

MINIMUM WAGES ORDINANCE, 1961

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Establishment of Minimum Wages Boards.
4. Recommendation of minimum rates of wages for unskilled and juvenile workers.
- ✓ 5. Recommendation of minimum rates of wages for workers with respect to particular industries.
6. Power to declare minimum rates of wages.
7. Periodical review of minimum rates of wages.
8. *Omitted.*
9. Prohibition to pay wages at a rate below the minimum rate of wages.
10. Cognizance of offences.
11. Protection of the proceedings of a Board.
12. Powers of Boards, etc., to collect information.
13. Certain powers of Court to Boards.
14. Chairman, etc., deemed to be public servants.
15. Bar to legal proceedings.
16. *Omitted.*
17. Rules relating to Boards.
18. Repeal and savings.

—: o :—

ORDINANCE No. XXXIX of 1961

AN

[28th September, 1961]

ORDINANCE

to provide for the regulation of minimum rates of wages for workers employed in certain industrial undertakings.

Whereas it is expedient to provide for the regulation of minimum rates of wages for workers employed in certain industrial undertakings, and for matters ancillary thereto;

Now, therefore, in pursuance of the proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance ;—

MINIMUM WAGES ORDINANCE

1. **Short title, extent and commencement**—(1) This Ordinance may be called the Minimum Wages Ordinance, 1961.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions**.—In this Ordinance, unless there is anything repugnant in the subject or context—

(1) "adult" has the same meaning as in clause (b) of section 2 of the Factories Act, 1934 (XXV of 1934) ;

(2) "Board" means a Minimum Wages Board established under section 3 ;

(3) "Council" means the Minimum Wages Council¹ constituted under section 8 ;

(4) "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 ;

(5) "factory" means a factory as defined in clause (j) of section 2 of the Factories Act, 1934 (XXV of 1934), and includes any place deemed to be a factory under sub-section (3) of section 5 thereof ;

(6) "industry" with its grammatical variations and cognate expressions, means an industry as defined in ²[Clause (xiv) of section 2 of the Industrial Relations Ordinance, 1969 (XXIII of 1969)] and includes a plantation as defined in clause (iii) of section 2 of the Payment of Wages Act, 1936 (IV of 1936) ;

(7) "juvenile worker" means a worker who is not adult ;

(8) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, but does not include—

(a) any contribution paid by the employer in respect of such person under any scheme of social insurance or to a pension fund or provident fund ;

(b) any travelling allowance or the value of any travelling concession ;

(c) any sum paid to such person to defray special expenses incurred by him in respect of his employment ;

¹This definition of "Council" is unnecessary as section 8 and all other references to the Council in the Ordinance were omitted by P. O. 1 of 1964, Art. 2 and Sch.

²Subs. for "clause (g) of section 2 of the Industrial Disputes Ordinance, 1959 (LVI of 1959)." by Ord. XXVII of 1981, s. 3 & 2nd Sch

- (d) any sum paid as annual bonus; or
 - (e) any gratuity payable on discharge; and
- (9) "worker" means any person including an apprentice employed in any industry to do any skilled or un-skilled, intellectual, technical, clerical, manual or other work, including domestic work, for hire or reward but does not include—
- (i) persons employed by the ¹[Federal Government] or a Provincial Government;
 - (ii) persons employed in coal mines in respect of whom minimum wages may be fixed under the Coal Mines (Fixation of Rates of Wages) Ordinance, 1960 (XXXIX of 1960); and
 - (iii) persons employed in agriculture.

3. **Establishment of Minimum Wages Boards.**—(1) As soon as may be after commencement of this Ordinance, the Provincial Government shall establish a Minimum Wages Board ²for the Province consisting of the following four members ³to be appointed by it, namely—

- (a) the Chairman of the Board;
- (b) one independent member;
- (c) one member to represent the employers of the Province; and
- (d) one member to represent the workers of the Province :

Provided that for the purpose of discharging the function of a Board specified in section 5 the following two more members appointed by the Provincial Government shall be added, namely—

- (i) one member to represent the employers connected with the industry concerned; and
- (ii) one member to represent the workers engaged in such industry.

(2) The Chairman of the Board and the independent member shall be appointed from persons with adequate knowledge of industrial labour and economic conditions of the Province who are not connected with any industry or associated with any employers' or workers' organization.

(3) The member to represent the employers of the Province and the member to represent the workers of the Province under sub-section (1) shall be appointed after considering nominations, if any, of such organizations as the Provincial Government considers to be representative organizations of such employers and workers respectively.

(4) The members referred to in the proviso to sub-section (1) to represent the employers connected with and the workers engaged in the industry concerned shall be appointed after considering nominations, if

¹Subs. for "Central Government" by P. O. 4 of 1975, Art. 2 (3).

²Sind Minimum Wages Board established. Noti. No. SO (L-11) 4 (6) 73 of 5 Feb., 1974, Sind Govt. Gaz. Pt. I, 14 Feb. 1974, p. 255.

³Punjab Govt. appointed additional members on the Punjab Minimum Wages Board to represent employers and workers in 13 specified industries. Noti. 2-12 (LIV) 70 of 3 Oct. 1974, Punjab Gaz. Extr. 10 Oct. 1974, p. 1325.

any, of such organizations as the Provincial Government considers to be representative organizations of such employers and workers respectively.

(5) The term of office of the members of the Board, the manner of filling casual vacancies therein, the appointment of its committees, if any, the procedure and conduct of the meetings of the Board and its committees and all matters connected therewith, including the fees and allowances to be paid for attending such meetings, and other expenses, including expenses for the services of experts and advisers obtained by the Board, shall be such as may be prescribed by rules made under section 17.

4. Recommendation of minimum wages for unskilled and juvenile workers.—(1) A Board shall, upon a reference made to it by the Provincial Government, recommend to such Government, after such enquiry as the Board thinks fit, the minimum rates of wages for adult unskilled workers and juvenile workers employed in industrial undertakings in the Province.

(2) In its recommendations under sub-section (1), the Board shall indicate, whether the minimum rates of wages should be adopted uniformly throughout the Province or with such local variations for such localities as are specified therein.

5. Recommendation of minimum rates of wages for workers with respect to particular industries.—(1) Where in respect of any particular industry in the Province for which no adequate machinery exists for effective regulation of wages, the Provincial Government is of the opinion that, having regard to the wages of the workers employed in the undertakings engaged in such industry it is expedient to fix the minimum rates of wages of such workers, it may direct the Board to recommend, after such enquiry as the Board thinks fit, the minimum rates of wages either for all such workers or for such of them as are specified in the direction.

* * * * *

(2) In pursuance of a direction under sub-section (1), the Board may recommend minimum rates of wages for all classes of workers in any grade and, in such recommendation, may specify—

(a) the minimum rates of wages for—

- (i) time work;
- (ii) piece work;
- (iii) overtime work; and
- (iv) work on the weekly day of rest and for paid holidays; and

(b) the minimum time rates for workers employed on piece work so as to guarantee minimum wages on a time basis for such workers.

(3) The time rates recommended by the Board may be on hourly, daily, weekly or monthly basis.

(4) The rates recommended under this section for overtime work and work on paid holidays shall not be less than the minimum rates fixed for such work under any other law for the time being in force.

¹Proviso omitted by P.O. 1 of 1964, Art. 2 and Sch.

6. Power to declare minimum rates of wages.—(1) Upon receipt of a recommendation of the Board under section 4 or section 5, the Provincial Government may,—

- (a) by notification in the official Gazette, declare that the minimum rates of wages recommended by the Board for the various workers shall, subject to such exceptions as may be specified in the notification, be the minimum rates of wages for such workers ; or
- (b) if it considers that the recommendation is not, in any respect, equitable to the employers or the workers within thirty days of such receipt, refer it back to the Board, for reconsideration with such comments thereon and giving such information relating thereto as the Provincial Government may think fit to make or give.

(2) Where a recommendation is referred back to the Board under clause (b) of sub-section (1), the Board shall reconsider it after taking into account the comments made and information given by the Provincial Government and, if necessary, shall hold further enquiry and submit to such Government—

- (a) a revised recommendation, or
- (b) if it considers that no revision or change in the recommendation is called for, make report to that effect stating reasons therefor.

(3) Upon receipt of the recommendation of the Board under sub-section (2), the Provincial Government may, by notification in the official Gazette, declare that the minimum rates of wages recommended under that sub-section by the Board for various workers shall, subject to such modifications and exceptions as may be specified in the notification, be the minimum rates of wages for such workers.

(4) Unless any date is specified for the purpose in the notification under sub-section (1) or sub-section (3), the declaration thereunder shall take effect on the date of publication of such notification.

(5) Where after the publication of a notification under sub-section (1) or sub-section (3), or after the minimum rates of wages declared thereunder have taken effect, it comes to the notice of the Provincial Government that there is a mistake in the minimum rates of wages so declared, or that any such rate is inequitable to the employers or the workers, it may refer the matter to the Board and any such reference shall be deemed to be a reference under sub-section (2).

(7) The minimum rates of wages declared under this section shall be final and shall not in any manner be questioned by any person in any court or before any authority.

[Note :—When minimum rates of wages have been notified under sub-section (1) or sub-section (3), they shall continue to be operative. In case the Government thereafter makes a second reference to the

¹Sub-section (6) omitted by P. O. 1. of 1964, Art. 2 and Sch.

MINIMUM WAGES ORDINANCE

Board under sub-section (5), its duty is to consider the whole matter afresh and make its revised recommendations in respect of minimum rates of wages. If the revised recommendation is considered by an employer to be more inequitable to him than the first reference, nothing can be done about it. The Supreme Court of Pakistan held that "there is no substance in this contention, for there is no such limitation imposed upon the powers of the Board by the statute itself." *National Steel Rolling Mills and others vs. Province of West Pakistan* : 1976 LLC 444=1968 SCMR 317 (2).

7. Periodical review of minimum rates of wages.—(1) The Board shall review its recommendations if any change in the economic conditions and cost of living and other relevant factors so demand, and recommend to the Provincial Government, any amendment, modification or revision of the minimum rates of wages under section 6 :

Provided that no recommendation shall be reviewed earlier than one year from the date on which it was made, unless the special circumstances of a case so require, and later than three years from such date.

(2) Review and recommendation under this section shall be deemed to be an enquiry and recommendation under section 4 or, as the case may be, under section 5, and, so far as may be, the provisions of this Ordinance shall, to such review and recommendation, apply accordingly.

* * * * *

9. Prohibition to pay wages at a rate below the minimum rate of wages.—(1) Subject only to such deductions may be authorized under this Ordinance or under any other law for the time being in force, no employer shall pay any worker wages at a rate lower than the rate declared under this Ordinance to be the minimum rate of wages for such worker.

(2) Nothing in sub-section (1) shall be deemed—

- (a) to require or authorize an employer to reduce the rate of wages of any worker ; or
- (b) to affect, in any way, the right of a worker to continue to receive wages at a rate higher than the minimum rate are declared under this Ordinance if, under any agreement, contract or award, or as a customary differential, "or otherwise, he is entitled to receive wages at such higher rate, or" to continue to enjoy such amenities and other advantages as are customary for such worker to enjoy; or
- (c) to affect the provisions of the Payment of Wages Act, 1936 (IV of 1936).

(3) Any employer who contravenes the provisions of this section shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both, and if the court trying such contravention by order so directs, shall also pay to the working concerned such sum as may be specified in the order to represent the difference between the amount actually paid to such worker and the amount which would have been paid to him had there been no such contravention.

¹Section 8 omitted by P. O. 1 of 1964, Art. 2 and Sch.

19-A. (1) The Provincial Government may, by notification in the official Gazette, appoint any person to be Authority for any area specified in the notification, to hear and decide all claims arising out of non-payment, or delay in the payment of wages to workers, in that area whose minimum rates of wages have been declared under the provisions of this Ordinance.

(2) Where contrary to the provisions of this Ordinance, wages of any worker have been withheld or delayed, such worker himself or through any other person authorised by him in this behalf, may, within six months from the day on which such payment was to be made, apply to the Authority appointed under sub-section (1) having jurisdiction, for an order directing the payment to him of such wages :

Provided that any such application may be admitted after the said period of six months but not later than one year from the date on which the payment was to be made, if the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer or other person responsible for the payment of wages alleged to have been withheld or delayed or give them an opportunity of being heard and after such further inquiry, if any, as may be necessary may, without prejudice to any other penalty to which such employer or other person may be liable under section 9 or any other law for the time being in force direct the employer or such other person to make payment to the applicant of the wages which have been withheld or delayed, together, with such penalty, not exceeding fifty rupees, as the authority may fix :

Provided that no direction for the payment of a penalty shall be made in the case of delayed wages, if the Authority is satisfied that the delay was due to—

- (a) a *bona fide* error or *bona fide* dispute as to the amount payable to the employee; or
- (b) the occurrence of any emergency or the existence of such exceptional circumstances that the person responsible for the wages was unable to make prompt payment ; and
- (c) the fault of the worker.

(4) If the Authority hearing any application under this section is satisfied that no amount to be paid as wages is due from the employer or other person responsible for the payment of wages to the applicant, it shall reject the application ; and if the application, in the opinion of the Authority, is malicious or vexatious, the Authority when rejecting it, may direct the applicant to pay a penalty not exceeding fifty rupees to the employer or other person responsible for the payment of wages.

(5) Any amount directed to be paid under this section may be recovered—

- (a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by him as a Magistrate ; and

¹Sec. 9-A inserted by West Pak. Ordinance XI of 1970 Gaz. of West Pak. Extr. 20 April 1970, p. 677.

(b) if that Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) An appeal against a direction made or order passed under sub-section (3) or sub-section (4) may be preferred to the District Court within thirty days of the date on which the direction was made or order was passed—

- (a) by the employer or other person responsible for the payment of wages, if the amount directed to be paid as wages or as wages and penalty exceeds one hundred rupees ;
- (b) by a worker, if the total amount of wages claimed to have been withheld from him exceeds rupees fifty; or
- (c) by the person directed under sub-section (4) to pay a penalty.

(7) If there is no appeal, the direction or order of the Authority made under sub-section (3) or sub-section (4) and where there is an appeal as provided in sub-section (6), the decision in appeal, shall be final and shall not in any manner be questioned by any person in any court or before any authority.

(8) An Authority appointed under sub-section (1) shall, for the purposes of determining any matter referred to in sub-section (3) or sub-section (4)—

- (a) have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purposes of enforcing the attendance of witnesses, compelling the production of documents, and the taking of evidence ; and
- (b) be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

10. Cognizance of offences.—No court inferior to that of a Magistrate of the first class shall take cognizance of an offence punishable under this Ordinance or the rules made thereunder, and cognizance shall not be so taken except upon a complaint in writing made by the Provincial Government or by any person authorized on this behalf by such Government.

11. Protection of the proceedings of a Board.—No act or proceeding of a Board * * *¹ shall be invalid or questioned merely on the ground of existence of any vacancy therein or of any defect in the constitution or in the appointment or qualification of any member thereof.

12. Power of Boards, etc, to collect information.—²[(1) Any Board or the Chairman of a Board may, for the purpose of an enquiry under this Ordinance or the rules made thereunder, direct any employer to furnish such records, documents or information and do such other acts as the Board or the Chairman, as the case may be, may require, and every such employer shall comply with such direction.]

¹The words "or of the Council" omitted by P.O. 1 of 1964, Art. 2 and Sch.

²Subs for original sub-section (1), *ibid.*

(2) The Chairmen of the Boards * * *¹ and such members, Officers and servants thereof as are authorized in this behalf by the rules made may, for the discharge of any functions under this Ordinance or the rules made thereunder,—

- (a) enter, at all reasonable times, any factory ;
- (b) inspect any books, registers and other documents relating to such factory ; and
- (c) record statements of persons connected with the working of such factory :

Provided that no one shall be required under this clause to answer any question tending to criminate himself.

(3) Any employer who contravenes the provisions of sub-section (1), and any person who wilfully obstructs anyone in the exercise of any power under sub-section (2), or fails to produce on demand thereunder any books, registers or other documents, shall be punishable with fine which may extend to five hundred rupees.

13. **Certain powers of Court to Boards.**—The Boards * * * * * shall, while holding an enquiry under this Ordinance or the rules made thereunder be deemed to be Civil Courts and shall have the same powers as are vested in such Courts under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely :—

- (a) enforcing the attendance of any person and examining him on oath,
- (b) compelling the production of documents and material objects ; and
- (c) issuing commissions for the examination of witnesses.

14. **Chairmen, etc. deemed to be public servants.**—The Chairmen of the Boards * * * * * and the members, officers and servants thereof, shall all be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

15. **Bar to legal proceedings.**—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Ordinance or the rules made thereunder.

16. [*Rules relating to Council*] omitted by P. O. 1 of 1964, Art. 2 and Sch.

17. **Rules relating to Boards.**—(1) Subject to the provisions of section 16, the Provincial Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the matters specified in sub-section (5) of section 3 ;

¹The words "and the Council" omitted, by P. O. 1 of 1964, Art. 2 and sch.