Minimum Wages Act Karnataka HC Upholds Wage Revisions Notified By Govt in 37 Sectors

Posted on April 16, 2020 by NT Bureau

- **When the rates of the minimum wages are fixed by the Appropriate Government, awrit Court cannot sit over in appeal, the bench observed.**

The Karnataka High Court has upheld the decision of the state government to revise the amount of minimum wages to be paid to employees in 37 sectors of employment. The court held that "It cannot be said that while fixing the rates of minimum wages the state government has exceeded the jurisdiction vested within it or the action is 'ultra vires' to the provisions of the act.

By the impugned notifications challenged by the employers, the rates of minimum wages were approximately enhanced by Rs.8000/- to Rs.15, 000/- per month after the lapse of 4 to 5 years with effect from December 2017. In case of Doctors, the enhancement was more as it was fixed at Rs.40,908.40/- per month with effect from 30th December 2017.

A division bench of Chief Justice Abhay Oka and Justice Mohammad Nawaz also allowed an appeal filed by several Unions challenging the decision of the government to withdraw three final notifications pertaining to Textile (silk) Industry, Spinning Mills Industry and Cloth Dyeing and Printing Industry, issued on December 30, 2017. The Court held that the vested right of employees under the final notifications cannot be taken away by simply withdrawing those notifications.

The bench decided a batch of appeals filed by Private Hospitals and Nursing Homes Association, Karnataka Employers Association who are establishments under the Karnataka Shops and Establishment Act. A petition filed by All India Trade Union Congress, Karnataka Drugs and Pharmaceutical Manufacturers Association, automobile dealers/industries and others. Over 37 appeals were before the court.

The challenge in the appeals were to an order of the single judge passed on March 29, 2019, which had held as valid the state governments notifications issued in exercise of powers under section 5 of the Minimum wages Act.

The petitioners primarily raised contentions pertaining to not adopting option under clause (a) of sub section (1) of section 5 and claimed that the exercise of revision of wages was discriminatory. The advisory board set up by the government to be illegally constituted and alleged illegality in the proceedings of the board. Discrimination between categories of employment and that the rates fixed were higher than rates fixed in other states. Also that the zones have been fixed arbitrarily, the petitioners claimed.

The writ appeals preferred by the employers are a legal ploy adopted by them to delay the payment of reasonable minimum wages to millions of workers in Karnataka and their

intention is to thwart the efforts of the State Government to achieve its constitutional obligations/objects of social and economic justice.

Reliance was placed on the decisions of the Apex Court in the case of Workmen represented by Secretary vs. Reptakos Brett and Company Limited and another and Unichoyi (U) and others vs State of Kerala to point out that minimum wages in respect of scheduled employment have been fixed separately for three zones and wage structure is arrived at on the basis of the scientific research and empirical data collected by the State agencies in April, 2015.

Further, it was submitted that as regards 37 draft notifications, as many as 521 objections were received and those objections were considered in the meetings of the Advisory Board held on seven different dates in relation to various industries. He pointed out that wherever needed; voting was done in the meetings of the Advisory Board.

The bench while reviving the withdrawn notifications said:

The vested right created in the employees to get the wages as per the rates fixed under the three final notifications could not be taken away without revising the rates as provided under section 3 read with section 5 the said Act of 1948.

Hence, the action of withdrawal of the said three notifications is ultra virus the provisions of the said Act of 1948 as well as the said Act of 1897 and is liable to be set aside (Para 59, page 297) In regards to the contention of not adopting option under clause (a) of sub section (1) of section 5 was discriminatory, the court said: The word 'either' used in sub-section (1) of Section-5 clearly indicates that there are two options provided to the Appropriate Government under clause (a) and (b). The Appropriate Government has discretion either to take recourse to clause (a) or clause (b) of sub-section (1) of Section 5. Under clause (a), the Appropriate Government has an option for appointing a Committee or sub- Committees to hold an enquiry and advise the Government in respect of fixation of minimum wages or its revision. Ultimately, the power is vested with the Government to fix the rates of minimum wages. By appointing/constituting the Committees under clause (a) or by following the procedure under clause (b) of sub-section (1) of Section-5, all that the Government gets is the factual details or data as well as the views of all the stakeholders. When the statute itself provides for two options, merely because the State exercises one option in case of one category of industry and the other option in case of other categories of industries, the action taken by the Government cannot be held to be discriminatory.

"If we look at Section 5, the exercise of the power by the Appropriate Government of fixing the rates of minimum wages is neither quasi-judicial nor administrative. The Legislature has delegated its power to the Appropriate Government to fix the rates of minimum wages. Hence, fixation of minimum wages is a legislative function...Hence, it follows that the requirement of giving reasons and giving hearing are ruled out", the bench said (Page 304, Para 62).

ARGUMENTS ON THE ILLEGALITY IN THE CONSTITUTION OF THE ADVISORY BOARD

AND THE ILLEGALITY IN THE PROCEEDINGS OF THE BOARD.

The court said appellants have not demonstrated any prejudice caused to them due to such technical error or improper composition of the Advisory Board. Therefore, it cannot be

concluded that the entire proceedings of the Advisory Board were vitiated due to improper constitution or composition of the Advisory Board. Moreover, on that ground alone, interference with the decision of the State Government in fixing the rates of minimum wages cannot be made in exercise of jurisdiction under Article-226 of the Constitution of India, especially when three major bodies of the employers representing the large number of classes of employers were a part of the Advisory Board. Therefore, this argument of the employers deserves to be rejected.

ISSUE OF CONSUMER PRICE INDEX:

There were arguments canvassed regarding the figure of the Consumer Price Index (CPI) which should be considered and that the action of the Government in merging CPI with 5780 points is erroneous (Para 81, Page 328).

To which the court said "We must note here that as per the dictum of the Apex Court, when the rates of the minimum wages are fixed by the Appropriate Government, a writ Court cannot sit over in appeal, make a detailed factual scrutiny and examine the merits of the recommendations as well as the merits of the wage structure finally notified by the Government."

It added "This Court does not have expertise to decide in what manner CPI should be computed for the fixation of the minimum wages and what should be the quantum of the minimum wages. But it is for the persons having expertise in the matter to take a call on that. A writ Court cannot act like an expert in the field and adjudicate on the said issues which should be normally left to the decision making authority which has the benefit of the opinion expressed by the members of the Advisory Board."

ARGUMENT OF DISCRIMINATION BETWEEN DIFFERENT CATEGORIES OF

EMPLOYMENTS AND THE ARGUMENT THAT THE RATES FIXED ARE HIGHER THAN

THE RATES FIXED IN OTHER STATES.

The court said "In some of the appeals, a grievance has been made that different yardsticks have been applied while dealing with different employments. There is a common argument that rates of minimum wages fixed in the State are higher than the rates fixed in other States.

The bench referred to the case of Bhikusa Yamasa Kshatriya and another vs Sangamner Akola Taluka Bidi Kamgar Union and others, in which the Apex Court held thus: Conditions of labour vary in different industries and from locality to locality, and the expediency of fixing minimum wages, and the rates thereof depends largely upon diverse factors which in their very nature are variable and can properly be ascertained by the Government which is in charge of the administration of the State."

The bench said "Thus, in view of the law laid down by the Apex Court, the contentions raised by the employers deserve to be rejected."

THE CONTENTION THAT ZONES HAVE BEEN FIXED ARBITRARILY:

The Government is the best judge to decide which area should be included in which zone. It is not for the writ Court to decide which area should fall in which zone. The court has stayed for 12 weeks its order, to enable the aggrieved persons to approach the higher courts.

"The concept of minimum wages is not a static concept. 72 years back when the (Minimum Wages) Act of 1948 was enacted, the said concept was different. Thereafter, it has gradually changed", the bench observed.

"The world has changed very fast during the last decade. The concept of necessities of life has undergone a drastic change. The concept of what is required for subsistence has also changed. The rate of minimum wages must be such that it ensures health and decency which concepts have also undergone a change", the Chief Justice-led bench said.