

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. Nos.D-7077, 3082, 3083, 3940, 4068, 4429, 4918, 5140, 6009, 6063, 6899, 6900, 6971, 7117, 7118, 7119 of 2016 460, 461, 464, 598, 783, 855, 886, 887, 946, 1282, 1309, 1339, 1340, 1764, 2281, 2755, 2825, 2913, 3569, 3570, 4527, 4533,4637, 4810, 4947, 5736 **to** 5779, 6016, 6092, 6194, 7813, 8357, 8535 **of 2017** 334, 335, 336, 479, 480, 481, 482, 539, 624, 897 **to** 903, 1037, 1272, 1273, 1274, 1276, 1277, 1740, 1766, 2040, 2236, 2263, 2265, 2700, 2872, 2873, 3016, 3017, 3127, 3158 and 3316 **of 2018**.

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

J U D G M E N T

Dates of hearing: 12.04.2018, 18.04.2018 & 09.05.2018.

Petitioners: Through M/s. Zaheer-ul-Hassan Minhas, Asif Ali, Farhan-ul-Hassan Minhas, Nazeer Ahmed Shar, Sofia Saeed Shah, Asif Ibrahim, Rana Sakhawat, Javed Akbar, Salman Ahmed, Javed Haleem, Waheed Ali Ghumro, Afnan Saiduzaman Siddiqui, Ghulam Mujtaba Sahito and Khalid Mehmood Siddiqui, Advocates. _____

Respondent No.1: Government of Sindh through Barrister Shahrayar Mehar, Assistant Advocate General Sindh. _____

Respondents No.2&3: Through M/s. Jawad Akbar Sarwana, Jamaluddin Bukhari, Advocates alongwith Muhammad Aziz Rana, Law Officer of SESSI. _____

IRFAN SAADAT KHAN, J. These are bunch of petitions wherein the only point raised on behalf of the petitioner is "Whether in absence of specific wage limit by the Governing Body what would be the amount of minimum wage on which the petitioners are liable to pay their social security contributions" since the other points raised in the petitions were not pressed by the learned counsel.

2. Briefly stated the facts of the case are that the petitioners are engaged in different business activities and are registered with the Respondent No.2 – SESSI and as present are paying their SESSI contribution at the rate of 6% of Rs.10,000/- per month per worker, which in their view is the minimum wage. Whereas, according to the respondents the petitioners are liable to pay minimum wage at the rate of Rs.14,000/- per worker per month and since the petitioners have paid lesser amounts hence they are liable to pay the difference of their SESSI contributions.

3. Mr. Zaheer-ul-Hassan Minhas, Advocate, who is appointed by the other counsel as the lead counsel to argue the matter on behalf of all the petitioners, at the very outset does not press petitions bearing C.P. Nos.D-5736, 5737, 5738 5740 to 5779, 6016, 6092 & 6194, all of 2017, which according to him after withdrawal of the notification dated 12.5.2017 on 17.10.2017 have become infructuous. Mr. Zaheer-ul-Hassan Minhas, Advocate, submitted that the Social Security Law was promulgated in 1965 with the main object to provide benefits to the employees or their dependents in the case of their sickness, maternity issue, injury or death and for other ancillary issues thereto. He stated that Section 20 of the Provincial Employees Social Security Ordinance 1965 (the repealed ordinance) requires every institution to contribute six percent of the minimum employees wage per worker per month. He submitted that Section 20 thereafter was amended vide Labour Law (Amendment) Act 1994 (Act XI of 1994), Provincial Employees Social Security (Amendment) Ordinance 2002 and Finance Act 2008. He submitted that on 29.2.2016 Sindh Assembly passed "Sindh Employees Social Security Act (Act VI of 2016) (the Act of 2016), which received the assent of Governor of Sindh on 31.3.2016 and on 12.4.2016 the same was notified in the gazette and

the Ordinance 1965 was repealed. He stated that as per Section 20 of Act 2016 also every employer is required to pay to the Institution a contribution at the rate of six percent of the wage per worker per month subject to the conditions as may be prescribed. According to him as per Section 75 of the Act 2016 in January of each year, the Governing Body shall review the wage limits looking to the wage levels or living costs and submit a report with its recommendations to the Government and the Government thereafter would issue a notification with regard to the minimum wage. He stated that since this exercise was not made in a timely manner by the Governing Body and the notification has not been issued, hence the minimum wage has to be considered at Rs.10,000/- per month per worker, hence according to him the petitioners are liable to pay six percent of the same, therefore, the demand notice issued by the Respondent No.3 by asking the payment of minimum wage of Rs.14,000/- is not in accordance with law. The learned counsel then read out Sections 86, 75 and 20 of the Act 2016 in support of his contention and stated that in absence of the specific wage limit by the Governing Body the demand of the enhanced amount of the wage is illegal. He stated that, though, it has been claimed by the respondents that a meeting of the Governing Body took place on 28.1.2017 but no such meeting took place and at present no notification has been issued by the Government on any recommendation of the Governing Body, hence according to him the demand of contribution of the SESSI on the minimum wage of Rs.14,000/- per worker per month by the respondents is illegal. He stated that till such time any minimum wage is fixed by the Government through a proper notification the SESSI may be required to accept the contributions made by the petitioners at the rate of 6% of Rs.10,000/- per worker per month and the issuance of notices to all the petitioners may be declared to be of no legal effect. In support of his contention the learned counsel has

placed reliance on the decision given in the case of COLLECTOR OF CUSTOMS SALES TAX AND CENTRAL NOW FEDERAL EXCISE QUETTA VS. M/S. HAJI MEHMOOD ESSA CO. AND ANOTHER (2017 SCMR 884).

4. All the other learned counsel appearing on behalf of all the petitioners have adopted the arguments of Mr. Zaheer-ul-Hassan Minhas, Advocate.

5. M/s. Jawad Akbar Sarwana, Jamaluddin Bukhari, Advocates, and Mr. Muhammad Aziz Rana, Law Officer, have appeared on behalf of SESSI, whereas Barrister Shahrayar Mehar, Assistant Advocate General Sindh, has appeared on behalf of Government of Sindh.

6. Mr. Jawad Akbar Sarwana, learned counsel appeared on behalf of some of the respondents and at the very outset has raised a preliminary objection with regard to the maintainability of the petitions and stated that the petitioners have adequate remedy under Section 61 of the Act 2016 and they may be directed to avail the same. In support of his above contention the learned counsel placed reliance upon the case of CHIEF ADMINISTRATOR OF AUQAF VS. MUHAMMAD RAMZAN (PLD 1991 SC 102) and ADAMJEE INSURANCE CO. VS. PAKISTAN (1993 SCMR 1798). He further stated that SESSI is a beneficial legislation and the terms of Act 2016 have to be given widest possible meaning in order to make the law workable and simply on the basis of technicalities the doors for benefits, which are given to the workers, may not be closed down. He stated that all the petitioners, admittedly, are notified persons and establishments and, thus, are liable to pay their respective contributions. He further stated that the terms "wages" has duly been explained under Section 2(32) of the Act 2016. According to him the minimum wage of worker in 2016 was Rs.14,000/-, which subsequently was increased to Rs.15,000/- in 2017, hence the petitioners are liable to pay their contributions as per

the notifications issued from time to time with regard to the fixation and payment of minimum wages. He also stated that the provisions of Section 20, which is a charging Section, is a mandatory provision of law and non-compliance of the same would expose the petitioners to fine and penalty. He stated that reliance of the counsel on Section 86(2) of the Act 2016 is misplaced, rather the said provision supports the contention of the respondents. The learned counsel then read out the said provision of the law to state that all the acts of the Governing Body passed under old Ordinance 1965 would continue to apply with full force and all the actions taken were to be treated valid and legal. He in this regard invited our attention to Section 6(c) of the General Clauses Act, 1897 and in support of his contention has placed reliance on the decision given in the case of MCB BANK LIMITED, KARACHI VS. ABDUL WAHEED ABRO AND OTHERS (2016 SCMR 108). He further stated that all the demand notices issued by the respondents are in accordance with the notifications issued from time to time and are valid and in accordance with law and the petitioners may be directed to make their proper contributions as per those notifications. He in the end stated that the petitioner since have come with unclean hands hence the instant petitions may be dismissed.

7. Mr. Jamaluddin Bukhari, Advocate, has adopted the arguments of Mr. Jawad Akbar Sarwana, Advocate, and has further stated that the instant petitions are not maintainable since the petitioners have failed to avail the remedy provided to them under Section 61(c), (d) & (f) of the Act 2016, hence according to him the instant petitions are liable to be dismissed in limine. He invited our attention to Sections 63 and 68 of the Act 2016 in support of his above contention. The learned counsel placed reliance on the decisions given in the cases of COLLECTOR OF CUSTOMS LAHORE VS. UNIVERSAL GATEWAY TRADING CORPORATION (2005 SCMR 37), KHALID MEHMOOD VS. COLLECTOR OF CUSTOMS LAHORE (1999

SCMR 1881) and MASTER FOAM (PVT.) LIMITED VS. GOVERNMENT OF PAKISTAN (PLD 2005 SC 373). He further stated that the petitions involve disputed questions of facts hence are not maintainable and relied upon the case of PAKCOM LIMITED VS. FEDERATION OF PAKISTAN (PLD 2011 SC 44). He next submitted that petitions are filed against show-cause-notices/demand notices, hence the same are not maintainable and are liable to be dismissed. In support of his above contention he placed reliance on the following decisions:-

- a) THE COLLECTOR VS. NAVEENA INDUSTRIES (2017 PTD 2123)
- b) MARITIME AGENCIES (PVT.) LTD. VS. ASSISTANT COMMISSIONER-II SRB (2015 PTD 160)
- c) MESSRS AL-HUSSAIN VS. GOVERNMENT OF SINDH (2017 PTD 1156).

He further submitted that petitions are barred under Section 56 of the Specific Relief Act, 1877, since more than six lac workers are being benefited through the Act of 2016 and the minimum wage limit has been fixed by keeping in view the inflationary trends and other factors. He further stated that the petitions have been filed without authority since no Board Resolution has been attached and placed reliance upon the case of MESSRS RAZO (PVT.) LIMITED VS. DIRECTOR REGIONAL EOBI (2005 CLD 1208). He further stated that some petitioners in the instant petitions are sole proprietorships who are not sui juris to file a petition hence the petitions filed by the sole proprietorships are liable to be dismissed in limine. In support thereof he placed reliance on the case of AHAN SAZ CONTRACTORS VS. PAK CHROMICAL LIMITED (1999 MLD 1781). He also stated that the actions taken under the repealed Ordinance 1965 have duly been saved under Section 86(2) of the 2016 Act. He further stated that a meeting of the Governing Body was duly held on 28.1.2017 wherein certain recommendations were made. He stated that previously minimum

wage was fixed at Rs.22,400/- per month but when the Governing Body in its 145th meeting dated 28.1.2017 found the same to be exorbitant withdrew the said minimum wage and restored the minimum wage to Rs.14,000/-, hence the present request of the petitioners for fixation of minimum wage at Rs.10,000/- instead of Rs.14,000/- is misconceived. He stated that the figure of minimum wage has been fixed keeping in view the rising cost of living, etc. He stated that the amount of Rs.10,000/- was fixed way back in 2008 and the same has been enhanced from time to time to Rs.14,000/- per month in the year 2016. He in the end submitted that the present petitions are not maintainable and the demand notices issued by the respondents-department are in accordance with law.

8. Mr. Muhammad Aziz Rana, Law Officer of SESSI, as well as the AAG have adopted the arguments of M/s. Jawad Akbar Sarwana and Jamaluddin Bukhari, Advocates.

9. Mr. Zaheer-ul-Hassan Minhas, Advocate, in his rebuttal reiterated his earlier submissions and stated that all the notifications are not saved under Section 82 of the Act. He further stated that the minimum wage fixed by the Government has got nothing to do with the minimum wage which has to be considered for SESSI contributions since the same has to be notified by the Government on the recommendations of the Governing Body, which has not been done, hence according to him for all practical purposes minimum wage has to be considered at Rs.10,000/- and issuance of the present demand notices to the petitioners by the respondents are illegal and may accordingly be vacated.

10. We have heard all the learned counsel at considerable length and have perused the record and the decisions relied upon by them.

11. Before proceeding any further we would like to reproduce the relevant provisions of the law on which emphasis have been laid by the learned counsel for the petitioners and the respondents.

"Section 20 of the Repealed Ordinance 1965 provides as under:

20. Amount and payment of contributions — (1) Subject to the other provisions of this Chapter, the employer shall, in respect of every employee, whether employed by him directly or through any other person pay to the Institution a contribution at such times, at such [not more than six per cent] and subject to such conditions as may be prescribed.

Section 2(32) of the Act 2016 provides as under:

- (32) "wages" means remuneration for service paid or payable in cash or in kind to a secured person, not being less than remuneration based on the minimum rates of wage declared under the Minimum Wages Ordinance, 1961 (XXXIX of 1961), without taking account of deductions for any purpose, under a contract of service or apprenticeship, expressed or implied, and shall be deemed to include any dearness allowance or other addition in respect of the cost of living and any payment by the employer to a secured person in respect of any period of authorized leave, illegal look-out or legal strike; but does not include —
- (a) any payment for overtime; or
 - (b) any sum paid to the person employed to defray special expenses entailed by the nature of his employment; or
 - (c) any gratuity payable on discharge; or
 - (d) any sum paid as bonus by the employer.

Section 20 of the Act 2016 provides as under:

20. Amount and payment of contributions.- (1) *Subject to the other provisions of this Chapter, the employer shall, in respect of every employee, whether employed by him directly or through any other person pay to the Institution a contribution at such times **at the rate of six per cent** and subject to such conditions as may be prescribed:*

*Provided that no contribution shall be payable on so much of an employee's **wages as determined by Government under section 75.***

Section 20(3), (4) & (5) of the Act 2016 provides as under:

(3) For the purpose of determining the amount of the contribution payable, daily wages shall be calculated in such manner as may be provided by regulations.

(4) Where the mode of payment of remuneration, whether in cash or in kind, makes it difficult to determine the amount of wages for computing the contribution, the Commissioner may, subject to regulations and in consultation with the representatives of employers and employees, determine such wages.

(5) Any sum deducted from another employee's wages by the employer under this Act shall be deemed to have been entrusted to him for the purpose of paying the employee's contribution in respect of which it was deducted.

Section 61 of the Act 2016 reads as under:

61. Decisions on complaints, questions and disputes.—*If any complaint is received or any question or dispute arises as to –*

- (a) whether any person is secured person within the meaning of this Act; or*
- (b) the rate of wages or average daily wages of a secured person for the purposes of this Act; or*
- (c) the rate of contribution payable by an employer in respect of an employee; or*
- (d) the person who is or was the employer in respect of a secured person; or*
- (e) any benefit and the amount and duration thereof; or*
- (f) any other matter in respect of any contribution or benefit or other dues payable or recoverable under this Act,*

the matter shall be decided by the Institution, in such manner, and within such time as the regulations may provide, and the Institution shall notify its decision to the person or persons concerned, in writing, stating therein the reason or reasons for its decisions; provided that the question or dispute relates to demand or assessment of social security contribution, the complainant shall deposit twenty five percent of the demand or assessment to the Institution.

Section 63 of the Act 2016 reads as under:

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.

Section 68 of the Act 2016 reads as under:

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.

Section 75 of Act 2016 provides as under:

75. Review and modification of wage limits, contribution and benefits.—(1) In January of each year, the Governing Body shall review the wage limits specified in clause (e) of sub-section (9) of section 2 and the rates of contribution and benefits provided under this Act in the light of any changes in wages levels or living costs and shall submit a report thereon together with its recommendations to Government.

(2) Government may, after considering the said report and recommendations, by notification in the official gazette, enhance or reduce the wage limits specified in clause (e) of sub-section (9) of section 2 or the rates of benefits payable under this Act.

Section 86 of the Act 2016 reads as under:

86. Repeal.—(1) The provisions of the Employees Social Security Ordinance 1965, hereinafter referred to as the repealed Ordinance, relating to the Province of Sindh are hereby repealed.

(2) Notwithstanding the repeal of the provisions under sub-section (1), the rules and regulations framed and notifications and orders issued under the repealed Ordinance shall continue to remain in force until altered, repealed or amended by the competent authority.

Section 6(c) of the General Clauses Act, 1897:

- 6(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

12. The Act 2016 was introduced with the main object to provide benefits to certain employees or their dependents in the event of sickness, maternity, employment, injury or death, and for matters ancillary thereto. From the preamble it is evident that this is a beneficial legislation provided for the above said cause and the institutions /establishments were made liable to make their contributions as per the charging section 20 in accordance with law. The terms "employee", "employer" and "wages" have been defined under Section 2(9) (10) and (32) respectively. "Employee" means person employed, whether directly or through any other person for wages or otherwise to do any skilled or unskilled job, apart from other duties as clearly defined under the said section. The term "employer" means works executed or undertakings carried on by any contractor or licensee etc. The term "wages", which has also been reproduced above, would mean remuneration for service paid or payable in cash or in kind to a secured person and a detailed description is given in the said section. The important thing which has to be noted from the definition of the wages that it should not be less than remuneration based on the minimum rate of wages declared by the Minimum Wages Ordinance, 1961. The definition of the "wages" given in the said Ordinance 1961, as defined under Section 2(8) of the said Ordinance, also defines the "wages" in somewhat similar manner as defined under the Act 2016. Since a minimum wage of an employee has to be determined keeping in view the inflationary trends and other factors, the minimum wage of an employee usually is fixed annually by the competent authority.

13. As soon after the establishment of the Social Security Institution a Governing Body has to be formed for the general directions and superintendence of the affairs of the institutions and as per section 5 of the Act 2016 the said Governing Body shall consist of the persons as clearly defined underin the said section. The powers of the Governing Body have been mentioned in section 6. The Governing Body has been entrusted with the duties to make its recommendations to the Government who upon receiving the same may pass appropriate orders thereupon. The Governing Body has been entrusted, apart from other duties, that in January of each year it shall review the wage limit and the rates of contributions and benefits in the light of changes in wage levels or living costs and submit its report to the Government alongwith its recommendations thereon and the Government may, after receiving the report and the recommendations, by a notification in the official gazette enhance and reduce the wage level. It is also an admitted position that the minimum wage limits of the employees varies each year looking to the inflationary and living cost etc.

14. The purpose of the Act 2016 is to collect the contribution from the employers for the benefits of the employees and until and unless proper and prompt collection from the employers is not made the benefits to the employees would hardly be possible. The Act, therefore, is a beneficial legislation intended to provide benefit to the workers measured on the basis of their minimum wages which varies each year. Hence, an interpretation of the Act with regard to any provision of the law which impediments its working has to be ignored and the interpretation which makes the Act workable has to be adopted. The Ordinance of 1965 stands repealed after the promulgation of the Act 2016, however the rules and regulations framed and notifications and orders issued under the repealed

Ordinance shall continue to remain in force until altered, repealed or amended by the competent authority. The question with regard to “wage” had been a moot point but the said point, in our view, to some extent has been laid at rest by correlating the wages as defined under the Act 2016 with the wages as defined under the law of Minimum Wages.

15. The minimum wage for unskilled workers in Pakistan during the last years is given as under:

Year	Wage (In Rupees)
1998	1950/-
2001	2500/-
2005	4000/-
2007	4600/-
2008	6000/-

Provincial minimum wage for unskilled workers is as under:

Year	Wage (In Rupees)
2010	8000/-
2012	9000/-
2013	10,000/-
2014	12,000/-
2015	13,000/-
2016	14,000/-
2017	15,000/-

The contribution of the minimum wage, in our view, has to be made in accordance with the amount as fixed in the notification, which subsequently is published in the official gazette, and the establishment is under the statutory legal obligation to pay its contribution accordingly. It has already been held by the decision given by the Hon’ble Supreme Court of Pakistan in the case of Shamas Textile Mills Ltd. and others (1999 SCMR 1477) that payment on account of Social Security contribution should not,

in any case, be less than the amount payable as remuneration under the Minimum Wages Ordinance 1961. Now in order to fix the minimum wage of an employee same criteria has to be fulfilled as given in the Minimum Wages Ordinance 1961 and minimum wage of an employee has to be the minimum wage as determined under the Minimum Wages Ordinance 1961 with regard to the minimum wage fixed for the unskilled employees a tabulation of which has already been reproduced hereinabove.

16. The decision relied upon by the learned counsel for the petitioners, in our view, is on different footings, since in that judgment the Hon'ble Supreme Court has categorically observed that no tax could be levied beyond the scope of charging section. However, in the instant case the learned counsel himself has not attacked the charging section, which is section 20, but has simply asserted that in absence of any minimum wage provided by the Governing Body or the notification the establishments are obliged to pay contribution at the rate of Rs.10,000/- per month per employee. We are afraid we cannot endorse the submissions made by the learned counsel for the petitioner as, in our view, the establishments are under legal obligation to pay their contribution as per the minimum wage prescribed for that year in the above referred tabulation form whatever is falling in the respective year i.e. for 2016 it would be Rs.14,000/- and for 2017 it would be Rs.15,000/- per month and the establishments are under the legal obligations to pay their contribution accordingly.

17. We also do not agree with the learned counsel for the petitioners that after repeal of Ordinance 1965 the notifications issued from time to time under the Ordinance 1965 have not been saved, whereas, in our view, bare reading of Section 86(2), reproduced above, would clearly reveal that not only rules and regulations framed under the repealed Ordinance but notifications and orders also issued under the repealed

Ordinance have been saved. Hence all the rules, regulations, notifications and orders under the provisions of Ordinance 1965, by virtue of section 86(2), are saved and whatever minimum wages have been prescribed by virtue of notification /orders issued under the Ordinance of 1965 would apply with full force on the Act 2016 until and unless the same are altered, repealed or amended by the competent authority, which is not the present case.

18. Moreover, section 6(c) of the General Clauses Act also stipulates the saving of a repealed law and any act done and action taken or purported to have been done or taken under or in pursuance of repealed Act, if it is not inconsistent with the provisions of the new Act, is always considered to be done or taken under the corresponding provisions of the new Act. Reference in this regard may be made to the decision given in the case of *SHAHIDA BIBI VS. HABIB BANK LIMITED AND OTHERS* (2016 PLD SC 995).

19. We, therefore, in view of what has been observed above, are of the view that the establishments are under legal obligations to make their contributions as per the respective notifications prevailing in the said year in accordance with law. The answer to the question thus raised in the instant petitions is, therefore, answered that even if there is no Governing Body to fix the minimum wage, the minimum wage as already notified for the respective year would be considered to be the minimum wage for making contributions by the establishments in accordance with law. Since we have decided the petitions on the above aspect, therefore, we do not deem it expedient to dilate upon the other objections with regard to the maintainability of these petitions raised by the learned counsel for the respondents. It, however, is clarified that if there is some factual or calculation error in the demand notices issued by the respondents, the

same could be taken care of under the provisions of section 61 of the Act respectively.

20. With these observations all the above petitions alongwith all the listed applications stand disposed of accordingly.

JUDGE

JUDGE

Karachi:
Dated: _____.