

***Haq Al-Ujrah* (Hire Right) in the Light of Islamic Jurisprudence and Law**

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ABSTRACT

Islam encourages seeking money and earning a living and control of spending habit based on morals. It forbids spending money through illegal means and has established rules for financial transactions on the basis of consent. *Ujrah* (hire) is considered the most important issue for an employee, and it is the focus of the relationship between him and his employer. Sharia and law clearly explain *haqq al-ujrah* (hire rights), an agreement between the employer and the employee for work done. Islamic scholars unanimously agree that the reward is either in cash, kind or benefit. However, scholars have different opinions regarding *ujrah al-hijam* (cupping hire) and taking reward for Quranic teaching. Reward is one of the pillars of contract, and the employer should pay without delay. Jurists also have different opinions regarding *ijarah al-nafaqah* (feeding and clothing in exchange for work). The most important findings of this study is that *haqq al-ujrah* is in line with the stipulation of Islamic Jurisprudence and law. Islamic law has established rules for determining the wages of workers to ensure

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appropriate wages so that workers and their families may access basic needs and that equality between employers and workers may be achieved.

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INTRODUCTION

It is permissible to hire a person to do a known job for a given reward, which both parties have agreed upon, whether the worker is an individual, group or company, and whether the reward is in cash, kind or benefit. This, as indicated in *Surah al-Qasas*, verses 26 and 27, is supported by the Quran, in which mention of 'hire' is made.

The daughter's request, "O my father, hire him, for the best one you can hire is the strong and the trustworthy," was granted by the father saying to Musa A. S., "...I wish to wed you one of these my two daughters, on [the condition] that you serve me for eight years, but if you complete it ten, it will be [as a favor] from you. And I do not wish to put you in difficulty. You will find me, if Allah wills, from among the righteous," and which Musa A. S. honourably accepted. This means that all conditions have to be clearly mentioned in the presence of the parties involved, and there should be no force or compulsion. In addition, it is not permissible to exchange the reward of labour for food or clothing as clearly indicated in the Quran. The Prophet (S.A.W.), in a *Hadith* reported by Abu Hurayrah, frowns at the idea of a worker's wages not being paid. The *Hadith* says, "Allah (S.W.T.) says: 'I will contend on

the Day of Resurrection against three [types of] people: one who makes a covenant in My Name and then breaks it; one who sells a free man as a slave and devours his price; and one who hires a workman and having taken full work from him, does not pay him his wages" (Al-Bukhari, 2009, *Hadith* No. 2075, p. 125). The law indicates that it is the right of the employee to collect wages according to the work done.

METHODS

The method used for data collection for this paper was qualitative. The authors relied mostly on primary and secondary sources of relevance to the issues discussed. The sources included, but were not limited to, the Quran, the *Hadith* of the Prophet, dictionaries and encyclopaedia, books of *tafsir*, *fiqh* and history, journals, working papers and numerous relevant academic materials.

RESULTS AND DISCUSSION

The Concept of *Ujrah* (Hire)

The word hire (*ujrah*) in the Arabic language is literally derived from the words for wages and remuneration, and it has two meanings; the first meaning is 'contract and reward' for work, while the second meaning is 'to fix'. One may say, "I hired a man and he served me for 10 years," meaning he became my employee for 10 years, or that he was hired on condition of receiving a certain amount of wages in exchange for labour or service (al-Jauhari, 1987, p. 85). It is said that the word *ujrah* is mostly used to mean a reward

in the Hereafter for good deeds, as the Almighty Allah says, "...and We gave him his reward in this world, and indeed, he is in the hereafter among the righteous" (*Surah al-Ankabut*, 29: 27). This indicates that the devotee will have a place in the Hereafter, in addition to the high position he was given in this world. Also the Almighty says, "they will have their reward with their Lord, and there will be no fear concerning them, nor will they grieve" (*Surah al-Baqarah*, 2: 262). Here, reward refers to a blessing in the Hereafter (al-Samarqandi, 2004, p. 175).

The word *isti'jar* in Arabic is a noun derived from *ijarah*, meaning 'to hire'. *Ista'jarahu* means 'he hired him to work for a given wage'. The word *isti'jar* is more general as the idea of an accompanying reward may or may not be implied. Ibn Faris noted that the word *ajr* can mean 'contract for work' or 'to fix broken bones', and both meanings can be combined (1979, p. 62). With regard to fixing bones, one can say *ajartu al-yad*, meaning "I fixed the hand." Combining these two origins of the word *ajr* could refer to something 'that can be used to solve any problem one has as a result of his labour' (Ibn Faris, 1979, p. 62). Ibn Manzur explained that *ajr* (wages) is a reward for labour, and its plural is *ujur* while *ijarah* (hire) is derived from *ajara* ('he hired') or *ya'jur* ('he is hiring') and is something that is given as a reward for work done. *Al-ajru* also means reward for good deeds, for example: "Allah (S.W.T.), rewarded him, Allah gave him a good reward" (Ibn Manzur, 1993, p. 10).

With regard to the technical meaning of *ujra* (hire), the *Malikiyyah* school of thought was of the view that it referred to a contract that contains human benefit or a contract that contains benefit for mankind. A contract regarding animals and ships is called *kira'* (al-Dasuqi, 1398, p. 2), while others have stated that *ujrah* means possession of benefit for a certain return (al-Shafi'i, 1990, p. 26). The law also stipulates that *ujrah* (hire) is an agreement between the employer and the worker for exchange of payment of a sum of money as reward for work done; additional bonuses and allowances may also be agreed upon.

The Legality of *Ujrah* (Hire)

Hire of persons for labour and service in exchange for cash or other rewards is legal and permissible in Islam, as evident in the Quranic verse quoted from *Surah al-Qasas* 26-27 above. Imam al-Shafi'i said the Almighty Allah mentioned that one of His prophets worked for hire for eight years in exchange for a wife. This indicates that hiring a person on the basis of a contract is permissible in Islam (al-Shafi'i, 1990, p. 26).

The best worker one can hire is one who is strong and trustworthy in carrying out his commitment. In addition to the above verse, *Surah al-Talaq* 6 in the Quran states, "...and if they breastfed for you, then give them their payment and confer among yourselves in the acceptable way; but if you are in discord, then there may breastfeed for the father another woman." This supports the argument that hiring a person is accepted and permissible in Islam.

The particular example quoted above highlights an important principle in hiring persons. The verse acknowledges that workers may not all be as equally productive, skilful or capable, or the particular task may need the worker to do more than he had agreed. It is then acceptable to pay the worker according to his capability or according to the demands of the task. In this example, the task of breastfeeding depends on the body of the woman and the need of the baby. One woman may have more breast milk than another, and her breast milk may be different. So too, one baby may require more breastfeeding than another. Payment, then, should be made based on this; there is no closer interpretation than this.

Hiring a person is also permissible with regards to slaves and other related services (Ahmad, 1994, p. 263). Allah (S.W.T.) enjoins the father to pay the nursing mother, provided that there is utterance and acceptance. Imam al-Shafi'i (1990, p. 26) says "Payment for breastfeeding is permissible, and breastfeeding differs according to the frequency of breastfeeding and the quantity of breast milk, but if another one is not found except this, then payment permissible on it and other similar matters." Ibn Ashur (2005, p. 430) said that the injunction "upon the father is the mothers' provision and their clothing according to what is acceptable" refers to the reward for breastfeeding. A woman in bond of marriage has no right to be paid or clothed for breastfeeding, but for the bond of marriage.

Similarly, the *Sunnah* of the Prophet clearly explained about hiring persons (*ujrah*). A'isha (R.A) narrated the following:

The Prophet (S.A.W.) and Abu Bakr employed a (pagan) travel instructor or guide. He was an expert guide and he broke the oath contract which he had to abide by with the tribe of al-'Asi bin Wail and he [and he shared the same religion as the] Quraish pagans. The Prophet (S.A.W.) and Abu Bakr had confidence in him and gave him their riding camels and told him to bring them to the Cave of Thaur after three days. So, he brought them their two riding camels after three days and both of them [The Prophet (S.A.W.) and Abu Bakr (R.A.)] set out accompanied by 'Amir bin Fuhaira and the Dili guide who guided them below Mecca along the road leading to the sea-shore. (al-Bukhari, 2009, *Hadith* no. 2263, p. 88)

This *Hadith* indicates that the Prophet (S.A.W.) and Abu Bakr (R.A) hired a polytheist. Anas narrated the following:

he was asked about the wages of the one who cups others. He said, 'Allah's Messenger (S.A.W.) was cupped by 'Abd Taiba, to whom he gave two Sa of food and interceded for him with his masters who consequently reduced what

they used to charge him daily. Then the Prophet (S.A.W.) said, “The best medicines you may treat yourselves with are cupping and sea incense.” He added, “You should not torture your children by treating tonsillitis by pressing the tonsils or the palate with the finger, but use incense”. (al-Bukhari, 2009, *Hadith* no. 5698, p. 125)\

These incidents recorded in the *Hadith* indicate that hiring persons is lawful in Islamic law, but the scholars have different opinions regarding hiring for some work. Such work includes:

Cupper hiring (*ujrah al-hijam*). The scholars also have different views regarding cupper hiring. The first view is held by the majority of scholars, that cupper hiring is permissible, even if it involves gain with lowliness. This is based on the *Hadith* of Anas (R. A.) quoted earlier. The second view is that it is forbidden, and scholars who are of this opinion cite the *Hadith* of Haram bin Muhayyisah, who narrated that his father asked the Prophet (S.A.W.) about the earnings of a cupper and he forbade him from that. Then he mentioned his need and he said, “Spend it on feeding your she-camels that draw water” (Ibn Majah, 2007, *Hadith* no. 2166, p. 732). The majority believe that the prohibition is on the basis of transcendence because cupping is obligatory upon a Muslim if there is need for it. It is recorded that the Almighty said, “...and cooperate in righteousness and piety, but

do not cooperate in sin and aggression, and fear Allah; indeed, Allah is severe in penalty” (*Surah al-Maidah*, 5: 2). The majority believe that the Prophet (S.A.W.) ordered the one who asked him about the earnings of a cupper to spend it on feeding his she-camels because if it were forbidden he would not have permitted the man to use it. They also state that the phenomenon does not imply prohibition, as Allah (S.W.T.) says “...and do not aim toward the defective therefrom, spending (from that)” (*Surah al-Baqarah*, 2: 267). This shows that he called the despicable money defective, and did not forbid it; defective is the opposite of good.

Taking payment for teaching the Quran.

The scholars have different opinions with regards to taking payment for teaching the Quran, and there are two different views regarding this. The first is the view of the majority of scholars of the Shafi'i and Maliki schools of thought that it is permissible to take payment for teaching the Quran (al-Nawawi, 1978, p. 15) whether the students are young or adult. They base this belief on the *Hadith* of the Prophet (S.A.W.) “...the best of which you take payment is the book of Allah” (al-Bukhari, 2009, *Hadith* no. 5737, p. 131). This is also based on the *Hadith* of Sahl ibn Sa'd al-Sa'adi (R.A.) that a woman came to the Messenger of Allah (S.A.W.) and said:

“O Messenger of Allah, I give myself in marriage to you.” She stood for a long time, then a man stood up and said: “Marry her to me if you do not want to marry her.”

The Messenger of Allah said: "Do you have anything to give her as dowry?" He said: "I have nothing but this lower garment of mine." The Messenger of Allah (S.A.W.) said, "If you give your lower garment, you will sit while you have no lower garment." He said, "I have nothing." The Messenger of Allah said, "Look [for something], even if it is only an iron ring." So he looked but he could not find anything. The Messenger of Allah said to him, "Have you [memorized] anything of the Qur'an?" He said, "Yes, Surah such and such and Surah such and such," naming them. The Messenger of Allah said, "I marry her to you for what you know of the Qur'an." (al-Bukhari, 2009, *Hadith* no. 2111, p. 236).

Regarding this *Hadith*, al-Qarafi (1994, p. 350) said, "I marry her to you for what you know of the Qur'an," denotes four things. First, his statement "I have nothing but this lower garment of mine," refers to the understanding that a person is not usually incapable of possessing stone or firewood or its equivalent. This indicates that the person had no real interest, otherwise he would have been denied by tradition, and would have been belied by the Prophet (S.A.W.).

Second, the Prophet (S.A.W.) exhorts him to "Look [for something]," making it clear that if he looks for something he can give as dowry, he would find it. Third, the statement "Look [for something], even if it

is only an iron ring," justifies to an extent that the minimum offering is sufficient, and it was known that the ring was greater than the least he could possess. Fourth, the statement, "So he looked but he could not find anything," indicates that he had no money; since he had no money, the marriage contract was legalised based on an estimate of its worth.

Thus, there is consensus among the scholars that it was permissible to take payment in the era of the Prophet's companions and their followers, as indicated in the doctrines, except for the teaching of some who came later such as Abu Bakr al-Asmi and Ibn Aliyah who said it is not permissible because of ambiguity. It is a contradiction that came after a consensus, so it is not considered (Ibn Qudamah, 1988, p. 321). According to Al-Kasani, "the scholars had this unanimous consensus before the coming of al-Asmi, as they hold this view on *Ujrah* (hire) agreement from the time of the companions to this day without being rebuked, so his contradiction should not be considered because it is against the consensus" (1986, p. 174).

Therefore, with regard to absolute interest, there is no doubt that the *ujrah* is a pertinent topic for employers and employees, where it is lawful. The prohibition of hiring persons results in incompatibility with Islamic law as the Almighty Allah has said, "Allah intends for you ease and does not intend for you hardship" (*Surah al-Baqarah*, 2: 185), and also, "...and [He] has not placed upon you in the religion any difficulty" (*Surah al-Hajj*, 22: 78). Everyone

needs money, clothing, food, utilities and other necessities. The needy need money to purchase necessities, while the rich need labour; the seller needs the buyer and the buyer needs the seller. Society in general works on the principle of exchange of money or benefits for work, utilities, necessities, business etc. and this can be achieved only through a hire agreement (*ujrah*).

The second view with regards to taking payment for teaching the Quran is the view of Hanafi, Ahmad, Ata'u, Dahaak and others, and they agree that it is forbidden. Their view is based on the *Hadith* of Ubadatu bin al-Samit, who said,

“I taught some persons of the people of Suffah writing and the Qur'an. A man of them presented to me a bow. I said: 'It cannot be reckoned property; may I shoot with it in Allah's path? I must come to Allah's Apostle (S.W.T.) and ask him (about it).' So I came to him and said: 'Messenger of Allah, one of those whom I have been teaching writing and the Qur'an has presented me a bow, and as it cannot be reckoned property, may I shoot with it in Allah's path?' He said: 'If you want to have a necklace of fire on you, accept it.' (Ibn Majah, 2007, *Hadith* no. 2157, p. 264)

Perhaps the first view is more acceptable, Allah knows best. It is the view of the majority of the scholars of the Shafi'i and Maliki doctrines that it is permissible to take

payment for teaching the Quran because the payment is given with necessity, as given to prayer leaders and those who make the call for prayer in mosques, as well as to judges. Therefore, it is permissible with necessity, but teaching the Quran and Islamic knowledge without payment might be better.

Pillars of *Ujrah*

There are four pillars of *ujrah*. First are the contracting parties i.e. “the employer and the employee; the employer is the buyer, while the employee is the seller of the benefit” (al-Dasuki, 1398, p. 2). According to the majority of scholars, the two contracting parties are required to be eligible for contract; they should be adults and sensible individuals, not boys who are indiscriminate, mad persons or drunkards. It is impermissible to hire a boy even if he is discriminate according to the Shafi'i and Zahiri doctrines; these record different opinions as to whether in such a case, the agreement would be valid (al-Nawawi, 1991, p. 175). According to the Shafi'i doctrine:

if [the young boy] is under guardian's control, the contract will be based on permission, and the most acceptable view according to Maliki and a narration from Ahmad, is that guardianship is a requirement for entry, not validity, but the contract is not valid according to Shafi'i. In another view of Maliki's and a narration from Ahmad, it is stated

that guardianship is a requirement for validity of the contract and not its entry. (al-Dasuki, 1398H, p. 3)

The second pillar is the form. "It should be based on what indicates consent like transactions, because it is a business relation, but if it is usually practiced, then the transaction indicates consent" (al-Sawi, 1423H, p. 7). The form may be either explicit or indirect in expression. It is explicit when one states, "I hire you for this," or "I employ you for one year's service." The time reference is an estimate of the benefit rather than a strict adherence to duration as the time may lapse after the employer's utterance or the employer himself may face uncertainties. Similar to this is the verse where Almighty Allah (S.W.T) says, "So Allah caused him to die for a hundred years" (*Surah al-Baqarah*, 2: 259), meaning that He caused the person in question to remain dead for a period of a hundred years. If you say it is valid for the mentioned benefits, then there is no need for assumption unlike the verse as it is clear. I say: the benefit is not real now and the circumstance requires something else, then the assumption of what was mentioned is better or is determined (al-Haithami, 1983, p. 121).

The third of the pillars is confirmation, which has five conditions. *Ujrah* should be "put in order" (al-Ansari, 1997, p. 85), "affordable to deliver" (al-Ansari, 1994, p. 294), free from interest, clear from the beginning in terms of the benefit, the amount and the form and the worker must receive

what was agreed by both parties should be his (al-Nawawi, 1978, p. 173). If the labour is workmanship,

[wages] can be based on time such as a one day's making of cloth, or its nature such as sewing. If they are merged together, i.e. the restriction based on nature and time, and if the situation is complex, it is not permissible based on consensus. However, if the situation is not complex, that it can be completed before the expiration of term, it is opined that it is permissible, but according to the well known view, it is not permissible. (Ulaish, 1989, p. 465).

The fourth pillar is *ujrah* (wages). For the validity of *ujrah*, "it is required that the wages should be known in its type, importance and feature if it is in custody, if not, viewing it is enough for hire of property and contract" (al-Ramli, 1984, p. 266). The majority of the scholars stipulate that conditions for wages as stipulated in the price (al-Kasani, 1986, p. 204) "as the same contract, and must be handed over, likewise the property" (al-Nawawi, 1978, p. 33). It is also required to be clean, and it is not permissible to hire what is unclean such as pigs or dogs. For the Prophet (S.A.W.) said:

"Allah and His Messenger have forbidden the sale of wines, meat of dead animals, pigs and 'idols'. It was said to him: 'O Messenger

of Allah, what do you think of the fat of dead animals, for it is used to caulk ships, it is daubed on animal skins and people use it to light their lamps?’ He said: ‘No, it is unlawful.’ Then the Messenger of Allah (S.A.W.) said: “May Allah curse the Jews, for Allah forbade them the fat [of animals] but they rendered it (i.e. melted it), sold it and consumed its price.” (Ibn Majah, 2007, *Hadith* no. 3486, p. 279)

Time to Pay the Wages

It is known that wages is one of the pillars of *ujrah*. Therefore, it is obligatory upon the employer to pay the employee as soon as it is possible because it is the right of the employee upon his employer, for Almighty Allah has said, “O you who have believe, fulfil [all] contracts” (*Surah al-Ma'idah*, 5: 1). This indicates that Allah commands fulfilment of contracts, and therefore it is obligatory to pay the worker as soon as possible. This refers to any contract such as buying and selling; it is a duty that must be fulfilled. The Prophet (S.A.W.) said, “Give the worker his wages before his sweat dries” (Ibn Majah, 2007, *Hadith* no. 2434, p. 31). The employee is entitled to his wages; the employer must pay the worker if the contract between the parties is to be completed naturally without compulsion or coercion on one another.

Scholars unanimously agree that the contracting parties should agree on the

payment, whether the payment should be made on immediate completion of the work or at a later time, in one sum or in instalments. Scholars have different opinions on what happens when the contracting parties have not agreed on the details of payment, as outlined below.

The first case. The details of the contract should describe clearly and without the benefit of a doubt the details of payment, for example, as if to say, “I agree with you to describe the specifications of a contract for so-and-so to serve me for the period of four years for a certain amount of money.” The number of years of service should be stated, and then the person hired may carry out his duty. Al-Nawai and al-Haithami outlined that if the task involves a venue or travel, the wages should be presented at the place of contract or at the end of the travel. For instance, if someone “hires an animal” for travel or carrying a load, or engages someone to “build a wall,” (al-Nawawi, 1990, p. 195), he should pay the worker at the end of the journey or when the wall is completed. He is required to hand over the wages at the place of the contract; payment “should not be delayed, replaced, transferred or discharged” (al-Sharbini, 1415H, p. 349). Al-Dasuki (1398AH) believed that,

delay in payment of wages is permitted if the worker started collecting the benefit within three days from the date of the agreement on the contract, and if he delays, the agreement becomes invalid;

because if the worker started collecting part of the benefit, it is counted as collection of the benefit.

The second case. If the hire refers to property “such that the hire be a motorcycle, in this case it is necessary to pay the wages with expedition” (al-Imrani, 2000, p. 257). Therefore, delay is not permitted for hire of property because it leads to depreciation and damage; this is a precaution to prevent conflict and dispute between the parties.

The law also stipulates that wages be paid in cash to the worker with the money in circulation, and that payment is to be made (a) on normal working days, (b) at the end of each month for employees paid monthly, and (c) at the end of each week for workers on the basis of units of production, hours, days or week [see Thai labour law, Section No. (3)]. Hence, the law obliges employers to pay workers their wages based on time and place in which the contract was initiated before the work begins, and does not specify a particular time such as a day or a week or a month.

Types of *Ujrah* and the Duration in the Labour Contract

Hiring, it is agreed by the general public and the scholars, is either in cash, property or benefits. Scholars have different opinions regarding hiring in exchange for food or clothing or what is called *ijarah al-nafaqah* (i.e. hire in return for feeding).

The first view is that it is not permissible, according to some scholars of

Hanafi (al-Zaila'i, 1313AH, p. 8), Hambali (Ibn Qudamah, 1988, p. 68), Shafi'i (al-Shirazi, 1990, p. 406) and Maliki (al-Dasuki, 1398AH, p. 8) because the wages is unknown. The second view, that it is permissible, is according to some scholars of the Maliki and Hambali schools, based on the *Hadith* of 'Ali bin Rabah, who said, "I heard 'Utbah Bin Nuddar say, 'We were with the Messenger of Allah (S.A.W.) and he recited Ta-Sin, when he reached the story of Musa (A.S.), he said: 'Musa (A.S.) hired himself out for eight years, or ten, in return for his chastity and food in his stomach.'" (Ibn Majah, 2007, *Hadith* no. 2444, p. 817).

The third view details, according to scholars of the Hanafi school (al-Zaila'i, 1313AH, p. 127), that hire for food and clothing is permissible only in wet-nursing. For Almighty Allah says, "Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing (period). Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity" (*Surah al-Baqarah*, 2: 233). The verse indicates that feeding and clothing them is obligatory for breastfeeding and does not differentiate between divorced women and others, but the context indicates divorce because a married woman must be fed and clothed even if she does not breastfeed, as the Almighty says, "...and upon the [father's] heir is [a duty] like that [of the father]" (*Surah al-Baqarah*, 2: 233). This suggests that "the heir is not the parents, and because the benefit of the nursery and breastfeeding is unknown, then

she can be compensated” (Ibn Qudamah, 1988, p. 364).

Thus, the most accepted view, Allah knows best, is the first one i.e. the impermissibility of *ujrah* in exchange for food or clothing, and we can say that this is the tradition among people today. The worker needs money more than clothing or food or what is called *ijarah al-nafaqah* (hire in return for feeding). Therefore, the employer should give the employee money on time; at the same time, the employee may spend the money as he wishes.

CONCLUSION

The most important findings of this study is that *ijarah* is permissible and legal, both in Islam and the Law, but scholars hold different opinions regarding permissibility for some work such as copper hiring and teaching the Quran. As for copper hiring, the majority holds that the most acceptable view is that it is permissible. Regarding taking payment for teaching the Quran, the view of the majority of scholars of the Shafi'i and Maliki schools is that it is permissible because the payment is made based on need as given to the *imam* and *mu'azzin* (prayer leaders and those who make the call for prayer in mosques) as well as to judges, but teaching the Quran and Islamic Knowledge without taking payment is better. The scholars also unanimously agree that the contracting parties should agree on immediate or delayed payment and on payment at once or in instalment; if the two contracting parties do not agree on these details, the scholars unanimously agree that

it is impermissible to hire persons in return for feeding or clothing, which can be said, may be in practice today. The worker needs money more than the clothing or the food or what is called *ijarah al-nafaqah* (hire in return for feeding). Therefore, the employer should pay the employee and the employee is free to spend the wages as he wishes.

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