

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.2538/ISB/IT/2021

Dated: 03.12.2021* HQ, Islamabad

Mr. Muhammad Saleem Raza,
Chak No. 12, Chabi NB Post Office Chak
No. 14 D, NB, Tehsil Yazman,
District Bahawalpur.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Mr. Muhammad Majid Qureshi, Advisor
Appraisal by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	None
Departmental Representative	:	None

FINDINGS/RECOMMENDATIONS

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The above referred complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance) stating that the Complainant was **employed** in Pakistan Broad Casting Corporation (PBC) as a news caster on temporary basis. He further contended that the amounts of salary/fees are paid after deduction of income tax @ 17.5 %. This deduction was made on the gross amount without any basic exemption like the one available to the salaried Govt servants.

2. The complaint was referred for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance, read with Section 9(1) of the Federal Ombudsman Institutional Reforms Act, 2013 followed by a reminder dated 29.12.2021. FBR

IR-Policy wing has informed that the daily wagers do not fall in the category of salaried persons thus cannot be categorized as employees. The rate of tax to be deducted u/s 153(1)(b) of the Ordinance is 10% and for non-filers it is 20%.

EXAMINATION OF RECORD AND FINDINGS:

3. Contention of the department has been examined in the light of documents provided by the complainant i.e. appointment letter, deduction certificates and relevant legal provisions i.e. sections 12 and 149 of the Income Tax Ordinance, 2001 Ordinance. Resulting position is as under:

Section 12. **Salary.**—

(2) Salary means any amount received by an employee from any employment, whether of a revenue or capital nature, including —

(a) **any pay, wages or other remuneration provided to an employee**, including leave pay, payment in lieu of leave, overtime payment, bonus, commission, fees, gratuity or work condition supplements (such as for unpleasant or dangerous working conditions).

Section 149. **Salary.** — (1) Every [person responsible for] paying salary to an employee shall, at the time of payment, deduct tax from the amount paid at the employee's average rate of tax computed at the rates specified in Division I of Part I of the First Schedule on the estimated income of the employee chargeable under the head "Salary".

Examination of FBR reply dated 27th January, 2022 reflects the following serious flaws:

- i. The above referred governing legal provisions of Income Tax Ordinance neither obligate any **valid contract of employment** as being suggested by FBR, nor place any other condition on employer or employee except for the basic "**Master-Servant Relationship**" **criterion**, which forms the basic parameter for any employment. Regular/Adhoc/Temporary/Daily Wages, all are the different shades & forms of employment and

law doesn't create any distinction among all the above forms.

- ii. While law treats WAGES at par with PAY, while defining salary, how daily wagers can be excluded from the ambit of employment?
- iii. PBC Letter No. 11(1) NE/2017/488 dated 10th August 2017 categorically states that "your services will be governed by Rule of Master and Servant."


In view of above FBR's treatment of the instant case u/s 153(1)(b) is against the dictates of law and excessive tax deductions from the pay/wages of a low paid temporary employee of PBC tantamount to maladministration in terms of FTO Ordinance, 2000.

RECOMMENDATIONS:

4. FBR is directed to:-

- (i) ensure that low paid employees of PBC and other such organizations are not burdened with excessive tax deductions at withholding stage. While Taxpayers facilitation constitutes the core function of FBR its implementation on ground should also be visible;
- (ii) direct the concerned RTO to process the instant case on priority basis and under relevant legal provisions, so as to save the complainant from grave hardship he is suffering since 2017;
- (iii) issue necessary clarification for all and sundry so as to safeguard the low paid employees against excessive deductions; and
- (iv) report compliance within 60 days.

Dated: 24-02-2022
U.f


(Dr. Asif Mahmood Jah)
(Hilal-i-Imtiaz)(Sitara-i-Imtiaz)
Federal Tax Ombudsman

Certified to be True Copy
25-2-22
Registrar
FTO Secretariat
Islamabad