

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Crl. Misc. 135/2015
IN
Crl. Original Petition No. 46/2014
IN
Suo Moto Case No. 6/2011

Muhammad Afzal

.....Petitioner

VERSUS

Munir Farooqi,
Chief Executive Officer Warid Telecom Lahore and Others

.....Respondent

NON-COMPLIANCE OF ORDER DATED 16 SEPTEMBER 2014

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Date: 6-8-2015

Mohammed Sarwar Khan,
Secretary
Law and Justice Commission of Pakistan

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A. Background

1. Since there is no requirement for labour registration with the Labour Departments, the respective Labour Departments do not have any authoritative data on the profile of the labour force in their respective provinces and districts. Hence, Labour department proceed on the basis of the numbers of registered factories, shops and commercial establishments. Consequently, **the respective Labour Departments cannot determine their reach and effectiveness in terms of ensuring "unskilled workers" who receive the minimum wage as provided by law.** Ensuring compliance with the law is thus problematic. Nor do Labour Departments have any data on the informal sector labour force. **It is vital that the Federal and the respective provincial Labour Department's strengthen their capacity to collect the necessary operational data,** which is foundational for them to implement their mandate/seffectively.

B. Information Base

2. Moreover, it has been suggested by the government officials –and as evidenced by the information provided (above)- that **the Federal and provincial governments do not possess the necessary information base from which to reliably determine the state of labour needs and entitlements, and effectively inform labour policy and planning.** The Pakistan Bureau of Statistics' (PBS) Labour Force Survey (LFS), last published in May 2015 for the period 2013-2014, provides some labour-related data but nothing on wages.

3. **It is therefore necessary that PBS, in consultation with the respective provincial Labour Departments, review the LFS questionnaire to ensure that the necessary information is captured keeping in view stakeholders' needs.** The PBS shall submit a consultation plan to consult with stakeholders on labour related information and data needs and support the provincial bureau of statistics. Accordingly, following consultations with stakeholders, **the PBS shall submit a revised questionnaire in Court**

through the Law & Justice Commission of Pakistan (LJCP) that shall inform the next labour survey.

4. We also note that according to the ILO, the PBS has significant "micro-data" that can provide a more detailed analysis of the labour force. The recent **Decent Work Country Profile Pakistan 2014** and the **Punjab Employment Trends Report, Occupational Safety and Health 2014** compiled by the ILO and the Government of Punjab was based on LFS's micro-data. The latter report was compiled by the Punjab Labour Department's Labour Market Information and Resource Centre, which, according to ILO, possesses the capacity to analyse the micro-data. It is thus clear to us that at the very least the Labour Department Punjab has the necessary capacity to compile key statistics, analyse them and translate them into policy recommendations that can inform their monitoring and evaluation framework and system. **The Labour Department Punjab may submit into Court a plan to conduct a comprehensive labour survey setting out the survey scope with sample size and methodology to capture labour related data for the formal and informal sectors.** Other provincial governments may coordinate with the Government of Punjab and PBS to develop the necessary capacities and documentation.

5. The provinces have established their own respective bureaus of statistics, which must have the technical capacities to design and compile the necessary datasets and statistics to meet Labour departments' needs. **The provincial governments must therefore take the necessary steps to ensure that the respective departments have the essential support and baseline information and datasets to effectively implement their statutory mandates.**

6. Without essential data and information, governments and departments cannot implement their respective mandates effectively. **Keeping in view the state of the Labour departments' (and other departments that we have examined in various matters coming before this Court recently), information/data weak resources, the respective chief secretaries and the Chief Commissioner ICT may be requested to, in consultation with the relevant Information Commissioners -in some cases it is the Ombudsman office- review information needs, baselines and data/information resources and submit in Court a copy of the report on information needs and a monitorable time-bound plan to address such needs.** This exercise is critical for enabling departments to effectively implement their mandates. The same shall also set out transparency standards.

7. For this purpose, **the respective secretaries and Chief Commissioner ICT Labour may be directed to, in collaboration with departments of Industries, Commerce, Mines and Shipping (as appropriate), submit in Court a monitorable time-bound plan to collate the necessary baseline data to effectively implement their mandates specifically covering minimum wages requirements and other functions.**

8. In view of the multi-departmental/organizational nature of this exercise, the respective chief secretaries may be tasked to submit in Court a timed and monitorable plan to compile necessary datasets and information baselines on the numbers of different types of employees, the nature of their employment, health risk profiles associated with particular industries, number of factories, shops and establishments and wage profiles et al.

C. Legislative Framework

9. After the 18th Amendment, the right to legislate on labour related matters including fixing a minimum wage fell to the respective provincial governments regulated under the **Minimum Wages Ordinance 1961 ("MWO") and Minimum Wages Rules 1962** that provide for all categories of workers –skilled, unskilled, domestic workers and apprentices- employed in specified "industrial undertakings" that include factories, shops and commercial enterprises (that varies between provinces). Current minimum wages notified by the respective governments are as under:

ICT	Punjab	Sindh	Balochistan	KPK
12,000	12,000	12,000	12,000	10,000

10. The Government of Khyber Pakhtunkhwa has revised its legal framework with the enactment of the **Khyber Pakhtunkhwa Minimum Wages Act 2013**, which fixed the minimum wage at the rate of PKR 15 000 with effect from 1 July 2014. Since the minimum wage was notified without consulting the Khyber Pakhtunkhwa Minimum Wages Board, the notification was challenged before the Peshawar High Court, which has stayed its implementation. Currently, the minimum wage in Khyber Pakhtunkhwa is therefore PKR 10 000. The Act expressly covers both registered and un-registered industrial and commercial undertakings.

11. There is agreement amongst the respective Labour departments' officials that the regulatory framework needs to be strengthened to enable Labour Inspectors to effectively ensure compliance with labour laws.

C. Enforcement Mechanisms

12. Overall responsibility for enforcement of labour laws vests in the provincial Labour departments that have designated **Labour Inspectors** to inspect shops, commercial establishments and factories falling under their territorial jurisdiction for ensuring the effective implementation of relevant provisions of the law including minimum wages (for time work, piece work, overtime work, work on weekly rest day, paid holidays). The table below indicates the number of Labour Inspectors in the respective provinces and ICT.

Name (No. of districts)	No of Inspectors	No. of Inspections	No of Registered Factories (under s. 9A, Factories Act 1934)	No. of Registered Shops/Commercial Establishments (under s. 24, West Pakistan Shops and Establishments Ordinance 1969)
Punjab (36)	72	177230	15487	146519
Sindh (24)	120	3397	8564	17311
KPK (26)	60	766	860	83997
Balochistan (32)	80	398	398	20 025
Islamabad (1)	06	2951	247	3424
Total (119)	338	184742	25556	271276

13. As per aforementioned rules the Labour Inspectors are required to visit industrial undertakings periodically and inspect the facilities being provided to the workers including rates of wages. **In the absence of contract and wage-related documentation and the workers reluctance to complain about minimum wage violations, physical inspection methods need to be re-examined to strengthen inspections regime through, for example, anonymous complaints and whistleblower protections.**

14. The MWO also provides for the provincial Government to appoint any person to be an **Authority** for any area to hear and decide claims arising out of non-payment or delay in payment of wages.

15. The MWO provides that any employer who contravenes the provisions of the law shall liable to be punished with imprisonment for a term which may extend to six (6) months or a fine which may extend to five hundred rupees (500) [in Punjab 20000/-] or with both. In Punjab whoever repeats any of the offence shall be liable to imprisonment for a term that may extend to six (6) months and fine extending to fifty thousand (50 000) rupees. **A key issue is the deterrence value of the penalties so that any possible gains made through violations are rendered prohibitive.**

D. Challenges & Recommendations

Based on consultations with the respective provincial and ICT Labour department officials, the following challenges have been identified.

(i) Law, Policy & Regulatory Reforms

16. Labour Court procedures lengthy and expensive: The workers are mostly amongst the poorest and vulnerable who cannot afford the expenses incurred on the court proceedings and trial, which is often very lengthy and expensive. Likewise, when the

Labour departments file prosecution against any employer the cases are decided after such a long period that workers consequently avoid submitting complaints through Labour Inspectors. The table below provides a summary of prosecutions lodged, cases decided and pendency in the respective provinces. **A summary trial procedures recommended by Labour department officials to enable Labour Inspectors to issue penalties on-the-spot at the instance that the violation is caught.**

Name (No. of districts)	No. of prosecutions lodged	No of cases decided	Fines imposed (PKR)	No. of pending cases
Punjab (36)	17556	5809	33 61 871	11747
Sindh (24)	1420	1247	135815	173
KPK (26)	1523	737	1 770 500	786
Balochistan (32)	53	8	0	45
Islamabad (1)	1746	0	653000	0
Total (119)	22298	7064	5921186	12 751

17. Workers' reticence, fear of termination from services/job security: Workers usually do not file complaints due to fear of retaliation from the employer which usually ends up with termination from service; this issue is more severe in case of temporary and contract workers. **Anonymous complaints should be sufficient to initiate an inspection and whistleblower protection provided where necessary.**

18. Weak deterrence: An important stumbling block in the effective enforcement of minimum wages is the weak penalties imposed for violations. As per statistics provided by the respective Labour departments, the number of prosecution initiated during the period from 1 July 2014 to 30 April 2015 and fines imposed on violators are as shown in the table above. **It is therefore crucial to revise penalties to ensure effective deterrence.**

(ii) Organisational Strengthening

19. Lack of Unskilled Workers Information/Data: The absence of accurate baseline data for the labour force (skilled and unskilled) employed in formal and informal sectors undermines government initiatives aimed at strengthening the welfare of the workers and related policy, planning and monitoring. **It is therefore crucial to establish the necessary information and evidence base through PBS and the like to ensure effective compliance with the law.**

20. Lack of documentation and service records: A significant number of minimum wage violation cases cannot be prosecuted and pursued effectively because of the "absence" of service record/appointment letters -employers do not issue appointment letters and prefer to outsource and hire contract workers to evade the legal obligations and possible actions that may be initiated against them. The wage record is not provided to the Inspector whilst the court demands detailed records as evidence in order to facilitate the recovery of arrears hence most cases are turned down on technical grounds. **Steps need to be taken to strengthen documentation that may be verified through other departments such as the Federal Board of Revenue, department of Industries, the Workers Welfare Fund, social security institutions et al.** Section 6 of the Payment of Wages Act 1936 may be suitably amended requiring the **employer to make payment to workers through documentary or electronic means such as cheques.**

21. Lack of standard templates/checklists: On query, all the Labour departments except the Labour Department Punjab have shared templates being used during inspection for assessment of implementation status of labour laws. **The information gathered reveals that there is no standardized inspection system and the inspection report template is just a checklist of documents to be maintained by the employer under different relevant laws. The physical inspection system therefore needs to be strengthened through the use of information technology and the like.**

Capacity Building

22. Labour Inspectorates' weak capacity: Labour Inspectors' lack the capacity and legal know how about circumstantial evidence required by courts to counter employers manipulating the record and evidence prior to filing the same in the court. **Inspectors' capacity building is required to enable them to effectively collect evidence that would be cogent and compelling in court.**

23. Strengthening statistical capacities: Statistical capacities need to be enhanced internally/departmentally and/or externally so that the Labour departments can compile or have access to the necessary operational data such as labour, factories and commercial undertakings including shops profiles and baselines for both formal and informal sectors. **A time bound monitorable plan is therefore required to enhance Labour departments' statistical capacities and key statistics posted on their respective websites, for this purpose, the plan and dataset may formulated.**

Date: 6-8-2015

**Mohammed Sarwar Khan,
Secretary
Law and Justice Commission of
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AFFIDAVIT OF THE FACTS

I, Mohammed Sarwar Khan, Secretary Law and Justice Commission of Pakistan take oath and state as under:

1. That the facts as stated in the report are true and correct to the best of my knowledge and belief; and
2. That the report is based on the available information and review of relevant laws.

Sworn at Islamabad 6th day of August 2015

DEPONENT