

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 1221-07-2021

Naeem Sadiq

Versus

Military Lands and Cantonments

Date of Hearing: 29.09.2021

Fawad Malik: Information Commissioner

APPEAL

1. Mr. Naeem Sadiq concerned about the lesser amount of wages being paid to the contracted janitors and also their non-registration with the EOBI and Social Security, by a large number of Cantonments, wants to know the following information for all 44 Cantonments from the office of the Director General, Military Lands and Cantonments, through his application dated 29.04.2021 invoking the Right of Access to Information Act, 2017:

1. *“Please provide in YES or NO the following 4 information about janitors employed themselves on contract by each of the 44 Cantt Boards.*
 - a. *Do they receive the current min wage of Rs. 17500 or not.*
 - b. *Do they receive 4 monthly holidays or not.*
 - c. *Are they registered with EOBI.*
 - d. *Are they registered with Social Security.*
 - e. *Do they have an appointment letter given to them. Please attach a sample of the appointment letter which gives details of their employment conditions.*

2. *Please provide in YES or NO the following 4 information about janitors employed through 3rd party contractors by each of the 44 Cantt Boards.*
 - a. *Do they receive the current min wage of Rs. 17500 pm or not.*
 - b. *Do they receive 4 monthly holidays or not.*
 - c. *Are they registered with EOBI.*
 - d. *Are they registered with Social Security?*
 - e. *Do they have an appointment letter given to them? Please attach a sample of the appointment letter which gives details of their employment conditions.”*
2. Aggrieved by the no response from the respondent organization with in the stipulated frame of time provided in the Act, he filed appeal before the Pakistan Information Commission.

PROCEEDINGS

3. The Deputy Director/Designated Officer, Military Lands and Cantonment Department vide letter dated 29.7.2021, was directed to provide reasons in writing within seven working days as to why the requested information has not been provided to the applicant as under section 14 of the Right of Access to Information Act 2017, each public body is bound to respond to a request as early as possible and in any case not later than ten working days of the receipt of the request.
4. The reply was not submitted nor was the information provided therefore the appeal was fixed for hearing before the Commission on September 22, 2021 and the designated officer was informed accordingly but no one appeared on behalf of the organization.
5. The appeal was again fixed for hearing on September 29, 2021 and the notice was issued to the Director (HQ), Military Lands and Cantonment Department. Again no one appeared to represent the respondent organization.

COMMISSION'S VIEW

6. While dealing with the matters related to information and record sought by the citizens under the Act 2017, the public bodies are under obligation to respond the applications as mandated in the Act. In the case in hand the respondent has not acknowledged the application, information is not provided to the applicant in the stipulated time frame and the notices of the Commission are not answered. The reply is not submitted and the hearings before the Commission were not represented by the public body. It is presumed that the respondent public body is willfully avoiding the proceedings before the Commission and that the public body has nothing in the sleeves to submit in the defense. In such like circumstances the Commission is left with no option but to decide the appeal ex parte after going through the contents of file in light of the Act and the Constitution of Islamic Republic of Pakistan since the matter of public importance and violation of fundamental rights is pointed out in the request.
7. The appellant wants sample of the appointment letters given to the employee in order to dig out information about janitors employed on contract by each of the 44 Cantonment Boards across the country, themselves and employed through 3rd party contractors as to whether they receive the minimum wages of Rs. 17,500/-(minimum per month wages for an employer declared by the government at the time of filing of appeal currently Rs. 20,000/- per month), whether they receive 4 monthly holidays and whether they are registered with EOBI and Social Security.
8. Article 27 of the Constitution of Pakistan envisages the inalienable safeguards against discrimination in service and Article 25 of the Constitution of Pakistan ensures right of equality and entitled to equal protection of law to the citizens of the state. All the state functionaries are duty bound to strictly adhere to the Constitutional rights while dealing with the citizens/employees in the business and affairs of the organizations in order to promote social justice and economic well-being and eradication of social evils.

9. So far as the out sourced employers through 3rd party are concerned, predominantly in an appeal no. 949-03-2021 titled '*Naeem Sadiq versus Pakistan State Oil*', the Commission has dealt with the identical matter. It may be considered as integral part of this order. The same is reproduced here under:

"The section 2(4) of the minimum wages ordinance, 1961 has defined the employer as:

"employer" means any person who employs either directly or through another person, whether on behalf of himself or any other person, any person for whom a minimum rate of wages may be declared under this Ordinance, and includes: --

(a) in relation to a factory, a managing agent or other person who has ultimate control over the affairs of the factory; and

(b) in other cases, any person responsible to the owner for supervision and control of such worker or for payment of his wages;"

The Honourable Supreme Court of Pakistan in the case titled "Fauji Fertilizer Company Ltd. vs National Industrial Relations Commission" reported as 2013 SCMR 1253, has observed as: "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 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 running 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 Sindh High Court while referring the above cited views of the Honourable Supreme Court of Pakistan has observed in the Constitutional Petition No. D-852 vide order dated 10.3.2021 as under:

“suffice it to say that it is a normal practice on behalf of such employer to create a pretense and on that pretense to outsource the employment against permanent posts. This all seems to be a sham pretense and therefore it is not a case of disputed fact and evidence is required to record”

10. The Commission is of the considered view that the information and record sought by the appellant is the category of record that ought to have been uploaded on the website of the organization and posted on the notice boards of each office to aware and facilitate the citizens as required under section 5 of the Act.
11. Right of access to the record and information in the matters of public importance is constitutional and statutory right of the citizens provided under the Constitution of Pakistan and the Right of Access to Information Act, respectively which cannot be denied or delayed at the whims of the beurocratic hierarchy. Disclosure of the requested record will improve the participation of the people in public affairs which will be helpful in reducing corruption and inefficiency and nepotism in the affairs of the organizations and promote the good governance.

ORDER

12. The appeal is allowed. The Deputy Director/Designated Officer, Military Lands and Cantonment Department, Ministry of Defense, Rawalpindi is directed to furnish the appellant all the requested information and record detailed in para 1, *supra*, forthwith but not later than ten working days of the receipt of this order.
He is further directed to make sure the compliance of the Section 5 of the Right of Access to Information Act, 2017 within one month, under intimation to this Commission.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 04.10.2021

Certified that this order consists of () pages, each page has been read and signed.