

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Date	Order with signature of Judge
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**Present: Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan ul Karim Memon**

Const. Petition No.	Petitioner
7347 of 2022	M/s Matco Foods Ltd.
7452 of 2022	M/s Helix Pharma (Pvt) Ltd.
7708 of 2022	M/s Imtiaz Provision Store.
7709 of 2022	M/s Indus Pharma (Pvt) Ltd.
7710 of 2022	M/s International Tank Terminals (Pvt) Ltd.
7711 of 2022	M/s Shabbar Garments (Pvt) Ltd.
7712 of 2022	M/s Exide Pakistan Ltd.
7713 of 2022	M/s Tapal Tea (Pvt) Ltd.
7714 of 2022	M/s Corrubox
7715 of 2022	M/s Farhan's (Pvt) Ltd.
7716 of 2022	Pakistan House International Ltd.
7717 of 2022	M/s Rajby Textile (Pvt) Ltd.
7718 of 2022	M/s Burma Oil Mills Ltd.
7719 of 2022	M/s Atlas Engineering (Pvt) Ltd.
7720 of 2022	M/s Sytech. Fibers(Pvt) Ltd.
7721 of 2022	M/s Artistic Fabric Mills (Pvt) Ltd.
7722 of 2022	M/s SRG Services (Pvt) Ltd.
7723 of 2022	M/s The Agha Khan Hospital Medical College Foundation
7724 of 2022	M/s Holy Family Hospital
7725 of 2022	M/s Rajby Industries
7726 of 2022	M/s The Citizen Foundation
7727 of 2022	M/s Atlas Battery Ltd.
7728 of 2022	M/s Tabros Pharma (Pvt) Ltd.
7729 of 2022	M/s Home Product International (Pvt) Ltd.
7730 of 2022	M/s Artistic Garment Industries (Pvt) Ltd.
7823 of 2022	M/s Surge Laboratories Pvt. Ltd.
7824 of 2022	M/s Eastern Trade & Distribution Company Ltd.
7825 of 2022	M/s Nabi Qasim Industries (Pvt) Ltd.
7826 of 2022	M/s Artistic Denim Mills Ltd.

Versus

Federation of Pakistan & others

Respondents.

Mr. Zaheer-ul-Hassan, Advocate for petitioner.
Barrister Moiz Ahmed, for respondents No.2 & 3.
Mr. Faiz Ahmed, advocate.

Syed Yasir Shah, AAG.

Date of hearing: 14.02.2023.
Date of order: 22.02.2023.

ORDER

Muhammad Iqbal Kalhoro, J: Petitioners, (diverse) establishments as defined in section 2 (e) of the Employees' Old-Age Benefits Act, 1976, **(the Act of 1976)** have brought a common question for adjudication through these connected petitions. The question pertains to fixation of the rate of contributions being made by these establishments to the Employees' Old-Age Benefits Institution **(the Institution)**, outlined u/s 4 of the Act of 1976, in compliance of section 9 of the said law that reads: Contributions shall be payable every month by the employer to the Institution in respect of every person in his insurable employment at the rate of six percent of his wages in the prescribed manner.

2. The case of petitioners, as argued by their counsel, is that wages as defined in section 2 (p) of the Act of 1976 means the rates of wages as declared under the Minimum Wages for Unskilled Worker Ordinance, 1969 **(the Ordinance of 1969)**. As per section 9 of the Act of 1976, an assessment to the rate of contribution @ 6% of wages has to be made on the basis of the rates of wages declared under the Ordinance of 1969, which is not more than Rs.13000.00 as declared under the Minimum Wages for Unskilled Worker (Amendment) Act, 2016 **(the Amendment Act of 2016)**. But the respondents (the Institution) are demanding, in pursuance of a notification (dated 28.04.2022) issued purportedly under the Minimum

Wages Ordinance, 1961 (**the Ordinance of 1961**), monthly contribution at the enhanced rate of Rs.25000.00 per month, by locking online portal configured for such purpose, which is illegal, not binding upon the petitioners and void *ab initio*.

3. It is interesting to note, before formally embarking upon merits of the cases in hand, that in the years 2016 and 2017, a number of establishments, more or less the same, had filed separate petitions seeking multiple reliefs, *inter alia*, declaration that the Employees Old Age Benefit Act, 2014 (Enacted by the province of Sindh) is a valid piece of legislation and the Employees Old Age Benefit Act, 1976 stands repealed to the extent of province of Sindh; that a notification dated 17.02.2016 (enhancing minimum wages for unskilled workers and thus the rate of contributions) is applicable to only Islamabad Capital Territory, Islamabad and not to the province of Sindh and has no retrospective effect for fixing minimum wages for unskilled workers and charging contribution thereon; and that the demand notices issued under the said notification is illegal and void. These petitions, titled as M/s Dairy Land (Pvt.) Limited and others, were dismissed vide a common judgment dated 3.12.2021. It has been mainly held therein that only the *rate schedule* has been challenged without first exhausting the remedies provided under the Act of 1976. And that without challenging the vires of the Amendment Act of 2016, a challenge to a notification issued thereunder cannot be made. This judgment has been challenged in the Honorable Supreme Court in CPLAs No.35 and 591 of 2022, and other connected matters in which although notices to the respondents and learned Attorney General and Advocate

General Sindh have been issued but no restraining order has been passed. The record further shows that again in the year 2022 some of the establishments filed petitions in this court impugning the demand notices issued by the Institution pursuant to aforesaid notification dated 17.02.2016. These petitions were also dismissed by an order dated 14.12.2022 holding mainly that earlier petitions challenging the demand notices based on the said notification have already been dismissed, and the issue is pending before the Apex Court of the country, therefore it does not require any further indulgence by the High Court. This is one aspect the case: the matter, albeit in a little bit varied form but essentially the same, is pending before the Honorable Supreme Court. No restraining order has been passed. Nonetheless, the petitioners, from time to time by instituting ostensibly a fresh cause of action and citing different grounds, keep on filing the petitions in this court and succeed, sometimes under the excuse of ad interim order, in evading making of required contributions to the Institution at the fixed rate.

4. Be that as it may. As to the case of petitioners, it may be clarified on the onset that it has not been disputed that previously the petitioners were making contributions as payable on the wages defined u/s 2 (p) of the Act of 1976 i.e. wages means the rates of wages as declared under the Ordinance of 1969. Then, the parliament enacted the Amendment Act of 2016 amending the Ordinance of 1969 thereby declaring minimum wages of unskilled workers @ Rs.13000.00 with retroactive effect from the year 2013.

Accordingly, the Institution started collecting the contributions at the said rate from the establishments without any murmur voiced by them. Thereafter, no further enhancement in the rate of minimum wages could be made through parliament as, it seemed, meanwhile on account of 18th amendment in the Constitution, the subject matter covered under entries 26 (Welfare of labor; conditions of labor, provident funds; employer's liability and workmen's compensation, health insurance including invalidity pensions, old age pensions) and 27 (Trade unions; industrial and labor disputes) in erstwhile concurrent list devolved to the provinces. It is not out of place to state at this juncture that province of Sindh has enacted its own law on the subject as the Sindh Employees Old-Age Benefits Act, 2014 and sister legislations like the Sindh Minimum Wages Act, 2015, etc. and vide a notification dated 09.07.2021 has declared minimum wages for unskilled workers at the rate of Rs.25000.00. It may be reminded that these are the same laws for the implementation of which in the province of Sindh, the establishments had filed petitions -- M/s Dairy Land (Pvt.) Limited and others – the judgment of which, they have challenged before the Honorable Supreme Court, as noted above.

5. But, in any case, in the wake of the 18th amendment, the subject matter having been devolved to the provinces, and the parliament ostensibly no more relevant to make further amendments/laws on the subject, the Chief Commissioner, Islamabad in exercise of powers conferred upon him, among others, u/s 4 of the Ordinance of 1961 has issued a notification dated 28.04.2022, impugned here, fixing the

minimum wages for unskilled workers and juvenile workers at the rate of Rs.25000.00. in all the establishments in Islamabad Capital Territory, Islamabad w.e.f. 01.04.2022. Since operation of this notification, and the one alike issued in the year 2016, is seemingly restricted to only Islamabad Capital Territory, a circular No.01/2015-2016 dated 01.03.2016 to extend the operation of such notifications across the country was issued. The apparent reason seems to be that although through the 18th amendment, the subject matter has devolved to the provinces — and the province of Sindh has enacted its own laws -- but practical steps to enforce and implement the same laws in letter and spirit have yet to be taken. And, for the time being, there is no mechanism available with the provinces – at least in the case of province of Sindh — to collect the contributions from the establishments proportionate to the rate of wages and give pension to the pensioners accordingly. Therefore, it is the Institution still which is collecting the contributions by invoking provisions of the Act of 1976.

6. Further, on the same point, it may be noted that in earlier petitions {M/s Dairy Land (Pvt.) Limited and others} decided on 03.12.2021, petitioners had insisted, in order to evade payment of contributions, that rate of Rs.25.000.00 as minimum wage for unskilled workers, as per the notification dated 28.04.2022 issued by the Chief Commissioner, Islamabad, was confined to only Islamabad Capital Territory, and not to the rest of the country. But the court did not find itself persuaded by such assertion and held while referring to circular No.01/2015-2016 dated 01.03.2016 that no doubt that after the 18th amendment, the subject matter in regard to

minimum wages rests within the domain of the province. However, since still EOBI has not physically devolved for operational purpose to the provinces, the rights of certain class of the people -- the employees defined under the Act of 1976 -- cannot be allowed to be frustrated, particularly when the petitioners have not challenged depositing of the contributions under the Federal Law. Further held that the application of the circular only without assailing the *vires* of the Amendment Act of 2016 under which it has been issued cannot be raised when thing notified therein are with reference to the Amendment Act of 2016 itself. It is clear that the court, besides finding the petitions incompetent on above legal point, was aware of the practical glitches in the way of collection of contributions by the province from the establishments and thus for the time being allowed the Institution to continue with the prevalent mechanism of collection of contributions.

7. Now coming to the case of the petitioners: that wages defined in section 2 (p) of the Act of 1976 is actually the rates of wages as declared under the Ordinance, 1969. Therefore, any assessment of the rate of contribution @ 6% of wages for unskilled workers in terms of section 9 of the Act of 1976 has to be made on the basis of the rates of wages declared as such, and not under the Ordinance of 1961. We may say that for the first time through section 5 of the Finance Act, 2005 the aforesaid definition of wages provided in the Ordinance of 1969 in clause (p) of section 2 of the Act of 1976, was inserted. Before that the wages defined in clause (p) of section 2 of the Act of 1976 was wages declared under the

Ordinance of 1961. It is not disputed by the petitioners that under the Ordinance of 1961 a Tripartite Wage Board consisting of employers, employees and government representatives is competent to determine minimum wages payable to workers, as against the Ordinance of 1969 under which any revision in the wages can be effected only by an act of parliament. And that accordingly the Board has determined the minimum wages for workers at the rate Rs.25000.00

8. In the case of Workers' Welfare Funds, M/O Human Resources Development, Islamabad and Others Vs. East Pakistan Chrome Tannery (Pvt.) Ltd. Lahore and Others (PLD 2017 SC 28), the Honorable Supreme Court in para 22 of the judgment, discussing implication of amendments brought about in various Acts including the Act of 1976 through Money Bill i.e. the Finance Act as defined under Article 73 (2) of the Constitution bypassing the regular legislative procedure under Article 70 of the Constitution, has declared all such amendments to be unlawful and *ultra vires* the Constitution. This judgment was followed by learned Lahore High Court in the case of Nishat (Chunian) Limited Vs. Federation of Pakistan Etc. (W.P.No.26106/2011), when it observed in its order dated 08.12.2016 “.....**therefore the amendment in proviso to Section 9 of the employees old age benefit act, 1976 made through finance act, 2005 is clearly an action without lawful authority and of no legal effect**’. It is obvious that, as a result, legally and in effect, the definition of wages provided under the Ordinance of 1961 in the Act of 1976 before the amendment effected through the Finance Act, 2005 has come to be read and applied for the purpose of determining, plus mode and manner

of determining, the minimum wages for the workers. The Honorable Supreme Court in the case of Shams Textile Mills Ltd. and Others (1999 SCMR 1477) has also laid down 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. It is quite obvious for foregoing facts and circumstances that for fixing the minimum wage of a worker/employee, the touchstone provided in the Ordinance of 1961 in this regard has to be enforced and applied.

9. When we see, in such undeniable context, the notification dated 28.04.2022 fixing Rs.25000.00 as minimum wages for unskilled workers, and pursuant to which locking of online portal configured for collecting contributions from the petitioners at the same amount, we find no illegality thereto warranting interference by this court in exercise of discretionary jurisdiction under Article 199 of the Constitution. Particularly, we may add for good measure, when petitioners apparently failed to bring up the matter before the Institution for a decision in terms of sections 33 (decisions on complainants, questions and disputes), file review application u/s 34 of any such decision, and failed to file an appeal against the decisions either u/s 33 or 34 to the Board u/s 35 of the Act of 1976. Without invoking equally efficacious remedy against the given grievance, it is settled, the direct approach to this court in constitutional jurisdiction by an aggrieved person in ordinary circumstances is not valid. This being the position, we do not find any merits in these petitioners and dismiss them

without any order as to cost. All the listed petitions along with pending applications are accordingly disposed of.

JUDGE

JUDGE

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