



7th December 2021

EFP Bulletin # 24

Sindh High Court Judgement in EOBI Case

& Invitation to Join the Consultative Meeting

10th December 2021 at 3:00 PM at Hotel Marriott Karachi

The Honorable Bench of Sindh High Court, in its judgement dated 3-12-2021, has dismissed the Petitions filed by the Employers' Federation of Pakistan and other companies through Constitutional Petitions # D-2085/2016 and others. The petitioners Challenged the Notification dated 17-2-2016, through which an amendment made in the Minimum Wage for Unskilled Workers Ordinance 1969 by the Federal Government applicable only for the Islamabad Capital Territory was made applicable throughout Pakistan with retrospective effect.

The Notification was challenged by the Employers' Federation of Pakistan in the High Courts of Lahore, Peshawar, Balochistan and Sindh. The Lahore High Court through its judgment dated 1-3-2016 declared the impugned circular issued by EOBI in pursuance to the afore said amendment in the Act has no application in the Province of Punjab. As a consequence, the Lahore High Court declared the demand raised against the Petitioners by EOBI in Punjab to be unconstitutional and illegal, and set the same aside. The Peshawar High Court also allowed the Petitions on the same grounds. The matter is pending in Balochistan High Court which issued stay in the matter and the final judgment is awaited. The Sindh High Court disposed-off the petition by the judgment above referred.

The Sindh High Court while dismissing the petitions in its ten paragraphed judgment has depended on wholly mistaken, frivolous and misconceived grounds which are summarized below.

1. In Para 1, the Petitioners' prayers have been quoted.
2. In Para 2, the Judgement refers to the fact that the Petitioners have challenged the Notification and that the Petitioners have not disputed the Judgment dated 7-9-2021 passed in CP No. D-4668/2015 in which the Honorable Court has held that until the issue of devolution is not resolved between the Federal Government and the Provincial Government, the EOBI will continue to be regulated by the EOBI Institution as per the EOBI Act 1967.
3. In Para 3, The Sindh High ignored the fact that in the very preamble of the impugned Gazette Notification regarding amendments in the Minimum wages for Unskilled Workers Ordinance 1969, quoted in para 3 of its judgment, it is mentioned that the amended Act is applicable only to Islamabad Capital Territory.



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4. In Para 4 of its judgment, the Learned Court refers to the ambiguous argument of the Deputy Attorney General that the referred amendment is 'common' and it is for Unskilled Workers Ordinance 1969 and is applicable all over Pakistan. This is in complete contradiction of the preamble and intention of the amended Act.
5. In Para 5 of the Judgment, the Court refers to the ambiguous contentions of the learned counsel for the EOBI who argued that the Ordinance of 1969 which was originally a Provincial statute is now a federal statute applicable to the Federal Capital and areas under the administrative control of Federal Government and that the Federal Government has declared rates of minimum wage of unskilled workers at par with the Provinces through Act of 2016 with retrospective effect. This contention is wrongly construed and the learned Sindh High Court did not take in to account the fact that such an intention is not contained in the content of the amended act.

The learned Court also referred to the ambiguous contention of the EOBI Counsel that if contention of the petitioner is accepted, the rate of minimum wages will always remain static at Rs. 6,000/- for calculation of contribution which will not only be disastrous for the scheme but also for the employees. The learned Court ignored the fact that after the 18th Amendment, all federal laws automatically became provincial laws and could be altered through amendment by the provincial assembly. Any province desirous to amend the EOBI Act 1976 could do so by bringing an amendment in the definition of wages in the EOBI Act 1976 and the contribution would become payable on enhanced rate. Therefore, the failure of Provincial Governments to bring amendment in the EOBI Act in the post devolution period was responsible for payment of EOBI contribution at static rate. The disaster referred to by the learned counsel could be removed by the provincial governments through amendment in the EOBI Act which they have deliberately not done due to vested interest.

6. The learned High Court in the para 6 of the judgment has referred to a judgment of the division bench in CP NO. D-7077/2016 which relates to contribution to the social security institution which has no nexus with the present case.
7. In para 7 of the Judgement, the Sindh High Court mentioned that the post 18th Amendment scenario with regard to legislation of wage rates in the provinces has not been disputed and that the petitioners have not challenged depositing of contribution under federal law.
8. In para 8 of the Judgment, the Sindh High Court frivolously observed that the 'perusal of language of two clauses as amended reflect that minimum wage ordinance was amended, hence they can not take plea that this is applicable only for federal capital territory of Islamabad when it shows that such amendments are in the act itself'. The reference to the cited case in this paragraph is also irrelevant.



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9. In para 9 of its Judgment, the Court frivolously observed that the rate schedule has been challenged without first exhausting the remedy so provided for any dispute under the EOBI Act. The Sindh High Court ignored the fact that there was no alternative remedy available to the petitioners except resorting to constitutional petition.
10. In para 10 of the Judgment, the Sindh High Court ambiguously observed that vires of the Act 2016 has not been challenged but the impugned notification so issued under such act has been challenged. The only ground on which the petitions have been dismissed seems to be the following:

“A challenge to application of notification only without assailing the vires of the Act under which the notification has been issued, legally, can't be made particularly where things notified are with reference to the Act itself”. On this count the Court observed that the instant petitions were not tenable in Law and therefore the petitions were dismissed.

From a review of the above detailed analysis of the Judgement of the Sindh High Court, it is clear that the Judgment suffers from serious errors, misconceptions and malafide derivations beyond the contents and scope of the petition placed before the Honorable Sindh High Court and the petitioners may go in appeal against the judgment to the Supreme Court of Pakistan.

In order to arrive at a consensus on this point, EFP has convened a Consultative Meeting on 10th December 2021 at 03.00 pm at Hotel Marriott Karachi. Petitioner companies are invited to join the meeting by sending their confirmation at info@efp.org.pk latest by 9th December 2021 so that the necessary arrangement of the meeting may be made.

With Warm Regards

Zaki Ahmed Khan

Acting President