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23590/2021

IN THE SUPREME COURT OF PAKISTAN Diary No.
(Appellate Jurisdiction)

Civil Petition for Leave to Appeal No. 5620 of 2021

1. **The Federation of Pakistan Chamber of Commerce**
A Trade Organization,
Having Office at FPCCI head office,
Federation House, main Clifton,
Abdullah Shah Ghazi Road,
Karachi,
Through its duly authorized Officer
2. **Soorty Enterprises (Pvt) Ltd**
A Private Company Limited,
Through its duly authorized,
Having Office at 26-A, SMCHS,
Off Shahrah-e-Faisal, Karachi.
3. **Artistic Milliners (Pvt) Ltd**
A Private Company Limited,
Through its duly authorized,
Having Office at Plot no. 4 & 8,
Sector 25, Korangi Industrial Area,
Karachi.
4. **Akhtar Textile Industries (Pvt) Ltd**
A Private Company Limited,
Through its duly authorized,
Having Office at Suite # 1001-4, 10th Floor,
Emerald Tower, Main 2 Talwar,
Clifton, Karachi
5. **Indigo Textile (Pvt) Ltd**
A Private Company Limited,
Through its duly authorized,
Having Office at Suite # G-19, 10th Floor,
Emerald Tower, Main 2 Talwar,
Clifton, Karachi
6. **M.N. Textile (Pvt) Ltd**
A Private Company Limited,
Through its duly authorized,
Having Office at Plot No. LX-5, Scheme No. 3 & 4,
Landhi Industrial Area,
Karachi

7. **Anis Apparel**
A Sole Proprietor,
Through its duly authorized Attorney,
Having Office at Plot no. 165 & 166,
Sector 23, Korangi Industrial Area,
Karachi.
8. **Yunus Textile Mills Ltd**
A Public Company Limited,
Through its duly authorized,
Having Office at H-23/1, Landhi Industrial Area,
Karachi
9. **Eastern Garments (Pvt) Ltd**
A Private Company Limited,
Through its duly authorized,
Having Office at B-58, S.I.T.E
Karachi
10. **Naveena Exports Ltd**
A Public Company Limited,
Through its duly authorized,
Having Office at B-21, Block 7/8,
Banglore Town, Main Shahrah-e-Faisal,
Karachi

Petitioners

Vs.

1. **Province of Sindh**
Through Secretary
Labour and Human Resources Department
Government of Sindh,
Sindh Secretariat, Karachi
2. **Sindh Minimum Wages Board**
constituted under the
Sindh Minimum Wages Act 2015
Through its Chairperson
Having office at 1st Floor,
Sindh Secretariat No. 3, Karachi

Respondents

**CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE
185 (3) OF THE CONSTITUTION OF THE ISLAMIC
REPUBLIC OF PAKISTAN, 1973 AGAINST JUDGMENT
DATED 15.10.2021 PASSED IN CP NO. D-5193 OF 2021 BY A
DIVISIONAL BENCH OF THE HONORABLE HIGH COURT
OF SINDH AT KARACHI**

Respectfully Sheweth,

Being aggrieved and dissatisfied by the Judgment dated 15.10.2021 passed by a Learned Divisional Bench of the Honourable High Court of Sindh at Karachi in Constitutional Petition No. D – 5193 of 2021 (*Impugned Judgment*), the Petitioners as named above prefer instant Petition for Leave to Appeal on the following questions of law, facts and grounds:

QUESTIONS OF LAW

- I. Whether the Respondent No. 1 can surpass Respondent No. 2 in declaring, announcing or adopting the minimum wage under the Sindh Minimum Wage Act, 2015?
- II. Whether the Learned Divisional Bench, through the Impugned Judgment, has attributed redundancy to the provisions of the Sindh Minimum Wage Act, 2015? If so, its effect?
- III. Whether the Impugned Notification is sustainable in view of the fact that it was issued in the absence of any reference for fixing the minimum wage at Rs. 25,000/- per month and without holding of any enquiry by the Respondent No 2 as required under the Sindh Minimum Wage Act, 2015?

- IV. Whether the recommendation of Respondent No. 2 (Minimum Wage Board) is binding on the Respondent No. 1? If so, what is its effect?
- V. Whether the Impugned Notification is discriminatory and in violation of the Petitioner's rights enshrined under Article(s) 9, 10-A, 18, 25 r/w 4 of the Constitution, 1973?
- VI. Whether the Learned Divisional Bench has erred in failing to appreciate the gravity of the risk the Impugned Notification poses to the export industry and the economy of the country?
- VII. Whether the Learned Divisional Bench, has wrongly imposed the responsibility of the Respondent No. 1, to ensure a basic standard of living for the citizens of Sindh, onto the private employers of Sindh?
- VIII. Whether the Learned Divisional Bench has erred in law by holding that the fixation of minimum wage through the Impugned Notification is a policy matter of the Government and the same cannot be interfered with?
- IX. Whether the Impugned Notification could be given retrospective effect by making it effective from a date prior to its publication in the official gazette?

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- X. Whether the findings in the Impugned Judgment are contradictory, in violation of the Sindh Minimum Wage Act 2015, the Rules framed thereunder, and in violation of well settled principles of law?
- XI. Whether the Impugned Notification being a non-speaking order is a nullity in law and fact?

FACTS

Respectfully Sheweth,

1. The Petitioners are independent entities engaged in various businesses within the province of Sindh. The Petitioners are industrial establishments that are producing goods for consumption within the local market and are for export abroad thereby attracting foreign exchange. All the Petitioners are carrying out their respective businesses in accordance with law and have filed the instant Petition through their duly authorized officers.
2. The Respondent No. 1 is the Province of Sindh through the Secretary, Labour and Human Resources Department that has issued the Impugned Notification dated 09.07.2021 bearing reference no L-II-13-3/2016 in purported exercise of powers under Section 4 (1) r/learned Section 6 (1) (a) of the Sindh Minimum Wages Act, 2015 (hereafter referred to as the Act). The Respondent No. 2 is the Board constituted under section 3 of the Act, and is responsible for recommending the minimum wage rate within the province of Sindh to the Respondent No. 1.
3. That by way of background, it is necessary to mention that after the passing of the 18th Amendment to the Constitution of Pakistan, the

subject regarding "Labour and Man Power" has now become a Provincial subject, and as such the provinces are conferred with the powers to freely legislate on matters relating to Labour and Man Power.

4. Subsequent to the same, the Act was enacted and published in the Sindh Government Gazette on 12.04.2016. The primary purpose of the Act is to regulate minimum wages and various other allowances for different categories of workers employed in certain industrial and commercial undertakings and establishments and for matters connected therewith and ancillary thereto, as described within the preamble of the Act.
5. A bare perusal of the Act provides that as per section 3, the Respondent No.1 shall constitute a Minimum Wages Board (Respondent No. 2). S. 3 of the Act (reproduced below) provides for representation and participation of all stakeholders and experts in the wage fixing mechanism.

3. (1) *As soon as may be after the commencement of this Act, Government shall constitute a Minimum Wages Board consisting of the following, namely:-*

- (a) the Chairperson;*
- (b) one member to represent the employers;*
- (c) one member to represent the workers;*
- (d) one member to represent the employers connected with the industry or trade concerned; and*
- (e) one member to represent the workers engaged in such industry or trade.*

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(2) The Chairperson and the members shall be appointed by Government.

(3) The Chairperson shall be appointed from persons with adequate knowledge of industrial, labour and economic conditions of the Province, who is not connected with any industry or associated with any employers' or workers' organization.

6. Accordingly, the powers of the Respondent No. 2 are provided for under sections 4 & Section 6 of the Act. Section 4 of the Act, reproduced below, provides that upon a reference made by the Respondent No.1, the Respondent No. 2 will provide recommendations for wage rates to the Respondent No.1:

4. *(1) The Board shall, upon a reference made to it by Government, recommend to Government, after such enquiry as the Board may deem fit, 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.*

7. As per section 6 (1) of the Act (reproduced below), once the Respondent No. 1 has received a recommendation from the Respondent No.2 through a reference made under s.4 of the Act, the Respondent No. 1 has two options before it. It can either publish the wages, recommended by the Respondent No. 2, in the official gazette (s. 6 (1) (a)) or it can send the recommendation back to Respondent No. 2 for reconsideration with their comments, within 30 days of receipt of recommendation, (s. 6 (1) (b)). There is, however, no provision available for the Respondent No. 1 to entirely bypass the Respondent No. 2 in fixing the minimum wage.

"6. (1) Upon receipt of a recommendation of the Board under section 4 or section 5, Government may -

- 1. (a) by notification in the official Gazette, declare that the minimum rates of wages recommended by the Board for the various workers shall, subject to such exceptions as may be specified in the notification, be the minimum rates of wages, for such workers; or*
- 2. (b) if it considers that the recommendation is not, in any respect, equitable to the employers or the workers, within thirty days of such receipt, refer it back to the Board for reconsideration with such comments thereon and giving such information relating thereto as Government may deem fit to make or give"*

Section 6(2) provides that where a recommendation is referred back to the Respondent No. 2 under s. 6 (1) (b), the Respondent No. 2 shall reconsider it after taking into account the comments and information given by the Respondent No.1 and, if necessary, shall hold further enquiry and submit to the Respondent No.1 either: (a) a revised recommendation (s. 6 (2) (a)); or (b) if it considers that no revision or changes in the recommendation is called for, make report to that effect stating reasons therefore (s. 6 (2) (b)).

- 8. Moreover, the Sindh Minimum Wages Board Rules 2021 (hereafter referred to as the 2021 Rules) dated 31.05.2021, published by the Respondent No. 1 in the official gazette on 17.06.2021, under the Act, are instrumental in understanding the wage fixing mechanism laid out above. Rule 3 of the 2021 Rules, reproduced below, titled 'Board to do certain things' gives exclusive power to the Respondent No. 2 to regulate the wage fixing mechanism.*

3. **Board to do certain things.** *The Board constituted under section 3 shall provide for the regulation of minimum rates of wages, adhoc relief, cost of living allowances, dearness allowances for different categories of workers employed in industrial and commercial undertakings*

Moreover, rule 19 of the 2021 Rules deals with the recommendation of minimum rates of wages for workers. Rule 19 (4), reproduced below, makes it mandatory for the Respondent No. 1 to publish the recommendations received by the Respondent No. 2, for invitation of objections from stakeholders. Rule 19 (5) (reproduced below) gives further power to the Respondent No. 2, and not the Respondent No. 1, to amend the recommendation in line with the objections received under Rule 19 (4) or to uphold its original recommendation.

(4) Where the Board proposes to recommend minimum rates of wages to Government, Government shall publish the proposed recommendation in the Official Gazette for inviting objections and suggestions thereto from persons likely to be affected thereby within fourteen days from the date of publication.

(5) The Board may, after considering any objection and suggestion made in accordance with sub-rule (4) make such amendments in the original proposals as may seem desirable, or may uphold its original proposals and make recommendations accordingly to Government.

The relevant sections and rules of the Act and the 2021 Rules respectively make it abundantly clear that the intent of the legislature was to give extremely limited power to the Respondent No. 1 and to vest the wage fixing power in the Respondent No. 2 that is the Wage Board.

9. That, owing to the glaring macro-economic issues such as inflation, the Respondent No.1, towards the end of 2020, had decided to revisit the minimum wage rate. The Respondent No. 2 held a meeting on 03.12.2020 for deliberating a new proposed minimum wage at the rate of PKR 19,000/- per month for unskilled workers. The wage rate of Rs. 19,000 per month was unanimously agreed upon by employers and employees alike. The outcome of the meeting is evident from the last paragraph of Agenda No.2 of the minutes of the meeting which expressly provides that;

"After detailed deliberation on the matter all the members of the Board agreed to increase & fix Rs.19,000/- per month the minimum wages for the un-skilled workers of the province of Sindh. It was also decided to publish the recommended wage rates in the official gazette for inviting objections/suggestions."

10. Pursuant to the meeting held by the Respondent No. 2 on 3.12.2020, the Respondent No.1 published the recommended wage rate of PKR 19,000 per month in the official Gazette of Sindh on 17.12.2020, inviting objections/suggestions from all stakeholders affected by the 9% increase within 30 days.

11. The Petitioners along with other stakeholders submitted their objections to the recommendation put forward by the Respondent No. 2 and

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consequently the Respondent No. 2 held a meeting on 22.4.2021 to consider the objections put forward and decided to once again revisit the minimum wage rate in Sindh. As per the minutes of the meeting which were published on 26.4.2021, all members present, including employee representatives, agreed that Rs. 19,000/- per month is the appropriate minimum wage for unskilled adult and juvenile workers effective from 1st April 2021.

12. Thereafter, a summary was moved before the Chief Minister on 01.06.2021, bringing forth the recommendation of Respondent No. 2 to fix the minimum wage of unskilled workers at Rs. 19,000 per month and for its issuance. It is pertinent to highlight that at no point, a summary recommending minimum wage of Rs. 25,000 per month was presented before the Chief Minister for issuance of notification.

13. However, to the utter shock and dismay of the Petitioners, the Respondent No.1, instead of adopting the binding recommendation of Rs. 19,000 per month, arbitrarily issued the impugned notification dated 09.07.2021 whereby the minimum wages of unskilled adult and juvenile workers was fixed at Rs.25, 000/- per month or Rs.961.00 per day. The increase from Rs.17, 500 to Rs.25,000 to the minimum wage rate amounts to an increase of 43% , which is completely unjustified and unsustainable. A bare perusal of the impugned notification expressly states that it has been issued, "*In pursuance of the provisions of Section 4(1) of the Sindh Minimum Wages Act, 2015 and in exercise of the powers conferred by Sub-Section (1)(a) of Section 6 of the Sindh Minimum Wages Act...*". However, the Respondent No. 2 had never conducted a meeting to deliberate the minimum wage rate of Rs.25,000 for unskilled workers throughout the Province of Sindh. Hence, the impugned notification could not have been issued "*in exercise of the powers conferred by Sub-Section (1)(a) of Section 6 of the Sindh Minimum Wages Act 2015, Government of Sindh..*".

14. The Respondent No.1 never issued a reference to the Respondent No. 2, proposing an increase from Rs.17, 500 to Rs.25,000/- to the minimum wage. The Petitioners and other affected stakeholders had never given any consent to such an unjustified increase in the minimum wage rate. Therefore, the fixation of minimum wage at Rs. 25,000 per month is violative of the Act and the Rules reproduced thereunder. As evidenced by the letters abovementioned, the Respondent No. 2 never deliberated upon the approved minimum wage rate of Rs.25,000 per month. The impugned notification dated 09.07.2021 issued by the Respondent No.1 is in complete violation of the provisions of the Act, and is a colorable exercise of their powers which are not conferred by Section 4 & 6 of the Act. Moreover, the Respondent No. 1 never published the wage of Rs. 25,000 per month, in the official gazette, inviting objections from the likely affected parties, as it is required to do under rule 19 (4) of the 2021 Rules.

15. Hence, the impugned notification dated 09.07.2021 is illegal, unlawful and not enforceable in law. Previously, whenever a recommendation to increase or fix the minimum wage has been made by the Respondent No. 2, the same has been published in the official gazette inviting public objections, however since there was no recommendation by the Respondent No. 2 to increase or fix the minimum wage at the rate of Rs. 25,000 per month, no such notification was published inviting objections. All this clearly points to the fact that the Impugned Notification is illegal, arbitrary and malafide. That, the Respondent No. 1 has issued the Impugned Notification in utter haste and in complete violation of the Act and the Rules framed thereunder as it is without lawful authority and jurisdiction and is in further violation of the constitutional rights of the Petitioners.

16. The malice of the Respondent No. 1 is further evident from the fact that the Impugned Notification states that it has been issued under s. 6 (1) (a) of the Act on the recommendation of the Respondent No. 2 made under s. 4 whereas no such recommendation exists. It is a matter of record that the Respondent No. 2 held its last meeting on 22.04.2021 when the minimum rate of wages for unskilled adult and juvenile workers was recommended at Rs. 19,000/- hence the Impugned Notification is totally illegal, malafide, without jurisdiction, coram non judice and liable to be set aside.

17. It is pertinent to mention at this juncture that the minimum wages announced by the Federal Government and other Provinces have been fixed to the rate of either Rs.20,000 or Rs.21,000. The position is as follows;

a) Federal Government	Rs.20,000/-
b) Province of Punjab	Rs.20,000/-
c) Province of KPK	Rs.21,000/-
d) Province of Baluchistan	Rs.20,000/-
e) Province of Sindh	Rs.25,000/-
f) EPZ	Rs. 20,000/-

18. The fixation of Rs. 25,000/- per month to the minimum wage of Sindh is therefore highly discriminatory and unjustified, keeping in view the minimum wage rates of other provinces of Pakistan. Such a huge disparity puts the Petitioners and other industrial and commercial undertaking in the province of Sindh (except export processing zones where the minimum wage is Rs. 20,000/-) at a huge disadvantage and makes their operations commercially unviable as they will be unable to

compete with other commercial and/or industrial undertaking as a result of the huge and unjustified burden sought to be imposed through the Impugned Notification.

19. The gravity of the situation can be truly surmised by a bare perusal of the following: In the year 2020-2021, Karachi alone was responsible for producing 50.78% of the total exports and the province of Sindh total produced 51.58% of the country's exports. Whereas in the year 2019-2020, Karachi was responsible for 51.21% of the total exports and the province of Sindh was responsible for 52.35% of the total exports in the country. Moreover, in the year ended 30th June 2018, Sindh alone was responsible for 44.91% of the total tax collection in the country. It follows from these facts that any threat to the sustenance of Sindh's export industry and exporters is an extremely serious and grave threat to the stability of Pakistan's economy and foreign income. That the national economy has no prospect of any real sustainable growth if the industries and exporters of Sindh are discriminated against.

20. Therefore, aggrieved by the impugned notification, the Petitioners filed the No. CP No. D – 5193 of 2021, which was tagged with petitions No. D 4596, 4603, 4777, 4938, 4943, 5072, 5229, 5275 and 4855 of 2021. The Respondent No. 2 filed comments in the CP No. D-4596 of 2021 which were treated as comments for the instant petition. Furthermore, an intervenor application was filed bearing CMA No. 21271 of 2021 in the CP No. D- 4596 of 2021. The applicants were mainly Employers' Union, Trade Unions, Labour Rights and welfare NGOs and organisation.

21. Consequently, Learned Divisional Bench of the Sindh High Court after hearing all the parties in the case, passed the Impugned Judgment on 15.10.2021 whereby the Impugned Notification was upheld and given retrospective effect from 01.07.2021 after its publication in the official

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gazette whilst the Respondents were directed to consider the objections of the employers within a period of 2 months after publication of the Impugned Notification under s. 6 (5) of the Act. Hence this Petition on the following grounds:

GROUNDS

The Recommendations of Respondent No. 2 are binding on Respondent No. 1:

A. At the very outset it is submitted that the Learned Divisional Bench vide its judgment dated 15.10.2021 has, respectfully, erred by failing to appreciate the wage fixing mechanism laid out in the Act. That, at paragraph 42 of the Impugned Judgment, the Learned Divisional Bench has, respectfully, wrongly relied on s. 6 of the Act to conclude that the recommendations of the Respondent No. 2 are not binding on the Respondent No. 1. It is submitted that the recommendations made by the Respondent No. 2 are binding on the Respondent No. 1 as it has the exclusive jurisdiction to fix the minimum wage rate under the Act and the Rules framed thereunder. The power to fix the minimum wage has been delegated to the Respondent No. 2 hence the Respondent No. 2 exercises legislative powers, therefore its decision is binding on Respondent No. 1.

B. S. 6 (1) of the Act provides the Respondent No. 1 with two options upon receipt of a recommendation from Respondent No. 2. It can either, declare the wages recommended by the Respondent No. 2 by publication in the official gazette (s. 6 (1) (a)) or if it considers that the recommendations are inequitable either to the employers or the employees, it may refer the matter back to the Respondent No. 2 for reconsideration (s. 6 (1) (b)). It is thus obvious that there is no

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provision available whatsoever within s. 6 of the Act for the Respondent No. 1 to override the recommendations of the Respondent No. 2. In case it disagrees with the recommendations made by Respondent No. 2, it is to refer the matter back to the Respondent No. 2, under s. 6 (1) (b) for reconsideration within 30 days. Since the Respondent No. 1 did not exercise its power to refer the matter back to the Respondent No. 2 within 30 days, the Respondent No. 1 was bound to notify the recommendation of Rs. 19,000. Moreover, under s. 6 (2) (b), the Respondent No. 2 upon receipt of reference under s. 6 (1) (b), has the power to disagree with Respondent No. 1 and communicate to the Respondent No. 1 that no change is required in the recommendation initially provided by them. Therefore, it is abundantly clear that Learned Divisional Bench has erred in holding that the competence to fix the minimum wage lies exclusively with the Respondent No. 1 and not Respondent No. 2. S. 6 (3) further provides that the Respondent No. 1 is to publish the minimum wage rate as recommended by the Respondent No. 2 under s. 6 (2). More importantly, the power to publish the notification, under s. 6 (3), can only be triggered "upon receipt of the recommendation of the Board under sub section (2)". However, the Respondent No. 1, in blatant violation of the Act and the 2021 Rules framed thereunder, published the notification announcing the minimum wage, of Rs. 25,000 per month, without receiving any recommendation from Respondent No. 2

C. That at paragraph 40 of the Impugned Judgment, the Learned Divisional Bench erred in law and fact to correctly appreciate the ratio of All Pakistan Newspapers Society & Ors v. Federation of Pakistan & Ors PLD 2012 SC 1, which provides that wage fixation is a legislative act and is therefore binding on the executive/government. In the aforementioned case, the word 'award' was used to define the

decision made by the wage board constituted under the News Employees (Conditions of Service) Act (LVIII of 1973). Relying on the use of the word 'award', the Learned Divisional Bench distinguished this case from the instant case, concluding that a 'recommendation' does not have the effect of an 'award' of a wage board which is binding in nature and that the same cannot be said about a recommendation. It is submitted, respectfully, that the Honourable Supreme Court in the aforementioned judgment was guided in its decision (to conclude that the award of the wage board is binding) not by the use of the word 'award' in the Employees (Conditions of Service) Act (LVIII of 1973) but by the very nature of a wage board, that is it performs a legislative function which will be binding on the government. The Honourable Supreme Court rightfully held that wage fixing is a legislative function, and therefore it is submitted that it should not make a difference whether a wage board's decision is called a 'recommendation' or an 'award' as that in no way impacts the very nature of the legislative functions performed by a wage board because of which its decision is binding on the government.

D. That, at paragraph 32, of the Impugned Judgment the Learned Divisional Bench has, respectfully, again erred in understanding the role of the Respondent No. 1 and 2, by relying on s. 2 (1) (xv) of the Act. S. 2 (1) (xv) of the Act is reproduced below:

(xv) "minimum wages" means minimum rates of wages announced, declared, adopted or notified by Government from time to time which shall include the basic pay and statutory allowances that is to say cost of living allowance, dearness allowance and adhoc relief;

Relying on the provision above, the Learned Divisional Bench has, respectfully, erred in concluding that the Respondent No. 1 alone is competent to 'decide' the minimum wages. However, it is submitted that the words: *announce, declare, adopt or notify*, cannot be read to mean *decide*. The aforementioned words, given the spirit of the

legislation (as will be explained below in more detail), should be read to mean that the Respondent No. 1 merely has the power to adopt, declare and notify the wages *as decided* by the Respondent No. 2 under s. 6 of the Act and the Rules framed thereunder.

E. That, at paragraph 28 of the Impugned Judgment, the Learned Divisional Bench, correctly stated, that the Act (as per its preamble) was enacted to provide for the "regulation of minimum rates of wages". However, the Learned Divisional Bench has erred in concluding that this regulatory power is within the exclusive domain of Respondent No. 1. A bare perusal of rule 3 of the 2021 Rules (reproduced above) will make it inexplicably clear that the power to regulate the minimum wages lies with the Respondent No. 2 and not the Respondent No. 1. It is evident from a bare perusal of rule 3, that *the Board constituted under section 3 shall provide for the regulation of minimum rates of wages*". The Act was introduced to regulate minimum wages (as correctly identified in the Impugned Judgment) but that power is vested in the Respondent No. 2 and not Respondent No. 1.

F. That the Learned Divisional Bench has, respectfully, erred in concluding at Paragraph 43 of the Impugned Judgment that it is the Respondent No. 1 *alone* that can agree or disagree with the recommendations, when the Respondent No. 2 is very evidently given the power to disagree with the Respondent No. 1 under s. 6 (2) (b) of the Act. It is submitted that the Learned Divisional Bench, in interpreting the Act in the given manner, has attributed redundancy to the Respondent No. 2. The Learned Divisional Bench has reduced the Respondent No. 2's role in the wage fixing mechanism merely to act at the behest of Respondent No. 1, which is against the spirit of the legislation. S. 3 of the Act provides for the constitution of Respondent

No. 2 and provides a detailed list of individuals that will constitute Respondent No. 2 so as to ensure accurate representation and participation of all stakeholders in deciding the minimum wage. The Federation of Pakistan is a signatory to the Minimum Wage Fixing Convention, 1970 which specifically protects the direct participation of employer representatives in any wage fixing machinery but the representation of all the stakeholders involved and specially sections 4-6 (providing a detailed mechanism for wage fixing) of the Act become redundant if the Respondent No. 1 can simply surpass the Respondent No. 2.

- G. That, the Impugned Judgment, has failed to take cognizance of the fact that the Impugned Notification was published without publishing the wage of Rs. 25,000 in the gazette inviting public objections, as required under rule 19 (4) (reproduced above) of the 2021 Rules and the process to be followed under the Act. Therefore, it is submitted that the Impugned Notification was issued abruptly and in haste without inviting objections and the same is in violation of Article 10-A, 18, 23 and 25 of the Constitution, 1973. That, the Learned Divisional Bench, in failing to strike down this illegal, arbitrary and mala fide Impugned Notification is, respectfully, perpetuating gross violations of the law.
- H. That, the Learned Divisional Bench has erred in failing to appreciate the ratio of the judgment in Khulna Textile Mills Ltd. V. Govt. of East Pak (PLD 1967 Dacca 229), which the Petitioners heavily relied upon in their submissions. The Learned Divisional Bench relied on the following passage from the aforementioned judgment in the Impugned Judgment to conclude that the Respondent No. 1 is not to blindly follow the recommendations of the Respondent No. 2.

"It is the Provincial Government that takes cognizance of circumstances requiring fixation of minimum wages and then sets the ball rolling by either referring the question of fixation of minimum rates of wages to the Minimum Wages Board under section 4 of the Ordinance or directing the Board under section 5 thereof to make recommendations".

However, the aforementioned judgment, in the very same paragraph that the passage above is quoted from states (as highlighted repeatedly in the Petitioner's submissions) that:

"the government having set the ball rolling must play the game.... In our view, once the matter has been referred to the Board and the Board has submitted its recommendations to the Provincial Government the latter has no option but to act in the manner prescribed under section 6 (1) (2) and (3) of the Ordinance."

It is respectfully submitted that the Learned Divisional Bench has simply omitted the part of the judgment that the Petitioners relied on and has consequently misinterpreted the Act. This passage of the judgment actually lends support to the submissions made in Paragraph B above that the only options available, to the Respondent No. 1, upon receipt of the recommendation, under section 6 (1) (2) and (3) are to accept the recommendation and publish a notification in the gazette or to send the matter back to the Respondent No. 2 for reconsideration, none of which involve overriding the decision of the Respondent No. 2 or unilaterally fixing a minimum wage which the Respondent No. 1 has done in utter violation of the said provisions.

1. That, even the passage of the judgment relied upon by the Learned Divisional Bench cannot help sustain the notification. The passage quoted in the Impugned Judgment clearly states that the wage fixing mechanism can be initiated only through a reference, made either under section 4 or section 5 of the Act, made by the Respondent No. 1 to Respondent No. 2. That is, the Respondent No. 1 cannot act unilaterally

under the Act, it must first make a reference to the Respondent No. 2 to initiate the wage fixing mechanism. Moreover, s. 6 of the Act, titled "Power to declare minimum rates of wages", clearly states that the Respondent No. 1 cannot declare the minimum rates of wages without a recommendation from Respondent No. 2. A bare perusal of s. 6 (1) of the Act (reproduced above) makes it apparent and obvious that Respondent No. 1's power to declare minimum wages is only triggered upon receipt of a recommendation from the Respondent No. 2, without which the Respondent No. 1 cannot exercise its power to declare the minimum rate of wages. However, as explained in the facts above, the Respondent No. 1 never made any reference to the Respondent No. 2, proposing an increase from Rs.17, 500 to Rs.25,000/- to the minimum wage and issued the Impugned Notification dated 09.07.2021 in a gross violation of the Act and the Rules framed thereunder, which the Impugned Judgment has wrongly upheld.

J. That, the Learned Divisional Bench has erred in concluding that the recommendations of Respondent No. 2 are subject to the final approval of Respondent No. 1. Firstly, there is no explicit provision in the Act to that effect. Secondly, if the Respondent No. 1 had such a power under the Act, the Act would not provide for the Respondent No. 1 to send a reference back to the Respondent No. 2 under s. 6 (1) (b), in the event of a disagreement with Respondent No.2, the Act would simply provide for the Respondent No. 1 to disagree and decide upon a wage that they believed was the right wage. All this points to the fact that the power to fix the minimum wage (a legislative function) has been delegated to the Respondent No. 2 under the Act and the Rules framed thereunder.

Discrimination:

K. That the Learned Divisional Bench, at Paragraph 50 of the Impugned Judgment, has respectfully, misconstrued the argument made by Petitioners against the Impugned Notification on the ground of discrimination. The Impugned Judgment has, respectfully, misconstrued the argument regarding discrimination between the industries and exporters of Sindh and industries and exporters in other areas of Pakistan and the Export Processing Zone within Sindh, into an argument about discrimination between employers and employees. The submissions made by the Petitioners was that the Petitioners, who are all exporters, would be placed at a great disadvantage compared to other exporters conducting commercial undertaking in areas other than Sindh. Though the export market remains the same for all players, those conducting export oriented commercial undertakings within the province of Sindh would face higher costs owing to the unjustified increase within the minimum wage rate, leaving them at a serious disadvantage compared to other exporters. However, the Learned Divisional Bench in the Impugned Judgment, at Paragraph 50, when allegedly dealing with the discrimination argument made by the Petitioners, entirely omitted this argument and failed to give this extremely poignant argument the due consideration, it deserves, in reaching its judgment. This discrimination will result in the closure of business and is in violation of Articles 18 r/w Article 4 of the Constitution.

L. The Learned Divisional Bench has, respectfully, failed to take cognizance of the fact that fixing the minimum wage at Rs. 25,000 per month is highly discriminatory and unjustified, keeping in view the minimum wage rates of other provinces of Pakistan, which are much

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lower than Rs. 25,000 per month (mentioned above). It is also pertinent to mention at this juncture that on 25.6.2021 the Export Processing Zone Authority had fixed the minimum wages of unskilled workers at Rs.20,000 per month with effect from 1.7.2021. Hence, if the impugned notification stands as it is, it will create further discrimination within the province of Sindh, between workers who are employed within the Export Processing Zone and the workers who are employed by other exporters within Sindh. It is submitted that the law does not envision such discrimination amongst similarly placed persons in society, and the Learned Divisional Bench has entirely failed to take into account these extremely important submissions made by the Petitioners.

M. That the Learned Divisional Bench has failed to take cognizance of the fact that the Impugned Notification destroys an even playing field for the Petitioners and brings them to the brink of losing out their entire business as they will be unable to compete in the local and international markets as they are being required to pay huge additional sums for the same workforce. The Impugned Notification therefore violates the Petitioner's right to livelihood and to carry out their trade and business in contravention of Article (s) 9, 18 r/w 4 of the Constitution, 1973.

N. That the Learned Divisional Bench has further failed to appreciate the risk this Impugned Notification poses not only to the economy of Sindh but also to the national economy. As mentioned above, in the year 2020-2021, the province of Sindh total produced 51.58% of the country's exports. Whereas in the year 2019-2020, Karachi alone was responsible for 51.21% of the total exports and the province of Sindh was responsible for 52.35% of the total exports in the country. Moreover, in the year ended 30th June 2018, Sindh alone was

responsible for 44.91% of the total tax collection in the country. All this points to the significance of Sindh's export industry to the economy of Pakistan. That, the national economy will have no real prospect of any long-term sustainable growth if the exporters of Sindh are discriminated against. That the Impugned Notification will make it virtually impossible for the Petitioners and all the industries of Sindh to carry out their business. This glaring and very real risk poses the threat of capital flight to other countries. Not only will this create rampant unemployment in the province of Sindh, it will also act as a serious detriment to the economy of Pakistan. That, the Learned Divisional Bench, in failing to appreciate the gravity of situation and letting the Impugned Notification stay in field, has regrettably paved the way for dire consequences for the country's economy.

O. That, the Learned Divisional Bench has tried to justify this arbitrary increase in minimum wages by reference to the recent increase in prices due to which it has become necessary to increase the minimum wage so that the workers can enjoy a decent standard of living. With utmost respect, it is submitted that that the private employers cannot be penalized for the failings of the Government. Firstly, it is submitted that it is the state's responsibility and not the private employers' responsibility to ensure that all citizens enjoy a basic standard of living. Furthermore, it is the state's responsibility to keep the rate of inflation in check, failing which, they cannot then pass the mantle of ensuring a basic standard of living for the workers, to their employers. More importantly, the recent increase in prices in a national phenomenon therefore it does not make sense to consequently increase the minimum wage only in the province of Sindh and not in other parts of Pakistan, where inflation is just as rampant as in Sindh Therefore, the employers

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will be at a huge loss and will not be able to sustain this arbitrary and illegal increase in the minimum wage.

Power of Judicial Review:

P. That, the Learned Divisional Bench at Paragraph 47 has, respectfully, erred in holding that it is the Respondent No. 1's obligation to fix the minimum wage, which is a legislative function, and therefore the court will be reluctant to exercise its power of judicial review. It is submitted that whilst it is true that wage fixing is a legislative function, as reiterated by the Petitioners in their submissions, that function is performed by the Respondent No. 2 and not the Respondent No. 1. That, the Petitioners had prayed for the court to exercise its powers to judicially review the decision made by the Respondent No. 1, in a blatant abuse of power, and strike it down. If the power of wage fixing, which is a legislative function, is vested in the Respondent No. 2 and consequently the Respondent No. 1, in utter violation and disregard of the law, usurps that power, it cannot by any far stretch of imagination be termed an exercise of legislative function which has been delegated to the Respondent No. 2 under the Act and the Rules framed thereunder. If anything, it is to be termed as an illegal, arbitrary and mala fide abuse of power, which is precisely the kind of executive action, the Honourable Court's power of judicial review aims at to correct.

Q. That, the Learned Divisional Bench has contradicted itself within the same Paragraph 47 mentioned above, by stating that wage fixing is a legislative function in the first sentence of the paragraph and then stating that it is a policy decision in the second sentence of the same paragraph. Even if wage fixing is a policy decision, it is vested in the Respondent No. 2 because it is a well-known fact that policy decisions

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are to be made by experts and between the Respondent No. 2 and Respondent No.1, it is evident that the Respondent No. 2 is the body of experts to decide on the matter. It is evident from a bare perusal of s. 3 of the Act (reproduced above) that the Respondent No. 1 is constituted of members from within the industry who have the relevant knowledge and expertise to decide the wages and not the members of Respondent No. 1. The Chairman of the Respondent No. 1 is required to have adequate knowledge of industrial, labour and economic conditions of the province. In any event, wage fixing is not a policy decision rather it is decision under the Act which is amenable to judicial review.

R. Even if the Respondent No. 1's decision is considered an exercise of executive power, there is no reason why the Honourable Court should restrain itself from interfering with this decision made in blatant abuse of power. The bedrock of judicial review is illegality, unreasonableness and procedural impropriety. That, the Respondent No. 1's decision is blatantly illegal (in complete violation of the Act and the Rules framed thereunder), procedurally improper (as the procedures laid down in the law have not been followed) and utterly unreasonable. Therefore, the Honourable Court should not hold itself back from exercising its powers of judicial review and striking down the Impugned Notification. That, in doing so the Honourable Court will not be substituting its decision with that of the Respondent No. 1 as it is not the Honourable Court that has been asked to fix a suitable wage, in which case it could be said that the Honourable Court is substituting its decision with that of the executive or interfering with legislative functions.

Ordering the Publication of Impugned Notification:

S. That, the Learned Divisional Bench, at Paragraph 51 of the Impugned Judgment, in directing the Respondent No. 1 to issue the notification

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fixing the minimum wage at Rs. 25,000/- per month, is respectfully, perpetuating a gross violation of the law. As it will be abundantly evident, from the foregoing paragraphs, the Respondent No. 1 fixed the minimum wage at Rs. 25,000/- per month, in utter violation of the Act and the Rules framed thereunder by acting unilaterally and without the recommendations of the Respondent No. 2.

T. That, the Learned Divisional Bench has, respectfully, misinterpreted the law, in directing the Respondent No. 1 to refer the matter back to the Respondent No. 2, *after* issuing the notification under s. 6 (5) of the Act. S. 6 (5) of the Act provides for the Respondent No. 1 to refer a matter to Respondent No. 2 if it realizes *after the publication of the notification* that there has been a mistake in fixing the minimum wage. But, the Impugned Judgment, has itself admitted that there has been a mistake and the mistake has been brought to the fore much before the publication of the Impugned Notification in the official gazette. Therefore, issuing the notification fixing the minimum wage at Rs. 25,000 per month and *then* sending the matter back to the board for its recommendations is simply a misapplication of the provisions. Once it has become obvious that there has been a mistake and a gross violation of the law in arriving at the figure for the minimum wage, the notification fixing the wrong wage should not be published in the first place instead the Impugned Notification should be struck down. That, by allowing the Impugned Notification to be published in the official gazette with the wrong minimum wage and *then* sending the matter to the Board to rectify it under s. 6 (5), it is submitted, with utmost respect, that the Learned Divisional Bench has placed the cart before the horse.

- U. It is also worth highlighting again that even under s. 6 (5) of the Act, the Respondent No. 1, upon realizing that there has been a mistake in the minimum rates of wages, cannot act unilaterally, and the mistake cannot be fixed without sending a reference to the Respondent No. 2. This highlights the spirit of the law and further establishes that the Learned Divisional Bench has, respectfully, failed to read the Act holistically and has therefore misinterpreted its provisions.
- V. That, the Impugned Notification is a non-speaking order, as acknowledged by the Learned Divisional Bench, at Paragraph 53 of the Impugned Judgment. That, if the Learned Divisional Bench acknowledged that the Impugned Notification is a non-speaking order when it needed to record reasons, then the logical consequence of reaching that conclusion was an order striking down the Impugned Notification. However, the Learned Divisional Bench of the High Court despite acknowledging that the Impugned Notification is a non-speaking order has wrongly allowed it to stay in field and has misdirected itself as to the law by allowing the Respondent No. 1 to issue a notification fixing the minimum wage at Rs. 25,000 per month.
- W. That the Learned Divisional Bench has, respectfully, erred in directing the Respondent No. 1 to publish the Impugned Notification in the official gazette under s. 6 (5) of the Act and has directed to give it retrospective effect from 01.07.2021. It is submitted that this direction is against the long-standing principle of law that notifications cannot have retrospective effect. Moreover, the Learned Divisional Bench has made conflicting observations within the Impugned Judgment. At Paragraph 53 of the Impugned Judgment, speaking about publication of the Impugned Notification in the official gazette, the Learned

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Divisional Bench stated, "This process shall not take more than a week from the publication of the Notification in the official gazette, wherefrom the notified minimum wages rate is to be applicable". However, at Paragraph 54, the Impugned Judgment stated that, "the Government shall ensure payment of such minimum wages amount to all such workers from 01.07.2021 till the time it (government) reviews such declaration".

X. That the Judgment authored by Mr. Justice Adnan Karim Memon, is based on surmises and conjectures and with utmost respect does not properly consider the arguments advanced by the Petitioners.

Y. That the Petitioners crave leave of this Honourable Court to raise further/additional grounds at the time of the hearing of the instant Petition.

PRAYER

It is, therefore humbly prayed that this Honourable Court may be pleased to grant leave to appeal against the Impugned Judgment dated 15.10.2021 passed by a Learned Divisional Bench of the Honourable High Court of Sindh at Karachi in Constitutional Petition No. D – 5193 of 2021 and set it aside.

Filed by



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For the Petitioners

Karachi:-
Dated:- .10.2021