

Present: Umar Ata Bandial, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed, JJ

FEDERATION OF PAKISTAN and others---Petitioners

Versus

PROVINCE OF SINDH through Secretary Labour and Human Resources Department and others--Respondents

Civil Petitions Nos. 5620, 5800 and 5959 of 2021, C.M.As. Nos. 12213, 12214 of 2021 in C.Ps. No. Nil/2021, C.M.A. No. 160 of 2022 in C.P. No. Nil/2022, Civil Petitions Nos.2-K, 64 and 59-K/2022 and C.M.A. No. 12221 of 2021, decided on 26th January, 2022.

(Against the consolidated judgment dated 15.10.2021 passed by the High Court of Sindh at Karachi in C.Ps. Nos.D-4596 of 2021, etc.)

(a) Sindh Minimum Wages Act, 2015 (VIII of 2016)---

---Ss. 4, 5 & 6---Minimum rate of wages, revision of---Provincial Government cannot itself revise the minimum rates of wages; it can only be done on the recommendation of the Minimum Wages Board (Board)---Sindh Minimum Wages Act, 2015 has made it obligatory for the Government to act on the recommendation of the Board on all occasions of fixation as well as revision of minimum wages.

The (Provincial) Government could only declare the minimum rates of wages on the recommendation of the Minimum Wages Board (Board).

The power of the Government to declare the minimum rates of wages has been qualified to be exercised on the recommendation of the Board. The words subject to such exceptions as may be specified in the notification used in section 6(1)(a) of the Sindh Minimum Wages Act, 2015 (the Act) and subject to such modifications and exceptions as may be specified in the notification used in section 6(3) of the Act may refer to exceptions, or modifications in the exceptions, that could be created in view of various classes of workers or industry and should not be understood to mean that the Government could itself alter the minimum rates of wages recommended by the Board in view of a detailed and exhaustive mechanism for fixation of the minimum rates of wages spelled out in sections 4, 5 and 6 the Act.

The Act has made it obligatory for the Government to act on the recommendation of the Board on all occasions of fixation as well as revision of minimum wages. The revision of minimum wage is to be done according to the policy and mechanism laid down in the Act. The Government cannot go against the provisions of the Act and arrogate to itself the function entrusted to the Board.

(b) Sindh Minimum Wages Act, 2015 (VIII of 2016)---

---Ss. 4, 5 & 6 & Preamble---Constitution of Pakistan, Arts. 3, 9, 14, 37(a) & 38(a)---Universal Declaration of Human Rights (UDHR), Art. 23---Minimum wage---Importance of minimum wage stated.

Minimum wage laws help ensure justice at work. The minimum wage has remained a core element of public policy and the International Labour Organization (ILO) designated the minimum wage as an international labour standard. [p. 304] E

Brishen Rogers, 'Justice at Work: Minimum Wage Laws and Social Equality' (2014) 92 Tex. L. Rev. 1543, 1548 and David Neumark and William L. Wascher, Minimum Wages (MIT Press 2008) 1 ref.

Minimum wage is a primary measure of the social value of work; they bring a change in workplace power balance by giving workers rights vis- -vis employers; and they require employers and consumers to internalize costs of increased wages

The requirement of establishing equitable and egalitarian work based social structures is a Constitutional command. The Constitution emphasizes on distributive justice with constitutional values of social, economic and political justice. It calls for elimination of exploitation and enjoins to protect the economic interests of the workers and ensure equitable adjustment of rights between employers and employees. Right to life including right to livelihood under Article 9 ensures just and favourable remuneration for workers. Right to dignity under Article 14 ensures decent work for workers i.e., working conditions and wages that enhance rather than undermine workers self-respect and social standing. The Universal Declaration of

Human Rights also provides that remuneration must be paid to each worker to ensure an existence worthy of human dignity.

Wage fixation is an important social welfare measure to be determined in the light of the economic reality of the situation and the minimum needs of the worker with an eye to the preservation of his efficiency as a worker. It is a delicate task, a fine balance is to be achieved. The demands of social justice, necessitating that the workers receive their proper share in the national income they help to produce, need to be balanced against the depletion, every increase in wages brings in the profits of the industry. The central character in this process remains the worker who deserves to get a fair share in the deal, as far as that can be, without at the same time impinging on the vital interests of the industry whose continuity and success are also the mainstay of labour. Minimum wage may preferably be fixed at a level that is capable of meeting a worker's basic living needs and those of his family, for housing, nourishment, education, health, leisure, clothing, hygiene, transportation and social security, with periodic adjustments to maintain its purchasing power. With the growth and development of national economy, living standards improve and therefore notions about minimum wage need to be more progressive.

Hindustan Hosiery Industries v. F. H. Lala AIR 1974 SC 526 and The Constitution of the Federative Republic of Brazil 1988, Art. 7 (IV). ref.

Abid S. Zuberi, Advocate Supreme Court for Petitioners (in C.P. No. 5620 of 2021).

Zaheer-ul-Hassan Minhas, Advocate Supreme Court for Petitioners (in C.Ps. Nos. 5800 and 64 of 2021).

Mrs. Samia Faiz Durrani, Advocate Supreme Court for Petitioners (in C.P. No. 5959 of 2021).

Khalid Mahmood Siddiqui, Advocate Supreme Court and Haroon-ur-Rehman, Advocate Supreme Court for Applicant (in C.M.A. No. 12213 of 2021).

Khalid Javed, Advocate Supreme Court for Petitioner (in C.P. No. 2-K of 2022).

Syed Ziauddin Nasir, Advocate Supreme Court for Petitioners (in C.P. No. 59-K of 2022).

Fauzi Zafar, Addl. A.G. Sindh and Sajid Ilyas Bhatti, Addl. A.G. for Respondents.

Faisal Siddiqui, Advocate Supreme Court for Respondents (Video link - Karachi Registry) (in C.M.A. No. 173 of 2022).

Jan Muhammad Khashkheli (In person) (in C.M.A. No. 173 of 2022).

Hasan Riaz, Research Officer, SCRC for Research Assistance.

Date of hearing: 26th January, 2022.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---The case stems from Notification dated 09.07.2021 ("Notification") issued by the Labour and Human Resource Department, the Government of Sindh ("Government"), under Section 4(1) read with Section 6 (1) (a) of the Sindh Minimum Wages Act, 2015 ("Act"), raising the minimum rates of wages for unskilled adult and juvenile workers employed in all industrial/ commercial establishments in the Province of Sindh to Rs. 25,000/- per month with effect from 01.07.2021.

2. The petitioners are the employers, or organizations of employers, running different industrial/ commercial establishments in the Province of Sindh and are aggrieved of the Notification for the reason that the minimum rates of wages could only be declared on the recommendation of the Minimum Wages Board ("Board") and that the Government and its line Department did not have the authority to itself decide the minimum rates of wages in disregard of the recommendation of the Board. Their challenge to the Notification remained unsuccessful before the High Court of Sindh.

3. We consider in this case whether the Government could itself revise the minimum rates of wages or could it be done only on the recommendation of the Board. For this purpose, it is necessary to refer briefly to relevant provisions of the Act. The Act provides for the regulation of the minimum rates of wages for different categories of workers employed in certain industrial and commercial undertakings and establishments. Under section 3 of the Act, the Government is required to constitute a five member Board with equal representation of employers and workers, one member each to represent the employers and workers, one member each to represent the employer and worker connected with or engaged in such

industry plus one independent member who is to serve as chair. Sections 4, 5 and 6 of the Act provide the mechanism for fixation of the minimum rates of wages. The Government, under Section 4 of the Act, makes a reference to the Board and the Board, after such enquiry as it may deem fit, recommends to the Government the minimum rates of wages for adult, skilled and unskilled workers and juvenile and adolescent workers employed in industrial establishments or commercial establishments or both. Section 5 of the Act relates to recommendation of the minimum rates of wages for workers with respect to particular industries. Section 6 provides that the Government may, on receipt of a recommendation of the Board under section 4 or section 5, declare that the minimum rates of wages recommended by the Board for the various workers shall, subject to any exceptions, be the minimum rates of wages.¹ Alternatively, if the Government considers that the recommendation of the Board is not, in any respect, equitable to the employers or the workers, it may within thirty days refer the recommendation back to the Board for reconsideration.² In such an event, the Board is bound to reconsider the recommendation taking into account any comments made and information given by the Government and submit to the Government a revised recommendation³ or the Board could make a report to the Government that no revision or change in the recommendation is called for, stating reasons therefor.⁴ The Government may then subject to any modifications and exceptions notify the minimum rates of wages as per the fresh recommendation whether revised by the Board or not.⁵ Any further revision of the minimum rates of wages notified by the Government under section 6 of the Act is also to be based on the recommendation of the Board.⁶ The Board is also required to periodically review its recommendations if a change in the economic conditions, cost of living and other relevant facts so demand. Such a review is to be considered as recommendation under section 4 or section 5, as the case may be, of the Act.⁷

4. It is thus evident of the relevant provisions of the Act that the power of the Government to declare the minimum rates of wages has been qualified to be exercised on the recommendation of the Board. We deem it necessary to clarify that the words "subject to such exceptions as may be specified in the notification" used in section 6(1)(a) and "subject to such modifications and exceptions as may be specified in the notification" used in Section 6(3) of the Act may refer to exceptions, or modifications in the exceptions, that could be created in view of "various" classes of workers or industry and should not be understood to mean that the Government could itself alter the minimum rates of wages recommended by the Board in view of a detailed and exhaustive mechanism for fixation of the minimum rates of wages spelled out in Sections 4, 5 and 6 the Act. In this case, the Government decided to revisit the minimum rates of wages and the Board recommended that the minimum rates of wages be increased to Rs. 19,000/- per month. The Government not agreeing with the recommendation of the Board and without sending the matter back to the Board as mandated by the Act, proceeded on its own to issue the Notification after increasing the minimum rates of wages to Rs. 25,000/- per month.

5. In case of disagreement between the Board and the Government, the Act provided a way out: the Government could within thirty days of the receipt of recommendation return it to the Board for reconsideration along with any comments and information, and the Board would be bound to reconsider its recommendation. It could revise it or stick to its earlier recommendation subject to justifying it with supporting reasons. In essence, the Government could only declare the minimum rates of wages on the recommendation of the Board. However, the Government chose to bypass the statutory mechanism by assuming the power vested, under the Act, in the Board and proceeded to declare the minimum rates of wages.

6. The Act has made it obligatory for the Government to act on the recommendation of the Board on all occasions of fixation as well as revision of minimum wages. The employers and the workers have equal representation on the Board in addition to an independent member who acts as chairperson and is expected to take a fair, disinterested and non-partisan view of the matter. The procedure acts as a check against any arbitrary or capricious decision-making by the Government and ensures that the minimum rates of wages be determined in an objective and participatory manner by an independent Board.

7. It is emphasized that we are concerned with the legality, and not the merits of the decision of the Government. No matter how noble the purpose or objective be, the Government cannot skirt around the mandate granted by the legislature. The Act makes the Government responsible for fixing the minimum rates of wages in certain industrial undertakings. It is the Government that takes cognizance of the circumstances necessitating fixation of the minimum rates of wages and sets the ball rolling by either referring the question of fixation of the minimum rates of wages to the Board under Section 4 of the Act or directing the Board under Section 5 of the Act to make recommendations on the said rates of wages and then the Government accepts the recommendations of the Board with or without exceptions or modifications or sends it back for reconsideration. Once the Board submits its recommendations to the Government, the Government cannot but act in a manner prescribed under Section 6 of the Act.⁸

8. Taking into consideration the provisions of the Act and the objective behind it, we are of the view that the Government travelled beyond its authority to encroach upon the mandate of the Board and issued the Notification without lawful authority. At the same time, it needs to be said that we are not unmoved by the considerations which urged the Government to issue the Notification. Rather, we do appreciate the concern shown by the Government for the welfare of the workers. However, the revision of minimum wage is to be done according to the policy and mechanism laid down in the Act. The Government cannot go against the provisions of the Act and arrogate to itself the function entrusted to the Board.

9. We are conscious of the fact that minimum wage laws help ensure justice at work.⁹ The minimum wage has remained a core element of public policy and the International Labour Organization (ILO) designated the minimum wage as an international labour standard.¹⁰ Minimum wages were originally proposed as a means to combat the proliferation of so-called sweatshops in manufacturing industries and to ensure that the workers received a fair wage for their work.¹¹ Minimum wage is a primary measure of the social value of work; they bring a change in workplace power balance by giving workers rights vis- - vis employers; and they require employers and consumers to internalize costs of increased wages.¹² In like manner, the Act seeks to ensure decent work for the workers. More importantly, the requirement of establishing equitable and egalitarian work based social structures is a constitutional command. Our Constitution emphasizes on distributive justice with constitutional values of social, economic and political justice. It calls for "elimination of exploitation"¹³ and enjoins to protect the "economic interests"¹⁴ of the workers and ensure "equitable adjustment of rights between employers and employees."¹⁵ Right to life including right to livelihood under Article 9 ensures just and favourable remuneration for workers. Right to dignity under Article 14 ensures decent work for workers i.e., working conditions and wages that enhance rather than undermine workers' self-respect and social standing. The Universal Declaration of Human Rights also provides that remuneration must be paid to each worker to ensure "an existence worthy of human dignity."¹⁶

10. Wage fixation is an important social welfare measure to be determined in the light of the economic reality of the situation and the minimum needs of the worker with an eye to the preservation of his efficiency as a worker. It is a delicate task, a fine balance is to be achieved. The demands of social justice, necessitating that the workers receive their proper share in the national income they help to produce, need to be balanced against the depletion, every increase in wages brings in the profits of the industry. The central character in this process remains the worker who deserves to get a fair share in the deal, as far as that can be, without at the same time impinging on the vital interests of the industry whose continuity and success are also the mainstay of labour.¹⁷ It is so because it is the worker for whose benefit the Act has primarily been promulgated. Minimum wage may preferably be fixed at a level that is "capable of meeting a worker's basic living needs and those of his family, for housing, nourishment, education, health, leisure, clothing, hygiene, transportation and social security, with periodic adjustments to maintain its purchasing power."¹⁸ We also recognize that with the growth and development of national economy, living standards improve and therefore our notions about minimum wage need to be more progressive.

11. For what has been discussed above, we convert these petitions into appeals and allow the same, the impugned judgment of the High Court is set aside, the constitutional petitions of the petitioners are

accepted and the Notification is declared to have been issued by the Government without lawful authority and having no legal effect.

12. The objections, if any, of the Government to the recommendations made by the Board for the minimum wage to be Rs. 19,000/- per month may be taken up by the Government with the Board in accordance with Section 6(1)(b) of the Act. Given these circumstances, the Government and the Board shall endeavour to resolve the matter of appropriate minimum wage enforced in the Province with effect from 01.07.2021 within a period of two months from the receipt of this judgement. In the alternative, the Government may, if so inclined, issue a notification in accordance with the said recommendations in exercise of its power under Section 6 (1) (a) of the Act.

13. Till the final resolution of the matter, as there is no material objection by the petitioners to pay a minimum wage of Rs. 19,000/- per month, as recommended by the Board, we direct that subject to the final notification issued by the Government, the recommendations of the Board fixing a minimum wage of Rs. 19,000/- per month shall be payable by the employers to their eligible workers w.e.f. 01.07.2021. MWA/F-3/SC Order accordingly.

1 S.6(1)(a).

2 S.6(1)(b).

3 S.6(2)(a).

4 S.6(2)(b).

5 S.6(3).

6 S.6(5).

7 S.7.

8 *Khulna Textile Mills Ltd. v. Government of East Pakistan* PLD 1967 Dacca 229.

9 Brishen Rogers, 'Justice at Work: Minimum Wage Laws and Social Equality' (2014) 92 Tex. L. Rev. 1543, 1548.

10 David Neumark and William L. Wascher, *Minimum Wages* (MIT Press 2008) 1.

11 *ibid.*

12 Rogers (n 9) 1548-9.

13 The Constitution of the Islamic Republic of Pakistan 1973, Art. 3.

14 *ibid* Art. 37(a).

15 *ibid* Art. 38(a).

16 Art.23.

17 *Hindustan Hosiery Industries v. F. H. Lala* AIR 1974 SC 526.

18 The Constitution of the Federative Republic of Brazil 1988, Art. 7 (IV).