

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR

Rep. Nos.317 to 354/FTO/2022
Date of Decision:25.01.2023

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Ms. 112
27/1
Dir Reg

Federal Board of Revenue Vs Mujeeb Ul Haq & others

Subject: **38 REPRESENTATIONS FILED BY FEDERAL BOARD OF REVENUE AGAINST THE FINDINGS / RECOMMENDATIONS DATED 26.10.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NOS. 0386 TO 0402 & 0404 to 0424/INFRML/2022.**

Kindly refer to your representations on the above subject addressed to the President in the background mentioned below:-

1. Rep. No.317/FTO/2022 in C. No.0386/Infrml/2022
2. Rep. No.318/FTO/2022 in C. No.0387/Infrml/2022
3. Rep. No.319/FTO/2022 in C. No.0388/Infrml/2022
4. Rep. No.320/FTO/2022 in C. No.0389/Infrml/2022
5. Rep. No.321/FTO/2022 in C. No.0390/Infrml/2022
6. Rep. No.322/FTO/2022 in C. No.0391/Infrml/2022
7. Rep. No.323/FTO/2022 in C. No.0392/Infrml/2022
8. Rep. No.324/FTO/2022 in C. No.0393/Infrml/2022
9. Rep. No.325/FTO/2022 in C. No.0394/Infrml/2022
10. Rep. No.326/FTO/2022 in C. No.0395/Infrml/2022
11. Rep. No.327/FTO/2022 in C. No.0396/Infrml/2022
12. Rep. No.328/FTO/2022 in C. No.0397/Infrml/2022
13. Rep. No.329/FTO/2022 in C. No.0398/Infrml/2022
14. Rep. No.330/FTO/2022 in C. No.0399/Infrml/2022
15. Rep. No.331/FTO/2022 in C. No.0400/Infrml/2022
16. Rep. No.332/FTO/2022 in C. No.0401/Infrml/2022
17. Rep. No.333/FTO/2022 in C. No.0402/Infrml/2022
18. Rep. No.334/FTO/2022 in C. No.0404/Infrml/2022
19. Rep. No.335/FTO/2022 in C. No.0405/Infrml/2022
20. Rep. No.336/FTO/2022 in C. No.0406/Infrml/2022
21. Rep. No.337/FTO/2022 in C. No.0407/Infrml/2022
22. Rep. No.338/FTO/2022 in C. No.0408/Infrml/2022
23. Rep. No.339/FTO/2022 in C. No.0409/Infrml/2022
24. Rep. No.340/FTO/2022 in C. No.0410/Infrml/2022
25. Rep. No.341/FTO/2022 in C. No.0411/Infrml/2022
26. Rep. No.342/FTO/2022 in C. No.0412/Infrml/2022
27. Rep. No.343/FTO/2022 in C. No.0413/Infrml/2022
28. Rep. No.344/FTO/2022 in C. No.0414/Infrml/2022
29. Rep. No.345/FTO/2022 in C. No.0415/Infrml/2022
30. Rep. No.346/FTO/2022 in C. No.0416/Infrml/2022
31. Rep. No.347/FTO/2022 in C. No.0417/Infrml/2022

32. Rep. No.348/FTO/2022 in C. No.0418/Infrml/2022
33. Rep. No.349/FTO/2022 in C. No.0419/Infrml/2022
34. Rep. No.350/FTO/2022 in C. No.0420/Infrml/2022
35. Rep. No.351/FTO/2022 in C. No.0421/Infrml/2022
36. Rep. No.352/FTO/2022 in C. No.0422/Infrml/2022
37. Rep. No.353/FTO/2022 in C. No.0423/Infrml/2022
38. Rep. No.354/FTO/2022 in C. No.0424/Infrml/2022

38 representations have been filed by Federal Board of Revenue on 21.11.2022 against the order of the learned Federal Tax Ombudsman (FTO) dated 26.10.2022, whereby it has been held that:

“FBR is directed to: -

- (i) ensure that the low paid complainants/employees of PTV are not burdened with excessive tax deductions at withholding stage;***
- (ii) implement these recommendations & findings in liaison with PTV's management on the lines already done by the management of PBC; and***
- (iii) report compliance within 45 days.”***

2. The above mentioned complaints were filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against excessive and unjust practice of deducting Income Tax @ 10/20% under Section 153(1)(b) of Income Tax Ordinance (the Ordinance) from the salaries/wages of low paid temporary/contractual employees of the Pakistan Television Corporation (PTVC), Headquarters Islamabad treating them as services providers. The complaints, being identical in nature, were disposed of through a single consolidated order.

3. The complainants stated that they had been hired as full-time employees in the categories of Supervisors and Translators. Their stance was as follows:

- The complainants were bound in Master-Servant Relationship and their status was similar to the Pakistan Broadcasting Corporation (PBC) Casual Employees.
- They marked Bio metric attendance on daily basis, they were paid on monthly basis and their remunerations were deposited directly in their Bank accounts.
- The employer had provided work-stations for them. They were subject to approval of leave application, entitled to weekly leave and were subject to similar administrative and disciplinary proceedings as any other employees of PTV.
- In pursuance to the FTO Recommendations in Complaint No. 2538/ISBIIT/2021 dated 24.02.2022, the PBC had clarified that all PBC equivalent/counterparts of complainants were governed by "Master-Servant Rule" whether specifically mentioned in engagement letter or not (copy placed on record).
- The complainants were only seeking relief from excessive tax deductions with immediate effect and will not seek any other service benefits.

- The complainants also produced a letter dated 11.10.2022, issued by Controller News, PTV in support of their contentions as follows:

"It is humbly submitted that the "Supervisors" and "Translators" Employed in PTV seeking tax exemption are:

- Employed in PTVC under "Master-Servant" Rule.
- Subject to employment under the Industrial and Commercial Employment (Standing Orders) Ordinance, 1966" and "The Industrial Relation Act, 2012".
- Similar in status to "PBC Casual Employees" who have been recently granted tax exemption by the FTO.
- Employed full-time and deputed to work in various shifts as any other employee working in PTVC.
- Biometrically verified for attendance on daily basis as any other employee of PTVC.
- Subject to approval of leave application before availing leave.
- Entitled to a weekly off-day subject to completion of 36 working hours per week (6hrs/day).
- Subject to similar administrative and disciplinary proceedings as any other employee of PTVC not meeting the mandatory working hours.

It is therefore requested that tax exemption may please be granted to Supervisors and Translators employed in PTVC in the light of FTO Finding under Case No. 2538 regarding income tax of low paid employees."

Although, they requested to PTVC/FBR for deducting their taxes U/S 149 of the Income Tax Ordinance, 2001 instead of deduction of Tax U/S 153(i)(b) @10/20% yet without any result. Thus, they took up the matter with the learned FTO by filing complaints U/S 10(1) of the FTO Ordinance, 2000.

4. The stance of PTV before the learned FTO was that the complainants had been engaged as service providers to whom remunerations were paid as per fee structure approved by the Board of Governors. Moreover, the complainants were not governed by "PTV Employees Service Rules". However, admittedly, those individuals were employed full-time and deputed to work in various shifts as any other employee working in the PTVC.

5. The FBR's stance before the learned FTO was that in pursuance of the learned FTO's Recommendations dated 24.02.2022, IR Policy Wing of FBR had already issued instructions vide letter dated 11.04.2022. It was now upto the IR Operations Wing and the relevant field offices to examine the status of "Master-Servant Relationship" on case-by-case basis.

6. Considering the respective stances, the learned FTO proceeded to pass the above referred order in the complaints of identical nature which is assailed by the FBR.

7. The hearing of the case was fixed for 17.01.2023. Ms. Javeria Hayat, Deputy Commissioner-IR has represented the FBR, whereas, the complainants have not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

8. The learned Federal Tax Ombudsman thrashed the matter vide Paras 2,3,8(iv,v&vi)&9 of the order as follows:

"2. The alleged Departmental practice in such cases has been examined in the light of relevant legal provisions i.e. sections 12 and 149 of the Ordinance, 2001: the 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."

- *Section 149. Salary. —*

(1) Every person responsible for paying 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 1 of Part I of the First Schedule on the estimated income of the employee chargeable under the head "Salary".

3. Under the above Legal provisions (Section 12 and 149 of the Ordinance), the term "Salary" includes pay, wages or other remuneration and payment in lieu of leave, overtime payment, bonus, commission, fees etc. Thus its scope is much broader than the formal concept of regular employment. As held in an earlier case only the broader criterion of Master-Servant relationship truly exemplifies the employment, covering all possible shades of i.e. Regular/Adhoc/Temporary/Hired/Daily Wages etc. Suffice to say that Section 12 of Income Tax Ordinance 2001 doesn't create any distinction among all the above forms.

8. In the light of above discussions, the following facts are inter alia, noteworthy;

- iv. *The details of engagement/employment of 38 Translators & Supervisors of the PTV News Islamabad have been obtained, which are quite revealing;*
- v. *It's quite shocking that the above low paid persons employed as full timers since as late as 1991(S.NO. 34) and 2001(S.NO 46) are subjected to excessive and harsher tax deductions u/s 153(i)(b) @ 10/20 % whereas highly paid contract employees of PTV are paying less taxes u/s 149 of Income Tax Ordinance, 2001. This tax treatment is arbitrary and discriminatory.*

- vi. *All the features of engagement of the complainants by PTV clearly indicate that all ingredients of employment and receipt of SALARY are visible. If nature of job and pre-conditions of engagement indicate the factum of employment then the head of payment, applicability of service rules etc. are of secondary importance. If the wages, fee received by the complainants is covered under the definition of SALARY u/s 12 then the aforesaid conditions are not material from the point of tax deduction.*

9. *In view of the above-mentioned facts & discussions, it has been established that the complainants, who have been hired by PTV as Supervisors, Translators over the last few decades as low paid employees are entitled to the similar relief which has been allowed to the employees of PBC and other similar cases. Excessive and harsh deduction of tax from their meager salaries U/S 153(1)(b) of the Ordinance is against the dictates of law and nature of treatment being discriminatory, tantamount to maladministration in terms of section 2(3)(i)(b) of the FTO Ordinance, 2000."*

Thus, these are findings arrived at on due consideration of the record.

9. It is worth noting that a written application has been received from the complainants to the effect that the FBR has accepted the plea of the complainants and implemented the findings of the learned FTO. Since, in pursuance of the FBR's letters dated 16.11.2022 and 30.11.2022, the PTV HQs has implemented the learned FTO's findings vide letter dated 12.01.2023, thus, the grievance of the complainants stands redressed. In such circumstances, the representations are liable to be disposed of accordingly.

10. Accordingly, the Hon'ble President, as per his decision above, has been pleased to dispose of the representations of the FBR.


(Anwar-ul-Haq)
Director General (Legal)

The Chairman,
Federal Board of Revenue, Islamabad.

Mr. Mujeeb ul Haq & others
House No. DK-320/B,
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Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), FBR, Islamabad.
3. The Commissioner-IR, Legal Zone, Large Taxpayer House, Islamabad.
4. Master file.


(Anwar-ul-Haq)
Director General (Legal)