shah