

25. Therefore, the Government of Sindh shall establish Social Security Courts at all places wherever such Courts are not notified/constituted. It has come on record that in whole province there is not a single court under Social Security Act, however, Government has notified two Labour Courts as Social Security Court. We feel that the Government has not taken serious efforts in favour of workers (Labours), admittedly Labour Courts are already small in number and overburdened, hence, in all divisions at least one Social Security Court and in Karachi at least four courts are the need of the *time*. The same, *hopefully*, shall help in determining the issues of the most *unprivileged* class i.e **workers/labours** hence same should be established without much loss of time. This process shall be completed within *least* practicable period. The report in this regard shall be submitted through MIT within a period of two (02) months.

26. In the end, it is added that the report of the Commissioner (Mr. Samiullah Qureshi, 2nd Senior Civil/ Assistant Sessions Judge, Shikarpur) shall also be sent to SWWB and labour department for consideration and action, as was/is suggested in the report because such labour needs not be made a part of heap of papers but demands a little more. Besides, same shall be placed in High Court Website.”

3. The Sindh Employees Social Security Act 2016 (SESS Act 2016) itself provides for constitution of Social Security Courts for any social security area(s) where the Sindh Employees Social Security Institution (SESSI) is working, yet the matter is under process. Secretary and Additional Secretary, Labour Department as well Law Officers of Law Department are present and contend that matter was placed before the Cabinet, however; referred for placing before this Court on the plea that there is low pendency of cases.

4. The ongoing global recession, and when the entire country is at the verge of being declared defaulted, has made the immediate implementation of this law inevitable.

5. Admittedly SESS Act, 2016 has not been implemented in its letter and spirit as well domestic workers and workers under SESS Act 2016 are to be registered. At present there are (06) six lacs workers registered with the SESSI and the SESS Act 2016 itself provides for

establishment of Courts hence the plea of low pendency of cases is not tenable because there is no forum available and creation of these Courts is mandatory requirement of the subject legislation is yet to be complied with. This Act covers around ten million families in the Province and it is strange that for social security of a large segment of our society forum is not being provided for redressal of their grievances.

6. Furthermore, the philosophy behind the 18th Constitutional Amendment is the devolution of powers but it is strange to see the reluctance of the present government to facilitate the implementation of this law at the district level.

7. It is expected that the Chief Secretary Sindh, Secretaries, Labour and Law Departments alongwith Choudhri Muhammad Rafiq Rajourvi and Mr. Zahid Farooq Mazari, learned A.A.Gs, will pursue the matter and will assist the Advocate General Sindh as well as work out the mechanism.

8. Failure to register and failure to formulate Courts amounts to failure in upholding fundamental rights as easy access to justice to every ordinary citizen especially to the vulnerable section of society, is the prime responsibility of the State, and by refusing to register the vulnerable group, the executive has miserably failed to uphold the law passed by the parliament and interpreted by this Court.

9. There is a proposal by Mr. Zahid Farooq Mazari, learned A.A.G. present in court that until such Courts are established, Magistrates of entire Province of Sindh may be notified as Social Security Courts. This Court appreciates his proposal in view of article 175 of the Constitution of Pakistan as well as in view of *Sharif Faridi's case* (PLD 1994 SC 105) that courts shall be independent from the Executives and are presided over by the judges. Accordingly that proposition may be deliberated and proceed further with the consultation of the Secretary, Law Department, within the

spirit of law. It is expected that the Province of Sindh will provided Courts/*fora* for majority of people for whom they have legislated and enacted the law which is in field, yet on papers. Sections 63 to 68 of the SESS Act 2016 are that :-

63. Appeal to Social Security Court.- Any person aggrieved by a decision of the Institution under section 61 or on a review under section 62 may appeal to the appropriate Social Security Court.

64. Constitution of Social Security Court - (1) Government may for purposes of this Act constitute, by notification, a Social Security Court for any Social Security area or areas specified in the notification. a Social Security Court shall be presided over by a Judge who shall be appointed by Government.

(2) A person shall not be appointed as a Judge of a Social Security Court unless he has -

(a) for a period of not less than three years held a judicial office; or

(b) for a period, or for periods aggregating, not less than seven years, been an advocate or pleader of the High Court.

65. Jurisdiction of Social Security Courts.— (1) Subject to the provisions of sub- section (2), a Social Security Court shall have exclusive jurisdiction to hear and decide appeals from decisions of the Institution under section 61 or review under section 62 in respect of all claims, questions and disputes arising in the appropriate Social Security Area.

(2) Government may, by order in writing, transfer an appeal from one Social Security Court to another, whenever it appears to it that such transfer will promote the ends of justice or tend to the general convenience of the parties and witnesses.

(3) The Social Security Court to which an appeal has been transferred under the provisions of sub-section (2) shall deal with the same as if it had been originally instituted in, or presented to, such Court.

66. Powers of Social Security Court, etc.— (1) A Social Security Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence, and such a Court shall be deemed to be a Civil Court within the meaning of section 195 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) Notwithstanding anything contained in any other law, a Social Security Court may, for the purpose of deciding any appeal, examine such witnesses and take such evidence as it considers necessary.

(3) A Social Security Court may make such order with regard to costs incidental to any appeal as it thinks fit.

(4) An order of a Social Security Court shall be enforceable as if it were a decree of a Civil Court.

(5) A person shall be guilty of contempt of a Social Security Court if he, without lawful excuse —

(a) offers any insult to the Social Security Court or any member thereof while the Court is functioning as such; or

(b) causes any interruption in the work of the Social Security Court; or

(c) fails to produce or deliver a document when ordered by the Social Security Court to do so; or

(d) refuses to answer any question of the Social Security Court which he is bound to answer; or

(e) refuses to take oath to state the truth or to sign any statement made by him when required by the Social Security Court to do so, and the Social Security Court may, without any complaint having been made to it, forthwith try such person for such contempt and sentence him to a fine not exceeding fifty rupees.

67. Appearance by legal practitioners.— Any application, appearance or act required to be made or done by any person to or before a Social Security Court (other than the appearance of a person required for the purposes of his examination as a witness) may be made or performed by a legal practitioner or by an officer of a registered trade union authorized in writing by such person, or, with the permission of the Court, by any other person so authorized.

68. Appeal - (1) Save as expressly provided in this section, no appeal shall lie from an order of a Social Security Court.

(2) An appeal shall lie to the High Court from an order of a Social Security Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be thirty days.

(4) The provisions of sections 5 and 12 of the Limitation Act, 1908 (IX of 1908) shall, apply to appeals under this section.

69. Stay of payment pending appeals. - Where the Institution has appealed against an order of a Social Security

Court that Court may, and, if so directed by the High Court shall, pending the decision of the appeal, direct that the payment of any sum required to be paid by the order appealed against shall be withheld.

10. Needles to mention that worthy Members of the Cabinet may not be properly assisted therefore judicial propriety demands that for compliance of the judgment of this Court, learned A.A.Gs who are appearing in the case shall also accompany the Advocate General Sindh and assist the Members Cabinet regarding implementation.

11. At this juncture it would be conducive to refer that Consumer Courts have been established all over Sindh as well as cases relating to *Careem* and *Uber* are also triable by Magistrates. In that eventuality under what circumstances more than ten million families can be deprived from their fundamental right, by not creating Social Security Courts. Non-compliance also negates the implementation of the best legislation.

12. With regard to jurisdiction point in present petition, it would be decided on next date of hearing. Meanwhile no coercive action shall be taken against the petitioners.

13. Being partly heard, let this matter come up on 07.02.2023 with notice to the Chairman, SESSI. He shall appear in person.

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