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Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2539 of 2010

Hindustan Sanitaryware and Industries Ltd. & Others.

.... Appellants

Versus

The State of Haryana .... Respondent

WITH

CIVIL APPEAL No. _____ of 2019
(Arising out of Special Leave Petition (Civil) No. 5832 of 2018)

Faridabad Industries Association .... Appellant

Versus

The State of Haryana & Another .... Respondents

J U D G M E N T

L. NAGESWARA RAO, J.

CIVIL APPEAL No. 2539 of 2010

1. The Appellant filed a Writ Petition challenging the Notification dated 27.06.2007 issued under Section 5 (2) of the Minimum Wages Act, 1948 (hereinafter, "the Act"). The said Writ Petition was dismissed by the High Court. Aggrieved by the judgment of the High Court, the Appellant has approached this Court.

2. In exercise of the powers conferred by Section 5(2) of the Act, the Finance Commissioner and Principal Secretary to the Government of Haryana, Labour Department issued a Notification on 27.06.2007 fixing/revising the minimum rates of wages in respect of different scheduled employments as mentioned in the schedule therein with effect from 01.07.2007. The relevant provisions of the Notification dated 27.06.2007 are as under:

- *Unskilled employees having 10 years' experience would be deemed categorized as semi-skilled "A".*
- *After 3 years of experience in semi-skilled "A", the employees would be deemed categorized as semi-skilled "B".*

- *After 3 years of experience in skilled "A", the employees would be deemed categorized as skilled "B".*

xxx

Note:

1. The minimum rates of wages being fixed/ revised are linked with Haryana State Working Consumer Price Index Number (base year 1972-73=100) with July 2007 as the base month. The rate of neutralization will be Rs.2.31 per point on the rise or fall of the Consumer Price Index Number, adjustment in wages shall be made six monthly i.e. 1st January and 1st July, every year after taking into account the average rise or fall in the Haryana State Working Class Consumer Price Index Number half-yearly ending December and June respectively.

2. The minimum rates of wages being now fixed/ revised shall not be affected as a result of the linkage as much as the wages shall not fall below those being fixed/ revised now.

3 The wages of apprentices appointed under the Apprentices Act, 1961 (52 of 1961), shall be regulated under the said Act.

4. There shall be no difference between the wages for men and women workers.

5. Where any of the above categories of workmen are engaged/ employed through a Contractor, the Occupier/ the Principal Employer shall be personally responsible for ensuring the payment of the minimum rates of wages by the Contractor.

6. If any category of workers employed in the employment is not mentioned specifically by name, he/she shall not be paid less than the minimum wages fixed for similar category having same skill.

7. While calculating the per day wages, the monthly wages shall be divided by 26 days but for deduction, if any, shall be calculated monthly wages divided by 30 days.

8. The categorization of employment in Brick Kiln is placed at ***Annexure-A.***

9. Above rates are without food. Wherever food is given customarily, it shall be extra.

10. Trainees will be paid 75% of the wages applicable to the category but it will not be less than the Minimum Wages for an unskilled category of worker. The period of training will not be more than one year."

3. The above Appeal was taken up along with the other Writ Petitions which were filed for the same relief. Without a detailed discussion on the issues which arose in the Writ Petition, the High Court dismissed the Writ Petition by observing that the contention raised by the Petitioners regarding the impermissibility of classification of workmen was misconceived and that the trainees would fall within the purview of the Act.

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Leave granted.

4. This Appeal by Special Leave is filed against the judgment of the High Court dated 18.08.2017 by which the Writ Petition filed by the Appellant questioning the Notification dated 21.10.2015 issued under Section 5(2) of the Act was dismissed.

5. By a Notification dated 21.10.2015, the Labour Department of the Government of Haryana revised the minimum rates of wages in respect of different scheduled

employments as mentioned in the schedules therein with effect from 01.11.2015. It is necessary to reproduce the relevant portion of the Notification dated 21.10.2015 which is as follows:

> *"Unskilled employees having five years experience would be deemed categorized as semi skilled "A".*
>
> *After 3 years of experience in semi skilled "A" the employees would be deemed categorized as semi skilled "B".*
>
> *After 3 years of experience in skilled "A" the employees would be deemed categorized as skilled "B"*
>
> *xxx*
>
> *xxx*
>
> *Notes:*
>
> *1. The minimum rates of wages notified herein above are basic rates of minimum wages which are not permitted to be segregated into components in the form of allowances by the employer. The minimum rates of wages being*

fixed/ revised are linked with Haryana State Working Class Consumer Price Index number (base year 1972-73=100) with July 2015, as the base month. There shall be 100% neutralization of the rise or fall of the consumer price index number on pro rata basis; the adjustment in wages shall be made six monthly i.e. on 1st January and 1st July every year, after taking into account the average rise or fall in the Haryana State Working Class Consumer Price Index half yearly ending December and June respectively.

2. The minimum rates of wages now being fixed/ revised shall not be affected as a result of the linkage as much as the wages shall not fall below those being fixed/ revised now.

3. The wages of apprentices appointed under the Apprentices Act, 1961 (52 of 1961), shall be regulated under the said Act.

4. There shall be no difference between the wages for men and women.

5. Where any of the above categories of workmen are engaged/ employed through a contractor, the occupier/ the principal employer shall be personally responsible for ensuring the payment of the minimum rates of wages by the contractor.

6. If any category of workers employed in the employment is not mentioned specifically by name, he/she shall not be paid less than the minimum wages fixed for similar category having same skills.

7. While calculating the per day wages, the monthly wages shall be divided by 26 days but for deduction, if any, shall be calculated as monthly wages divided by 30 days.

8. The categorization of employment in Brik Kiln is placed above at Annexure-A.

9. Above rates do not include food charges. Wherever food is given customarily, it shall be extra.

10. Trainees shall be paid 75% of the wages applicable to the category, but it shall not be less

than the Minimum Wages for an unskilled category of worker because an unskilled worker does not require any training. The period of training shall not be more than one year.

6. It was submitted on behalf of the Appellant before the High Court that the segregation of wages into components in the form of allowances was permissible. The further contention of the Appellant before the High Court was that Note 10 of the Notification which fixed the minimum wages for trainees at 75% of the wages applicable to that category and also limited period of such training to one year was *ultra vires* the Act. The provision for categorization of unskilled employees as semi-skilled on their acquiring experience of a certain number of years was stated to be beyond the jurisdiction of the Government. Inclusion of Domestic Workers and Safai Karamcharis in the list of scheduled employments at Serial Numbers 49 and 50 was also in challenge in the Writ Petition. The High Court rejected the submission of the Appellants that there is prohibition of segregation of wages into components in the form of allowances. The

challenge to 100% neutralization was also not accepted by the High Court. The Act was held to be applicable to the trainees by the impugned judgment. Insofar as the categorization of workers was concerned, the High Court was of the opinion that the categorization was justified and indeed necessary as the workmen were continued in their grades for a long number of years which resulted in stagnation. The contention of the Appellants that Domestic Workers and Safai Karamcharis could not have been included in the list of scheduled employment at Serial Numbers 49 and 50 was accepted by the High Court. In view of the aforesaid findings, the High Court concluded that Notes 1, 9 and 10 of the Notification dated 21.10.2015 were legal and valid. It is relevant to mention that the High Court relied upon the judgment of a Division Bench in Writ Petition (Civil) No.11326 of 2007[1] in support of its findings.

7. Mr. Kailash Vasdev, learned Senior Counsel appearing for the Appellants in Civil Appeal No. 2539 of 2010 submitted that the classification of workmen by the

1 Apparel Exporters & Manufacturers Association vs. State of Haryana – CWP No.9942 of 2007 dated 06.09.2007

Notification dated 27.06.2007 amounts to an interference with the promotion policy of the Appellant which is beyond the jurisdiction of the Government under the Act. He stated that the Government does not have the power to alter the conditions of service, contract or settlement between the employer and the employee. He referred to a settlement between employees and the employer which specifies the regulation of wages. Mr. Vasdev argued that the High Court erred in not realizing the difference between a fair wage, a living wage, and a minimum wage. He relied upon a judgment of this Court in ***Bidi, Bidi Leaves and Tobacco Merchants' Association*** v. ***State of Bombay***[2] in support of his submission that the power that is conferred on the Government was only to deal with fixation and revision of wages and not to interfere with the contractual rights and obligations. Mr. Harvinder Singh, learned counsel appearing for the Petitioner in Civil Appeal @ SLP (Civil) No.5832 of 2018 submitted that the Petitioner has a grievance only regarding some portions of the Notification dated 21.10.2015. His first objection to the Notification was relating to the revision of minimum

2 1962 Supp (1) SCR 381

rates of wages for Security inspector/ Security officer/ Supervisor by relying upon the definition of “employee” in Section 2(i) of the Act. He submitted that Security inspector/ Security officer/ Supervisors will not fall within the purview of the definition and hence, the State Government did not have the power to fix/ revise the minimum wages for the said categories. Similarly, the learned counsel submitted that trainees cannot be brought within the purview of the Act as they also do not fall within the definition of “employee” under Section 2(i) of the Act as all the trainees are not employed for hire or reward. The learned counsel relied upon a judgment of this Court in ***Haryana Unrecognised Schools' Association*** v. ***State of Haryana***[3] in which it was held that teachers working in an educational institution cannot be held to be discharging either skilled or unskilled or manual or clerical work and as such they did not fall within the scope of “employee” under Section 2(i) of the Act. Mr. Singh submitted that the Government did not have the power to place a restriction on the period of training which according to the Notification cannot be

3 (1996) 4 SCC 225

more than one year. He further argued that the classification of employees was totally impermissible. He also submitted that different minimum rates of wages cannot be fixed for the same class of work in the same scheduled employment. By the deemed categorization of an unskilled employee as a semi-skilled employee after five years experience, the Government fixed higher minimum rate of wages for a worker who has completed five years though he continued to work as an unskilled employee. This would amount to higher minimum wages being paid for a worker in the lower category on the basis of deemed classification. He further submitted that the prohibition of segregation of wages into components in the form of allowances was beyond the competence of the Government. By referring to Section 2(h) of the Act which defines wages, the learned counsel for the Appellant submitted that the very definition of wages means all other remuneration in accordance with the terms of contract or employment. According to Mr. Singh, there is no concept of basic rate of minimum wages. He further argued that the concept of principal employer and

contractor is foreign to the Act and the occupier/the principal employer cannot be made responsible for the payment of minimum rate of wages to a contract labour. Allegations of exploitation of workmen by the employers cannot be a ground for issuance of a notification under Section 5 of the Act if the Government lacks jurisdiction.

8. Dr. Monika Gusain, learned counsel appearing for the State of Haryana referred to Article 43 of the Constitution of India to submit that it is the duty of the State to secure a living wage to all workers. She submitted that the Notifications were issued on the basis of recommendations made by an Advisory Committee after consultations with the employers and the workmen. Splitting of the minimum wages into components is permissible as there is no prohibition in the Act. She contended that the deemed promotion of an unskilled worker to a semi-skilled worker, based on experience, is only for the purpose of entitling them to the next grade of minimum wages which cannot be construed as a deemed promotion or classification. Dr. Gusain stated that it has come to the notice of the Government that trainees were

not being paid even the minimum wages applicable to an unskilled workman for which reason it was decided that trainees should be protected. The learned counsel for the State of Haryana defended the Notifications dated 27.06.2007 and 21.10.2015 on the ground that they were issued to protect the fundamental rights of the workers. She also argued that the Appellants have not produced any material to show the loss caused to them by the Notifications, and hence, the judgment of the High Court does not warrant interference.

9. At this stage, it is necessary to refer to the relevant provisions of the Act. "Wages" and "Employee" have been defined in Sections 2(h) and 2(i) of the Act which reads as under:

> *"2(h) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, [and includes house rent allowance], but does not include—*
>
> *(i) the value of—*

(a) any house-accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
(v) any gratuity payable on discharge;

2(i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the

control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the [Union].”

10. The appropriate government is empowered by Section 3 of the Act to fix the minimum rates of wages payable to the employees employed in an employment specified in Part I and Part I (b) of the Schedule. Section 4 of the Act provides that the minimum rate of wages fixed or revised under Section 3 may contain:

“(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the “cost of living allowance”); or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

(iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any."

11. The procedure for fixing or revising the minimum rates of wages is dealt with under Section 5 of the Act. After following the procedure prescribed under Section 5, the appropriate government can fix/revise the minimum rates of wages and issue a notification to that effect. An obligation is imposed on the employer by Section 12 of the Act to pay to every employee engaged in a scheduled employment wages at a rate not less than the minimum rates of wages fixed by the notification issued under Section 5 of the Act. The authority conferred on the Government in fixing or revising the minimum rates of wages under the relevant provisions of the Act was dealt with by this Court in ***Bidi, Bidi Leaves and Tobacco Merchants' Association*** (supra). This Court held:

"What is the extent of the authority conferred on the respondent in fixing or revising minimum rates of wages under the relevant provisions of the Act? In dealing with this question we must necessarily bear in mind the definition of the term "wages" prescribed by Section 2(h). As we have

already seen the term "wages" includes remuneration which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment. In other words, the term "wages" refers to remuneration payable to the employee as a result of the terms of employment. What would be the amount to which the employee is entitled if the other terms of the contract are performed? That is the question which has to be asked in determining what the term "wages" means under Section 2(h). No doubt Sections 3, 4 and 5 authorise the appropriate Government to fix the minimum rates of wages. In other words, if the wages fixed by a contract which is either express or implied are found to be low, authority is conferred on the appropriate Government to increase them so as to bring them to the level of what the said Government regards as the minimum wages in the particular scheduled employment in the particular area concerned. This means that power is conferred on the appropriate Government to modify one term of the contract express or implied between the employer and the employee and that is a term which has reference to the payment of wages. If for a certain piece of work done by the employee the employer has agreed to pay him either expressly or by

implication a certain amount of wages the appropriate Government can issue a notification and prescribe that for the said work done under the contract the employer must pay his employee a much higher rate of wages and the higher rate of wages thus prescribed would be deemed to be the minimum rate of wages between the parties.

It would, however, be noticed that in defining "wages" clause 2(h) postulates that they would be payable if the other terms of the contract of employment are fulfilled. That is to say, in authorising the fixation of minimum rates of wages the other terms of the contract of employment have always to be fulfilled. The fulfilment of the others terms of the contract is a condition precedent for the payment of wages as defined under Section 2(h) and it continues to be such a condition precedent even for the payment of the minimum rates of wages fixed and prescribed by the appropriate Government. The significance of the definition contained in Section 2(h) lies in the fact that the rate of wages may be increased but no change can be made in the other terms of the contract. In other words, the Act operated on the wages and does not operate on the other terms of the contract between the employer and the employee. That is the basic approach which must be adopted in determining

the scope and effect of the powers conferred on the appropriate Government by the relevant provisions of the statute authorising it to prescribe minimum rates of wages or to revise them. What the appropriate Government is authorised to do is to prescribe, fix or revise wages and wages are defined to be remuneration payable to the employees if the terms of the contract of employment, express or implied, were fulfilled. This definition runs, as it inevitably must, through the material provisions of the Act and its importance cannot therefore be ignored."

12. The learned counsel for the Government of Haryana argued that the workmen are exploited by the employers and the notifications were issued after taking into account the recommendations of the expert body to protect the interests of the workmen. The point raised by the Appellants pertains to the jurisdiction of the Government in the issuance of the notification. The grievances of the workmen can be redressed by the *fora* constituted under the Industrial Disputes Act, 1948 if the Government does not have the competence to deal with certain issues in a notification under the Act. In ***Bidi, Bidi Leaves and***

Tobacco Merchants' Association (supra), Justice Gajendragadkar, observed :-

> *"It is well settled that industrial adjudication under the provisions of the Industrial Disputes Act 14 of 1947 is given wide powers and jurisdiction to make appropriate awards in determining industrial disputes brought before it. An award made in an industrial adjudication may impose new obligations on the employer in the interest of social justice and with a view to secure peace and harmony between the employer and his workmen and full co-operation between them. Such an award may even alter the terms of employment if it is thought fit and necessary to do so. In deciding industrial disputes the jurisdiction of the tribunal is not confined to the administration of justice in accordance with the law of contract. As Mukherjea, J., as he then was, has observed in Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi the tribunal "can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations between them which it considers essential for keeping industrial peace". Since the decision of the Federal Court in Western India Automobile*

Association v. Industrial Tribunal, Bombay , it has been repeatedly held that the jurisdiction of Industrial Tribunals is much wider and can be reasonably exercised in deciding industrial disputes with the object of keeping industrial peace and progress (Vide: Rohtas Industries, Ltd. v. Brijnandan Pandey, Patna Electric Supply Co. Ltd., Patna v. Patna Electric Supply Workers' Union). Indeed, during the last ten years and more industrial adjudication in this country has made so much progress in determining industrial disputes arising between industries of different kinds and their employees that the jurisdiction and authority of Industrial Tribunals to deal with such disputes with the object of ensuring social justice is no longer seriously disputed."

13. There is no power vested in the Government by the Act to make alterations to the terms of a contract. Jurisdiction is conferred by the Act on the Government to fix/revise the minimum rates of wages notwithstanding the contract. The Notification dated 21.10.2015 postulates that unskilled employees having five years experience would be deemed categorized as semi-skilled "A"; that after three years of experience in semi-skilled "A", the employees would be deemed categorized as semi-

skilled “B”; that after three years of experience in skilled “A”, the employees would be deemed categorized as skilled “B”. Such categorization or classification by deeming workmen in one category to belong to another category is in direct contravention of the contract between the employer and the employee and is beyond the jurisdiction of the Government. Inclusion of Security inspector/ Security officer/ Supervisor at Serial No.9 in the table “Minimum rates of wages in respect of all scheduled employment” in the Notification is *ultra vires* the provisions of the Act. They do not fall within the definition of “employee’ in Section 2(i) as they do not discharge any skilled or unskilled, manual or clerical work.[4] Similarly, not all trainees can be included in the Notification. Trainees who receive wages during the period of training would fall under the definition of “employee” as has been fairly admitted by the learned counsel for the Appellants. It is the Appellant’s case that such of those trainees who are not paid any wages cannot be included in the notification. We are in agreement with the said submission as only a person who is employed for “hire or

4 See: *Haryana Unrecognized Schools’ Association* (supra)

reward" will fall under the definition of "employee". Consequent upon the above finding, the trainees who are not paid wages cannot be included in the notification and the fixation of minimum wages for such trainees at 75% is also not valid. To make it clear, the minimum wages fixed for trainees who are appointed for reward is not interfered with. The period of training to be undergone by a trainee would depend upon the contract between the employer and the employee. There is no power vested in the Government under the Act to decide the period of training and any stipulation with regard to the training period is *ultra vires*.

14. The word "employee" as defined in the Act means any person who is employed for hire or reward in a scheduled employment. There is no distinction made between a person employed by the principal employer and a person employed through a contractor. Any person who employs, whether directly or through any other person, one or more employees in a scheduled employment falls within the definition of an "employer".[5] A close scrutiny of the definitions of the employer and the

5 Section 2(e), Minimum Wages Act, 1948

employee would show that workmen employed through the contractors fall within the purview of the Act. We reject the submission made on behalf of the Appellants that the contract workmen are not covered under the Act.

15. The other point that remains to be considered is regarding the segregation of wages into components in the form of allowances. It is useful to refer to the judgment of this Court in ***Airfreight Ltd.*** *v.* ***State of Karnataka***[6] in which this Court observed:

> *"20. ... ... Once rates of minimum wages are prescribed under the Act, whether as all-inclusive under Section 4(1)(iii) or by combining basic plus dearness allowance under Section 4(1)(i), are not amenable to split up. It is one pay package. Neither the scheme nor any provision of the Act provides that the rates of minimum wages are to be split up on the basis of the cost of each of the necessities taken into consideration for fixing the same."*

16. "Wages" is defined in Section 2(h) to mean all remuneration, capable of being expressed in terms of

6 (1999) 6 SCC 567

money, which would, if the terms of the contract of the employment, express or implied were fulfilled, be payable to a person in respect of his employment or of work done in such employment and includes house rent allowance. There are four exclusions in the definition of wages which pertain to travelling allowance, value of housing accommodation, supply of light, water, medical attendance, etc. If certain components of the remuneration are taken care of by the employer, he cannot be asked to pay twice over such allowance/ payments which are part of the remuneration. Therefore, we are of the opinion that the prohibition on segregation of the wages into components under the notification dated 21.10.2015 is not a valid exercise of power.

17. Our conclusion in respect of some parts of the Notification will not affect the Notifications as such. The part of the Notifications other than that which are dealt with by this judgment shall continue to be in force. We make it clear that the employers shall not be entitled to recover any amounts paid under the Notifications to the workmen on the ground that they have succeeded in this

case. As the findings recorded in this judgment pertain to the jurisdiction of the Government under the Act, the workmen are not precluded from seeking redressal of their grievances by resorting to other remedies available to them under law.

18. The upshot of the above discussion is :

(a) The prohibition of segregation of wages into components in the form of allowances in the Notification is impermissible;

(b) The security inspector/ security officer/ security supervisor cannot be included in the Notification;

(c) Trainees who are employed without payment of any reward cannot be covered by the Notification;

(d) Categorization of unskilled employees as semi-skilled on the basis of their experience is *ultra vires* the Act;

(e) Fixing the training period to a period of one year is beyond the jurisdiction of the Government.

19. For the aforementioned reasons, the appeals are allowed.

.....J.
[L. NAGESWARA RAO]

.....J.
[M.R.SHAH]

New Delhi,
April 29th, 2019.