

**Pakistan Information Commission**  
**Government of Pakistan**

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**In the Pakistan Information Commission, Islamabad**

**Appeal No 1339-09/2021**

**Naeem Sadiq**

**(Appellant)**

Vs.

**Cantonment Board Malir, Karachi**

**(Respondent)**

**Order**

**Date: November 1, 2021**

**Zahid Abdullah: Information Commissioner**

**A. The Appeal**

1. The Appellant filed an appeal, dated September 13, 2021, to the Commission, stating that he submitted an information request to CEO, Cantonment Board, Malir on August 20, 2021 under the Right of Access to Information Act 2017 but did not receive the requested information from the public body.
2. The information sought by the Appellant is as under:  
*“You are a Federal Government Organisation and the Federal Government minimum wage since 11 July 2021 is Rs.20.000 pm.*
  1. *Kindly give information as to why all the sanitation workers working on the streets of your Cantonment were paid Rs. 17500 on 1st August 2021, instead of Rs.20000.*
  2. *Kindly give information as to why all the sanitation workers working on the streets of your Cantonment have not been registered with EOBI or Social Security.*
  3. *Kindly give information as to why all the sanitation workers working on the streets of your Cantonment are working for past many months without an Appointment Letter that describes the terms and conditions of their job and indicates the date a person started working.*
  4. *As compliance to first 3 paragraphs is a legal requirement, kindly also provide information on the exact date by which you shall comply with each of the above 3 requirements. Kindly provide the information / records as requested above, ensuring its accuracy verified by a designated officer, within 10 working days as stipulated in the RTI law.”*

**B. Proceedings**

3. Through a notice dated September 24, 2021 sent to the CEO, Cantonment Board, Malir, the Commission called upon the Respondent to submit reasons for not providing the requested information.

4. The Respondent, through a letter dated October 11, 2021, shared its response, which is as under:  
*“Cantonment Board Malir outsourced conservancy services through open tendering process, duly covered all codel formalities and publication in national press as per PPRA Rules. The conservancy contractor is bound to pay minimum wages to their (labour / staff) as announced by the Government from time to time vide clause xxxii of existing conservancy agreement 2020-2021. ii. Contractor janitors / sanitation workers have not been enlisted with EOBI and Social Security by the Contractor. iii. Contractor janitors / sanitation worker employees are temporary / daily wagers as such no appointment letter has been issued to these sanitary workers by the contractor. 3. Moreover, the informations required as mentioned in your application at serial No. 4 pertains to conservancy contractor firm, therefore it is requested to get the same directly from such firm on address and contact”.*
  
5. The rejoinder was shared with the Appellant on October 26, 2021 and the Appellant shared his response on November 1, 2021, which is as under:  
*“Ref your Information Sharing Letter dated 26 October 2021. Cantt Board Malir has failed to provide the specific info asked for in question no 1 and 4 of my request letter.  
Question 1. Malir replies by saying that the contractor is bound to pay minimum wages. However the fact is that the CONTRACTOR DOES NOT PAY THE MIN WAGE. The Malir Cantonment whose ultimate responsibility is to check if contractors are complying with min wages, refuses to take this responsibility and also refuses to provide the reason for this non-compliance, as asked in our question.  
Question 4. Infor not provided. Instead applicant asked to get it from contractor – with who we have nothing to do.  
You are requested to kindly take necessary legal action against the organization so as to enable the provision of complete and correct information”.*

**C. Issues**

6. The instant appeal has brought to the fore following issue:  
  
Is the Respondent, Cantonment Board, Malir responsible to keep record indicating that labour laws of the land are being adhered to by the conservancy contractor with regard to the payment of minimum wages to the staff working for the Respondent as announced by the Government from time to time, or, mere insertion of clause xxxii of existing conservancy agreement 2020-2021 to this effect absolves the Respondent from its obligation?

**D. Discussion and Commission’s View on Relevant Issues**

7. The citizen has sought access to information/records indicating that the Respondent adheres to the labour laws of the country with regard to the staff that performs functions for the Respondent.
8. The Respondent states that “The conservancy contractor is bound to pay minimum wages to their (labour / staff) as announced by the Government from time to time vide clause xxxii of existing conservancy agreement 2020-2021”.
9. This Commission holds that mere insertion of clause xxxii of existing conservancy agreement 2020-2021 does not absolve the Respondent from its responsibility to ensure that labour laws of the land are being adhered to by the conservancy contractor with regard to the payment of minimum wages to the staff working for the Respondent as

announced by the Government from time to time as public funds are involved. As held by the Honourable Supreme Court of Pakistan in *Naimatullah Khan and others v. Federation of Pakistan* (2020 SCMR 513), while relying on *Habibullah Energy Limited and another v. WAPDA and others* (PLD 2014 SC 47), it is a well settled principle of law that all public functionaries must exercise public authority, especially while dealing with the public property, public funds, or assets in a fair, just, transparent and reasonable manner, untainted by *mala fide*, without discrimination and in accordance with law, keeping in view the Constitutional rights of the citizens”. That further, in *Hakeem Muhammad Saeed v. Deputy Commissioner, Vehari and others* (PLD 2020 Lahore 110), dealing with the right to information, the Lahore High Court found, at paragraph 3: “Right to information is the right that a citizen has, of access to information from the government and statutory bodies that receive public funds. RTI is based on the principle that information belongs to the people. It boosts transparency, which in turn strengthens accountability, reduces corruption and improves delivery of public services”.

10. This Commission is of the view that it is responsibility of the public bodies to maintain records of all the transactions to ensure that public funds, spent directly, or, through contractors, to perform official functions, are utilized in accordance with the laws of the land. In *Nisar Khan Khattak v. Haji Adam, Director General (Admin), PEMRA and another* (2021 PLC (C.S.) 140), the Islamabad High Court observed, at paragraph 12: “Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country, and therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good”. Further, in the Lahore High Court held, at paragraph 4, relying on *Shaukat Ali v. Government Dildar Ali v. D.C.O. Chiniot and others* (2015 CLC 1141), of Pakistan (PLD 1997 SC 342): “It is held that State functionaries are expected to act fairly and justly in a manner which should not give to any one any cause of complaint on account of discriminatory treatment or otherwise. While discharging official functions, efforts should be made by State functionaries to ensure that no one is denied the right to earn his livelihood because of the unfair or discriminatory act on their part”.
11. It is apparent from the response that the Respondent has not maintained record pertaining to the use of public funds, which is a serious matter of maladministration. As Cantonment Boards are an attached department of the Ministry of Defence, the same fall under the definition of a “public body” contained in Section 2(ix) of the Right to Information Act 2017, which includes “any Ministry, Division, attached department or subordinate office, including autonomous bodies of the Federal Government”. As a public body, the Respondent is, therefore, obligated under the 2017 Act to maintain and update its record.
12. In the instant Appeal, Sindh High Court Constitutional Petition No. D-852 of 2019 dated 10 March 2021 is also relevant. While dealing with the question as to whether the employees of a labour contractor can be considered as the employees of the establishment where they work through labour contractors, the Honourable Sindh High Court refers to the Honourable Supreme Court judgment (2013 SCMR 1253) by saying, “ In the case where an employer retains or assumes control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of the company; under the direct supervision

and control of the company; working within the premises of the company, involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company. The Honourable Sindh High Court judgment further declares, “Keeping in view the rule of parity and equity, all the janitorial staff even if considered to be the employees of the contractor, which is not the correct position, they have been performing duties of permanent nature ought to have been on regular strength of respondent-cantonment boards”. While discussing the right of a worker/workman, engaged for rendering service in an establishment through a labour contractor, to participate in a referendum for choosing a Collective Bargaining Agent, the Honourable Supreme Court, in *Sui Southern Gas Company Limited v. Registrar of Trade Unions and others* (2020 SCMR 638), observed, at paragraph 4: “Although, in view of the foregoing discussion, the question as to whether a person has been employed/engaged by the establishment directly or through a contractor is of no relevance, however, it may be beneficial to note here that the services, the workers enlisted as voters are rendering, are of security guards, janitors, gardeners and of ditching/backfilling and of meter reading, etc.” The Apex Court, while dealing with the question as to whether the employees of a labour contractor can be considered as employees of the establishment where they work through the labour contractor, found, in *Fauji Fertilizer Company v. National Industrial Relations Commission* (2013 SCMR 1253), held: “The crux of the above case law is that:- (a) the word ‘employed by the factory’ are wide enough to include workmen employed by the contractors of the company; (b) the employees of the contractor shall be the employees of the company if the contractor engaged the workers for the running of the affairs of the company and not for some other independent work which has no concern with the production of the company; ... (d) the employees, engaged directly or through a contractor, would be deemed to be the employees of the company for whose benefit they perform functions; ... (f) if the contract is found to be not genuine and a device to deprive the employees from their legitimate rights/benefits, the so-called contract employees will have to be treated as employees of the company”. The Honourable Court reasoned: “Normally, the relationship of employer and employee does not exist between a company and the workers employed by the Contractor; however, in the case where an employer retains or assumed control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor”.

13. In the light of above-mentioned Supreme Court and SHC judgments, the Respondent should have treated staff hired through the contractor the same way as it treats the staff directly hired by it in terms of maintaining record. That Article 11(2) of the Constitution of Pakistan prohibits “all forms of forced labour”, and Article 37 provides that the State shall “make provision for securing just and humane conditions of work”. In *Javed Iqbal and another v. Federation of Pakistan and others* (2018 PLC (C.S.) 228), the Honourable Islamabad High Court held, at paragraph 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”. Denial of payment of minimum wages can lead to a complaint of violation of Article 9 right to life and liberty, as held at paragraph 12 of the aforementioned judgment (2018 PLC (C.S.) 228): “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". The Honourable Islamabad High Court made another pertinent observation, i.e. that the meaning of "life" used in Article 9 is "wide", accordingly, it should "enable a man not only to sustain life but to enjoy it... with dignity, legally and constitutionally". In addition, Article 38(e) provides that the State shall "reduce disparity in the income and earnings of individuals". That further, the State of Pakistan is a Party to the International Labour Organization (ILO) Convention No. 29 (1930) on Forced Labour, since 23 December 1957. Under Article 2(1) of the Convention, "forced or compulsory labour" includes "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The Indian Supreme Court has, in 1982 AIR 1473, interpreted the term "forced labour" to include persons working for less than minimum wage. That in *Mohammad Imran and others v. Province of Sindh* (2019 SCMR 1753), the Honourable Supreme Court, at paragraph 48, held: "With regard to the minimum salary of teachers in Sindh, the concept of a minimum wage which is, through a formula, linked to a source of revenue is not an alien concept. This aims to deal with the issue of the right to earn a livelihood under Article 9 of the Constitution and the right not to be exploited under Article 3 of the Constitution, which as per this Court's judgment is the duty of the State to ensure". That in *Subay Khan v. Secretary, Labour, Government of Punjab* (PLD 2019 Lahore 253), the Honourable Lahore High Court addressed the issue of minimum wages and working conditions of domestic workers. Accordingly, in paragraph 26 of the judgment, relying on *PLD 2009 SC 507*, the Lahore High Court found: "... the Honourable Court laid ratio that all contracts whereby a person agrees to render services without wages or for nominal wages, forfeits the freedom of employment or movement or forfeits the right to appropriate or sell, at market value, any of his property or product of his labour, are void".

14. That in *Human Rights Cases Nos. 16360/2009 & 14292-P of 2010* (PLD 2011 Supreme Court 37), the Honourable Supreme Court made an important finding, at paragraph 6: "It is to be noted that under section 6 of the West Pakistan Minimum Wages for Unskilled Workers 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 person 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". In *PLD 2011 Supreme Court 37*, the learned Attorney-General had argued that Lady Health Workers, being employees of the National Program for Family Planning and Health Care, remained on contract on a year to year basis due to which they were entitled to receive whatever was "agreed upon by them". The Honourable Supreme Court held, at paragraph 7: "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, the are entitled for the same on the basis of policy... In a welfare State 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... 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... Therefore, any agreement, which is against the public policy is not enforceable”.

15. Cantonment Executive Officer, Cantonment Board Malir, Karachi has neither designated Public Information Officer (PIOs), as required under Section 9 of the Right of Access to Information Act 2017 nor ensured implementation of Section 5 of the Act. With respect to the enforcement of the Punjab Transparency and Right to Information Act 2013, the Lahore High Court has held, at paragraph 5 in *Hakeem Muhammad Saeed v. Deputy Commissioner, Vehari and others (PLD 2020 Lahore 110)*: “Needless to mention that law expects government functionaries proactive and not lethargic role. For this purpose, the Act of 2013 requires designation of PIOs in all administrative units or offices under it who have been bound down to provide requisite information... For said purpose each public body was mandated under Section 7 of the Act to designate/notify at least one public information for each office or administrative unit within 60 days of promulgation of this Act”.
16. This Commission has observed that information of public importance mentioned in Section 5 of the Act is not being published through the web site of federal public bodies. In fact, the Web sites of federal public bodies contain generic information and not specific information as required under Section 5 the Act. This is despite the fact that Principal Officer of each public body was required to ensure proactive disclosure of information through web site within 6 months of the commencement of the Right of Access to Information Act, 2017.
17. This Commission maintains that the information proactively published under Section 5 of the Right of Access to Information Act 2017 should be ‘accessible’ for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of ‘accessible’ in section 5 of the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under:

“The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.

## **E. Order**

18. Appeal is allowed. Cantonment Executive Officer, Cantonment Board Malir is directed to maintain records pertaining to the minimum wages paid to the staff hired through the contractor, ensuring through means of verification that funds are spent in accordance with the relevant labour laws of the country from the day of the receipt of this Order and submit compliance report to this commission after one month of the receipt of this Order.
19. Cantonment Executive Officer, Cantonment Board Malir is directed to conduct enquiry as to why the Respondent has failed to maintain records pertaining to the minimum wages paid to the staff hired through the contractor, reflecting through means of verification involving the input from staff and the contractor that funds were spent in accordance with the relevant labour laws of the land from the date of the signing of the

contract and share the enquiry report with this commission within one month of the receipt of this Order.

20. Cantonment Executive Officer, Cantonment Board Malir is directed to proactively publish all categories of information through its web site as required under Section 5 of the Act and submit the compliance report to the commission in the Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017'. This template is available under 'Information Desk' category at the web site of the commission [www.rti.gov.pk](http://www.rti.gov.pk). The compliance report be submitted to this commission at the earliest but not later than 10 working days of the receipt of this Order.
21. Cantonment Executive Officer, Cantonment Board Malir is directed to ensure accessibility of the information proactively published on its web site under Section 5 of the Right of Access to Information Act 2017 for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities and submit compliance report to this effect using 'Web accessibility checklist'. This checklist is available under 'Information Desk' category at the web site of the commission [www.rti.gov.pk](http://www.rti.gov.pk). The compliance report be submitted to this commission at the earliest but not later than 10 working days of the receipt of this Order.
22. Copies of this order be sent to Cantonment Executive Officer, Cantonment Board Malir and the Appellant for information and necessary action.

**Mohammad Azam**

Chief Information Commissioner

**Fawad Malik**

Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on:

November 03, 2021

This order consists of 7 (seven) pages, each page has been read and signed.