

THE FEDERAL TAX OMBUDSMAN ISLAMABAD

C. Nos. 0386 to 0402 & 0404 to 0424/INFRML/2022

Dated 01.09.2022¹ HQ, Islamabad

- | | |
|--|---|
| 1 Mr. Mujeeb ulHaq,
House No. DK-320/B, Dhoke
Kashmiryan, Rawalpindi. | 12 Mr. Aamir Khan,
G-10/2 PHA Apartment,
Rawalpindi. |
| 2 Mr. Habib ur Rehman,
House No. 20, Street No. 3, Royal
Avenue, Park Road, Chak shehzad,
Islamabad. | 13 Mr. Sami Ullah,
House No. 732, Street No. 34,
Margalla town,
Islamabad. |
| 3 Ms. Kinza Zehra,
F-856 Talli Mohallah,
Rawalpindi. | 14 Ms. Anita Aziz,
Shina News Translator Newscaster
PTV News, Islamabad. |
| 4 Mr. Hamza Sahkoor,
Shandoer Boys Hostel, G-12/1,
Islamabad. | 15 Mr. Yawar Ahmad,
Khushal House, Satra mil,
Islamabad. |
| 5 Mr. Farhan Ali,
Chak No 102 NB, Sargodha. | 16 Muhammad Danish,
26 No, Pind Paracha G-15/3,
Islamabad. |
| 6 Mr. Muhammad Ali Ehsan,
House No. 4113, Street No. 11,
Gulzar-e-Quaid, Rawalpindi. | 17 Mr. Hassan Danial Dar,
House No. 454, Street No. 14,
Sector R Askari 14, DHA Phase 4,
Islamabad. |
| 7 Muhammad Nisar,
House No. CB-642, Nai Abadi Marir
Hassan, Rawalpindi. | 18 Ms. Aqsa Kanwal,
House No 13/4-B, Street No 110,
Sector G-7/4, Islamabad. |
| 8 Mr. Muhammad Fahad Aziz,
House No. 827-G, Street No. 39,
Block-C, PWD, Islamabad. | 19 Ms. Ruqia Arif,
Tipu Road, 20B, Rawalpindi. |
| 9 Mr. Asad Amin,
New Mal Chak shahzad,
Islamabad. | 20 Mr. Tahir Mustafa,
House No 107/B, Street No 13
Allama Iqbal Colony Cantt,
Rawalpindi. |
| 10 Mr. Umar Farooq,
Village & Post Office Mateela Tehsil
Kot Momin Distt Sargodha. | 21 Mr. Bilal Rafique,
Gori Town Phase-I,
Islamabad. |
| 11 Mr. Ariful Kabeer Siddiqui,
House No. CB-59, Lane 04,
Westridge 3, Rawalpindi. | 22 Mr. Ahmad Faraz,
Shah Khalid Colony,
Rawalpindi. |

¹ Date of registration in FTO Sectt.,

- | | |
|---|--|
| <p>23 Ms. Kalsoom Awan,
House No D-50, Shah Faisal Colony
Chaklala, Rawalpindi.</p> <p>24 Mr. Zohaib Akbar,
Zia Masjid, Rawalpindi.</p> <p>25 Mr. Javaid Ahmad,
Street No. 27/A, House 13,
Barma Welfare Society, Islamabad.</p> <p>26 Muhammad Usman,
House No. 16, Street No. 02,
Motti Bazar, Rawalpindi.</p> <p>27 Muhammad Ashraf,
PTV News, Islamabad.</p> <p>28 Usman Ali,
House No. 2380, Street No. 68,
I-10/1, Islamabad.</p> <p>29 Mr. Dawood Ishfaq Khan,
House No. 27, Zafar Akbar Road,</p> <p>30 Muhammad Ali,
Ali Pur, Islamabad.</p> | <p>31 Muhammad Imran,
Azeem Boys Hostel Chata
Bakhawar, Islamabad.</p> <p>32 Mr. Bilal Ahmad,
Street No. 3, Arslan Town
Jahangsydean, Islamabad.</p> <p>33 Mr. Sohail Ahsan,
House No. 46-R, Street No. 18, G-
6/2, Islamabad.</p> <p>34 Mr. Nayeem ul Assad,
House No. DK734/A, Satellite Town
Dhok kashmiryan, Rawalpindi.</p> <p>35 Mr. Saleem Raza,
Balti News Translator/Newscaster,
PTV News, Islamabad.</p> <p>36 Mr. Akbar Hussain,
House No. 24, Street No. 8, River
Garden, Islamabad.</p> <p>37 Mr. Irshad Hussain,
Lathrar Road, Alipur,
Islamabad.</p> <p>38 Ms. Sana Pervaiz,
House No. 8, Block-6,
Airport link road Shah Faisal Colony,
Rawalpindi</p> |
|---|--|

.... Complainants

Versus

The Secretary,
Revenue Division,
Islamabad

Managing Director,
Pakistan Television Corporation

.... Respondents

Dealing Officer	: Mr. Muhammad Majid Qureshi, Advisor
Appraised by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Complainants in Person
Respondent Department	: Ch. Ahmed Nawaz, Legal Coordinator, PTV
	: Ms. Sana Bushra, Manager Tax & Audit, PTV
Departmental Representative	: Tariq Iqbal, Secretary-IR, Policy Wing, FBR

FINDINGS/RECOMMENDATIONS

The above-mentioned petitions 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 PTV, Headquarters Islamabad, treating them as services providers. The complainants demand tax treatment under the head salary, warranting tax deduction u/s 149.

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 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”.

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.

4. In response to the hearing notice u/s 9(2) of the FTO Ordinance, Chaudhary Ahmad Nawaz, Advocate and Ms. Sana Bushra, Manager (Tax and Audit) of PTV attended as Authorized Representatives (AR), Mr. Mujeeb ul Haq and Mr. Habib ur Rahman appeared on behalf of the complainants. Mr. Tariq Iqbal, Secretary (Law & Clarification) represented FBR. The issues raised in the complaint were discussed in detail.


5. Ms. Sana Bushra explained that the complainants have been engaged as **service providers** to whom remunerations are paid as per **fee structure** approved by the Board of Governors. She further stated that the complainants are not governed by "PTV Employees Service Rules. However, while answering to a query, she admitted that these individuals are **full timers, working in various shifts for a considerable long time.**

6. Mr. Habib ur Rahman, submitted that he, along with other complainants, have been hired as full-time employees in the categories of Supervisors and Translators. He vehemently pleaded that;

- the complainants were bound in **Master-Servant Relationship** and their status was similar to the PBC Casual employees.
- They mark bio metric attendance on daily basis, they are paid on monthly basis and their remuneration is deposited directly in their bank accounts.

- The employer has provided work-stations for them. He further stated that they were subject to approval of leave application, entitled to weekly leave and were subject to similar administrative and disciplinary proceedings as any other employee of PTV.
- He pleaded that in pursuance to the FTO Recommendations in Complaint No. 2538/ISB/IT/2021 dated 24.02.2022, the PBC has clarified that **all PBC equivalent/counterparts of complainants are governed by "Master-Servant Rule" whether specifically mentioned in engagement letter or not**.(copy placed on record).
- He pleaded that complainants are 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. The contents of the letter are reproduced as under;

"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, 1968" and "The Industrial Relation Act, 2012".*
 - *Similar in status to "PBC Casual Employees" who have been recently granted tax exemption by 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.”

7. Mr. Tariq Iqbal, Secretary FBR stated that, in pursuance of FTO Recommendations dated 24.02.2022, IR Policy Wing of FBR has already issued instructions vide letter dated 11.04.2022. It was now up to the IR Operations Wing and the relevant field offices to examine the status of ‘Master-Servant Relationship on case-by-case basis.

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

i. An identical issue has already been dealt by this office in Complaint **No. 2538/ISB/IT/2021**, filed by an employee of Pakistan Broadcasting Corporations (PBC), PTVs sister organization. In the said case during Investigation and Review proceedings, the FBR conceding the wrong being done has not only implemented the recommendations rather widely circulated the findings of this office among all concerned vide C.NO.3(3)/2022-S(CM)/81818-R dated 11th April, 2022. **FTO’s recommendations have already gained finality in the said case.**

ii. In dozens of the cases of low paid employees of KPK education department, this office has granted relief after thrashing the identical issues. In these cases RTO Peshawar had mainly pleaded that as the payment made to the hired lecturers is being made from college/project funds and not from head “Establishment/Salaries” and that they are not covered under KPK Service rules therefore they cannot be treated as salaried employees. Their plea was rejected because the criterion of Master-Servant Relationship has nothing to do with the head of payment or applicability of rules.

7

For instance, Factory & industrial workers, though not covered under normal Federal/Provincial Service Rules yet their wages are not treated as payment against services because WAGES is an integral part of SALARY, as defined u/s 12.

(Ref: C. Nos. 541 & 29 Others, 1248, 1249, 1252, 1258, 1280, 1283, 1286, 1290, 1294, 1299, 1300, 1301, 1302, 1304, 1306, 1308, 1311, 1312, 1313, 1315, 1317, 1370, 1426, 1427, 1428, 1429, 1431, 1432, 1434 & 1440 1488, 1489, 1491, 1493, 1495, 1496, 1502, 1504, 1505, 1506, 1507, 1509, 1510, 1524, 1525, 1526, 1527, 1528, 1529, 1530 & 1531/PWR/IT/2022.

iii. While deciding FBR's representations in all above referred cases the honourable President of Pakistan has upheld FTO's recommendations vide orders dated 15th August, 2022.

iv. The details of engagement/employment have been obtained, which are quite revealing:

PTV NEWS ISLAMABAD - TRANSLATORS & SUPERVISORS



S.No.	Name	CNIC	Designation	Date of Joining	Per Month Salary
1.	Arif ul Kabeer Siddiqui	37405-2542617-7	Urdu Translator	01-07-2011	Rs. 45000
2.	Umar Farooq	38401-5897729-5	Urdu Translator	17-05-2011	Rs. 45000
3.	Kishwar Ali Sarfraz	37405-3744023-5	Urdu Translator	23-05-2011	Rs. 45000
4.	Sana Pervaiz	36302-4234471-4	Urdu Translator	17-05-2011	Rs. 45000
5.	Ms. Ruaqia Arif	82401-9919990-2	Urdu Translator	01-01-2012	Rs. 45000
6.	Mr. Sohail Ahsan	38403-2888560-1	Urdu Translator	07-10-2013	Rs. 45000

7.	Mr. Irshad Hussain	42201-8664982-5	Urdu Translator	17-04-2014	Rs. 45000
8.	Akbar Hussain	61101-5364861-9	Urdu Translator	13-08-2011	Rs. 45000
9.	Mr. Mujeeb ul Haq	37405-7124525-3	Urdu Translator	24-07-2014	Rs. 45000
10.	Mr. Yawar Ahmed	61101-3082903-7	Urdu Translator	01-08-2014	Rs. 45000
11.	Adnan	61101-7150495-7	Urdu Translator	10-04-2014	Rs. 45000
12.	Ms. Kalsoom Awan	37405-0357823-2	Urdu Translator	01-06-2014	Rs. 45000
13.	Mr. Muhammad Ali Ehsan	37405-2921125-9	Urdu Translator	02-03-2015	Rs. 45000
14.	Mr. Farhan Ali	38403-6170203-1	Urdu Translator	17-11-2016	Rs. 45000
15.	Mr. Dawood Ishfaq	37405-6845191-5	Urdu Translator	08-06-2014	Rs. 45000
16.	Mr. Muhammad Usman	37404-6830956-3	Urdu Translator	01-06-2016	Rs. 45000
17.	Mr. Uzman Ali	34601-0758480-7	Urdu Translator	08-03-2018	Rs. 45000
18.	Kinza Naqvi	37405-1101495-6	Urdu Translator	02-12-2016	Rs. 45000
19.	Muhammad Fahad Aziz	61101-6043609-3	Urdu Translator	01-06-2021	Rs. 26250
20.	Bilal Rafique		Urdu Translator	09-11-2021	Rs. 26250
21.	Farakh Mehmood	34302-1744547-9	Urdu Translator	10-12-2021	Rs. 26250
22.	Hassan Riaz	37405-3047584-7	Urdu Translator	10-12-2021	Rs. 26250
23.	Muhammad Imran	38201-8458215-9	Urdu Translator	03-01-2022	Rs. 26250
24.	Hamza Shakoor	32202-5172489-7	Urdu Translator	15-02-2022	Rs. 26250
25.	Aqsa Kanwal	61101-1378069-6	Urdu Translator	15-02-2022	Rs. 26250

9

26.	Tahir Mustafa	61101-1272721-1	Urdu Translator	07-04-2022	Rs. 26250
27.	Rana Ali Ehsan	37402-4743283-9	Urdu Translator	28-04-2021	Rs. 26250
28.	Zohaib Akbar	17301-8976697-1	Urdu Translator	25-04-2022	Rs. 26250
29.	Sami Ullah	61101-5290209-3	Urdu Translator	28-04-2021	Rs. 26250
30.	Irshad Ahmed Qureshi	37405-6500273-7	Urdu Translator	18-10-2022	Rs. 36000
31.	Muhammad Amnan	33102-0653669-7	Urdu Translator	28-02-2022	Rs. 26250
32.	Syed Fakhir Azam Shah	15202-9432650-3	Urdu Translator	28-02-2022	Rs. 26250
33.	Asad Abbas	38102-9640282-7	Urdu Translator	31-03-2022	Rs. 26250
34.	Salahuddin	Arabic Translator	61101-2000480-3	11-07-1991	Rs. 33000
35.	Habib Ur Rehman	64-01-5695747-7	Supervisor	13-08-2011	Rs. 39000
36.	Anita	71402-3535968-6	Translator	22-11-2016	Rs. 16500
37.	Ahmed Faraz	71501-8261288-5	Translator	26-12-2021	Rs. 10125
38.	Muhammad Ashraf	37405-8365381-5	Supervisor	14-08-2011	Rs. 36000
39.	Saleem Raza	61101-0158615-5	Translator	14-08-2011	Rs. 6000
40.	Muhammad Ali	71103-5159148-5	Translator	05-08-2015	Rs. 16500
41.	Manzoor Hussain	71302-4304866-7	Translator	01-09-2013	Rs. 16500
42.	Javaid Ahmed	82203-1342334-1	Translator	06-12-2012	Rs. 33000
43.	Bilal Ahmed	02203-0443568-1	Translator	00-08-2017	Rs. 33000
44.	Muhammad Nisar	37401-5589850-5	Supervisor	24-04-2014	Rs. 36000
45.	Asad Amin	61101-9620281-3	Translator	00-12-2015	Rs. 33000

46.	Zia Ur Rehman	61101-1892835-1	Translator	15-05-2001	Rs. 11000
-----	---------------	-----------------	------------	------------	-----------

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.

Q

FINDINGS:

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.

RECOMMENDATIONS:

10. 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.

(Dr. Asif Mahmood Jah)

(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)

Federal Tax Ombudsman

Dated: 26-10-2022