



20<sup>th</sup> October 2021

## **EFP Circular# 03 Sindh Minimum Wages Notification**

1) The Petition filed by EFP challenging the recent fixation of Minimum Wages by the Government of Sindh (“GOS”) and other similar Petitions has been decided vide a Division Bench judgment dated 15-10-2021, authored by Justice Salahuddin Panhwar with additional observations by Justice Adnan Ul Karim Memon, though agreeing with the Senior Judge. (A copy of the Judgement is attached).

2) After recording all grounds agitated by the Petitioners, the Hon’ble Court has made the following directions:

a) As per para 51 of the judgment, the notification dated 09-07-2021 was a declaration under Section 6(1) of the Minimum Wages Act. The GOS shall (now) immediately publish a notification under Section 6(3) of the Minimum Wages Act as required in para ii of the notification itself.

b) In para 52 of the judgment, the court observed that the application of the notification shall be from the date of publication thereof. The court further observed that since the grievance of the employers has come on record, therefore, the government, regardless of enforcement of the notification, shall treat the matter as falling within the meaning of section 6(5)(1) of the Act, which requires that when after the publication of a notification under subsection 1(1) or subsection 3(3) or after the minimum rates of wages declared thereunder have taken effect, it comes to the notice of the government that there is a mistake in the minimum rate of wages so declared or that any such rate is inequitable to employers or the workers, it may refer the matter to the board and any such reference shall be deemed to be a reference under subsection (2).

c) In para 53 of the judgment, the court observes that this process shall not take time more than a week from the publication of the notification in the official gazette where the notified minimum wage rate is to be applicable. The court further observes that the government shall also give reasons for an increase of the minimum wages rate from that as was recommended by the board (that is Rs. 19,000). The board shall ensure completion of the process not beyond a period of two months and shall submit a recommendation to the government, which without any unnecessary delay shall ensure compliance with section 6 (3) of the act.



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d) In para 54 of its judgment, the court directs the government to ensure payment of such minimum wages amount (Rs. 25,000) to all workers including daily wages workers or those working on contingency from 01-07-2021 till the time government reviews such declaration.

3) It is evident that the Court has avoided suspending the earlier notification but left a room open for the Government to reconsider the issue considering the earlier “mistake” and the grievance of the employers and issue a fresh notification, immediately.

4) The Court has also directed the Minimum Wages Board to reconsider the issue within two (2) months and shall submit the (revised) recommendation to GOS which, without any unnecessary delay, shall make “such modifications and exceptions as may be specified in the notification”.

5) The GOS now has three (3) options while issuing fresh notification as directed by the Court. The same, possibility wise, are as follows:

a) Maintain the fixation @ Rs. 25,000/- giving reasons for such enhancement over and above the recommendations of the Board.

b) Fix the new rates between the amount of Rs. 19,000/- recommended by the Board and Rs. 25,000/- notified earlier.

c) Notify the rate of Rs. 19,000/- as recommended by the Board.

6) In the opinion of our legal team, the judgment is vague/ambiguous and suffers from several errors and inconsistencies which can be successfully challenged in the Supreme Court. The Hon’ble Division Bench of the Sindh High Court has seriously erred as under:

a) The Hon’ble Court has held that in the entire scheme of the minimum wage mechanism, the role of government is decisive. This is contrary to the expressed provisions available in the Act itself. This interpretation of the Hon’ble Court has given an end to the concept of an independent Minimum Wage Board.



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b) The Hon'ble Court has overlooked the current composition of the Minimum Wage Board. In the judgment, the learned court has referred to the old composition of the Minimum Wage Board, which has been amended. According to the new structure, the Board comprises of 04 representatives from the workers, 04 representatives from the employers, and 02 representatives of the government. At the very face of it, if the Minimum Wage Board has to decide by simple majority voting, decisions can be taken by a majority vote in favor of the employers or the workers depending on which side the government decides to take. This in itself places employers' grievances in a deplorable situation since they may be bulldozed by a majority vote of government and workers' representatives. To expect a decision in favor of the employer in such a structure is far from reality.

c) The learned Court already declares the current notification as ineffective since it requires to be gazetted for implementation. This very fact was sufficient to nullify the notification dated 09-07-2021. The Court has, however, gone beyond its jurisdictions to suggest to the government as to how the increase of minimum wages to Rs. 25,000 can be legalized. The whole process suggested by the Court of first publishing the notification, implementing the notification, and then referring the notification to the Minimum Wage Board for considering a mistake committed by the government on grounds of inequity agitated by the employer and then reissuing the notification based on implied recommendation for the Minimum Wage Board within two months amounts to a categorical rebuke of the process of law.

d) As per section 6(3) of the Act 2015, if the government comes to know after the declaration of minimum wage in the gazette notification that the same was inequitable, it may refer the matter to the Minimum Wage Board for a recommendation. In the instant case, the government has already been apprised of the mistake and grievance of the employers before the declaration of minimum wage in a gazette notification, and therefore, if at all, the matter is to be referred to the Minimum Wage Board, it should be done before the notification is made. The Sindh High Court's advice to the government to make such reference after notifying the increased minimum wage and after being in full knowledge of the mistake and grievance of the employers is itself a mockery of the law.

7) Based on the serious errors of the law pointed out above, it is advisable that the petitioners approach the Supreme Court of Pakistan for clarity on the following points:



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- a) The sanctity of the Minimum Wage Board as the legal mechanism to determine minimum wages for workers in the unskilled and skilled categories and whether the Minimum Wage Board acts in an advisory capacity or a regulatory capacity.
  - b) Whether or not the government has the ultimate power to act beyond the recommendations of the Minimum Wage Board.
  - c) Can a superior court advise the government to follow a circumvented path to implement its notification based on an admitted mistake?
- 8) The petitioner companies must seriously consider agitating before the Supreme Court for their legal right protected under the Sindh Minimum Wage Act 2015. In the meantime, EFP will continue its efforts to negotiate the best possible deal with the government and the workers through the process to be initiated by the government in pursuance of the Court decision. The petitioners may voluntarily decide to increase the minimum wage to Rs. 20,000 to keep it in line with the increase given by the Federal and other Provincial Governments including the Government of Sindh for its employees and the EPZ authorities.

The above should be without prejudice to an attempt, which EFP proposed to challenge the judgment of the Sindh High Court on grounds mentioned above and to seek a stay order from the Supreme Court restricting the Government of Sindh from issuing illegal gazette notification in pursuance of the advice given in the judgment of the Sindh High Court.

To further discuss and update our members, an Interactive Consultative Meeting of EFP members is being convened on 21st October 2021 at 3:00 PM at Hotel Marriott Karachi to discuss the following agenda:

- 1) Implications and challenges faced by employers in view of the decision of Hon'ble High Court in Minimum Wage cases and also in implementing SESSI, EOBI, and other related labor legislations.
- 2) Issues and challenges of Inspections/audits under various labor laws and discussion on remedy.
- 3) Briefing on EFP Industrial Relation and Legal Help Desk services
- 4) Pending Legal Matters



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EFP Legal Team comprising of Leading counsels namely; Mr. Khalid Mehmood Siddiqui, Advocate Supreme Court, Barrister Haroon Dugal, and Mr. Zaheer Minhas, Advocate Supreme Court, will speak and update the members on the above agenda/topics.

Members are requested to avail themselves of this opportunity and make it convenient to attend the meeting. Kindly confirm participation by email at [services@efp.org.pk](mailto:services@efp.org.pk)

The meeting will be followed by the EFP Annual General Meeting at 05.00 pm.

Kindly observe punctuality.

Sincerely:

**Syed Nazar Ali**  
Secretary General