IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25328 of 2015 O&M)
Date of Decision: August 18, 2017

Gurgaon Industrial Association and another ---Petitioners

Versus

State of Haryana ---Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Kanwaljit Singh, Sr.Advocate with
Ms.Vikrant Pamboo; Mr.Ashwani Talwar and
Mr.P.K.Mutneja, Advocates for the petitioners

Mr.Ankur Mittal, Addl. Advocate General, Haryana.

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HARINDER SINGH SIDHU, J.

1. This order will dispose of five writ petitions i.e. CWP Nos.25328, 25517, 27473 of 2015, 2324, 2383 of 2016, as the issue involved therein is common.

2. In all these petitions, the petitioners have impugned certain provisions of the notification dated 21.10.2015 of the Haryana Government, Labour Department. Vide this notification issued in exercise of the powers conferred by sub-section(2) of Section 5 of the Minimum Wages Act, 1948 (for short `the Act'), the State of Haryana has revised the minimum wages (all inclusive) in respect of different Scheduled Employments mentioned therein w.e.f. 01.11.2015. Before this, the wages were fixed/revised by the Haryana Government, Labour Department notification dated 27.06.2007.

3. Ld. Counsel for petitioners in all these cases state that they have no objection to the revision of wages, but are only aggrieved of certain other provisions of this notification.

The relevant parts of the notification is extracted below:

"***HARYANA GOVERNMENT***

LABOUR DEPARTMENT

Notification

The 21st October, 2015

No.3/42/83-3 Lab.— In exercise of the powers conferred by Sub-Section (2) of Section 5 of the Minimum Wages Act, 1948 (Act XI of 1948), the Governor of Haryana after considering the objections / suggestions received in response and after consultation with the State Minimum Wages Advisory Board, Haryana with reference to Haryana Government, Labour Department notification No.3/42/2014-3 Lab, dated 14th August, 2014, hereby fixes / revises the minimum rates of wages (all inclusive) in respect of different scheduled employments as mentioned in the schedules given below with effect from the 1st November, 2015, in the State of Haryana, which were previously fixed/revised vide Haryana Government, Labour Department, Notification No.3/42/83-3 Lab dated the 27th June, 2007.

SCHEDULE

Sr. No.	*Name of Scheduled Employments*
1	*2*

1. *Agricultural implements, Machine Tools and General Engineering including Cycle and Electrical Goods Industry*
2. *Cinema Industry*
3. *Saw Mill and Timber Trade Industry*
4. *Cotton Ginning and Pressing Industry*
5. *Textile Industry*
6. *Glass Industry*
7. *Public Motor Transport*
8. *Tanneries and Leather Manufacturing*
9. *Rice Mills, Floor Mills and Dal Mills*
10. *Rubber Industry*
11. *Local Authorities*
12. *Operation of Tubewell Industry*
13. *Woollen Carpet making or shawl weaving establishment run on powerloom or handloom*
14. *Shops and Commercial Establishments*
15. *Tailoring, Stitching and Embroidery Establishments*

16. *Public Works Departments, Irrigation*
17. *Oil Mills*
18. *Manufacturing of Khandsari, Gur and Shakkar*
19. *Private printing presses*
20. *(i) Non ferrous Metal Rolling and Re-rolling Industry*
    (ii) Brass, Copper and Aluminium Utensils making Industry
21. *Scientific Industry*
22. *Chemical and Distillery Industry*
23. *Contract or Establishments of Forest Department*
24. *Electroplating using salts or chromium nickel or any other compound and connected buffing and polishing Industry*
25. *Ferrous Metal Rolling and Re-rolling Industry*
26. *(i) Constructions and Maintenance of Roads and Building operation Stone breaking and Stone crushing*
    (ii) Public Works Department, Public Health
27. *Ayurvedic and Unani Pharmaceuticals*
28. *Potteries, ceramics and refractory Industry*

xxx xxx xxx

46. *Electronics and allied or incidental Industries*
47. *Plastic Industries*
48. *Brick Kiln*
49. *Domestic worker*
50. *Safai Karamchari*

Minimum rates of wages in respect of all Scheduled Employments

Sr.No.	*Categories of Workers*	*Qualification and experience*	*Minimum Rates of Wages*	
1	*2*	*3*	*4*	*5*
			Per month	*Per day*
**1*	*Unskilled*		*7600.00*	*292.31*
**2*	*Semi-Skilled A* *B*		*7980.00* *8379.00*	*306.92* *322.27*
**3*	*Skilled A* *B*		*8797.95* *9237.85*	*338.38* *355.30*
4	*Highly-Skilled*		*9699.74*	*373.07*
xxx	*xxx*	*xxx*	*xxx*	*xxx*
10.	*Safai Karamchari in any employment*		*8100.00*	*311.54*

** 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 xxx

Details of workers of categories i.e. Unskilled, Semi-Skilled, Skilled, Highly-Skilled, Clerical and General Staff is as notified vide Haryana Government, Labour Department, notification No. 3/42/83-3 Lab. (1) to (50), dated the 1st March, 2002 and as modified from time to time. The categories of an employee in respect of scheduled employment wherever not categorized earlier or in case of dispute would be decided by the Government.

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 number 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 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 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 Brick 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.*

SHASHI GULATI,
Additional Chief Secretary to Government, Haryana, Labour Department."

4. Arguing on behalf of the petitioners (in CWP No.25328 of 2015), Mr. Pawan Kumar Mutneja, learned counsel raised grievance with regard to Note 1, as per which segregation of the wages into components in the form of allowances is not permitted and which after linking the wages with the Haryana State Working Class Consumer Price Index provides for 100% neutralization of rise and fall of the consumer price index by adjustment of wages every six months taking into account the average rise or fall in the price index ; Note 10, which fixes minimum wages for trainees at 75% of the wages applicable to the category and also limits the period of such training to one year; the provision for categorization of unskilled employees as semi-skilled and the semi-skilled as skilled on their acquiring experience for certain number of years as specified in the notification; and inclusion of 'Domestic Worker' and 'Safai Karamchari' in the List of Scheduled Employment at Sr. No.49 and 50.

5. He argued that Section 4 of the Act provides for fixation of minimum wages by any one of the three methods specified in clauses (i), (ii) or (iii) of sub-section (1) thereof. As per clause (i), it may consist of a basic rate of wages and a special allowance to be adjusted at such intervals to accord as nearly as practical with variation in the cost of living index number. As per clause (ii), it may consist of a basic rate of wages with or without cost of living index and cash value of concessions in respect of

supplies of essential commodities at concessional rates. As per clause (iii), it may be an all inclusive rate allowing for basic rate, the cost of living allowance and cash value of concessions. In the notification, the all inclusive mode as per clause (iii) has been adopted. Despite that the respondents in Note 1 have provided for 100% neutralization of the wages on rise or fall of the consumer price index and that the adjustment of wages shall be made every six months after taking into account the average rise or fall in the consumer price index. It is argued that such adjustment of wages is permissible only when wages are fixed as per clause (i) and not when all inclusive mode as per clause (iii) is adopted. Further, treating wages as a basic rate of minimum wage, which is not permitted to be segregated into components in the form of allowances, is contrary to definition of wages in Section 2(h) of the Act, which itself provides for segregation into components. The non-segregation of wages into components impacts other labour laws as well. He argued that by mixing the components of clause (i) and (iii), the notification has the effect of calculating not the minimum wages but the fair wages. He further argued that granting 100% neutralization is also not legal.

6. Note 10 of the notification, whereby, trainees are required to be paid 75% of the wages applicable to the categories, has been impugned on the ground that training is not employment. He referred to the definition of employee in Section 2(i) of the Act and Section 2(s) of the Industrial Disputes Act, 1947 and contended that trainee is not an employee. Trainees only get stipends and not wages, hence, they don't fall within the scope of the Act.

7. He further argued that the impugned notification, by directing

up-gradation of workers from unskilled to semi-skilled and from skilled `A' to skilled `B' on completion of certain number of years has, in fact, prescribed a promotion policy for them. This, he argued, is beyond the scope of the Act. Such up-gradation would fall within the ambit of conditions of employment of workers dealt with under the Industrial Employment (Standing Orders) Act, 1946 or The Industrial Disputes Act, 1947. It has the effect of giving promotion to various categories irrespective of vacancies in the promotional categories. Besides, unskilled, semi-skilled and skilled are distinct categories on the basis of qualification and special experience of the person. ITI is a mandatory qualification for semi-skilled and skilled employees. Merely working for certain number of years would not make an unskilled worker as semi-skilled or skilled without having acquired the necessary qualification and training.

8. He argued that inclusion of `Domestic worker' and `Safai Karmachari' at Sr. No.49 and 50 in the list of Scheduled Employments is highly misleading. These are not employments. `Domestic worker' and `Safai Karmachari' are categories of employees. If these terms are considered as per the common understanding then `domestic workers' are those who are employed in homes, which cannot be construed as an industry or even in the category of scheduled employment as defined under Section 2 (g) of the Act. A household cannot, under any circumstances, be included in the definition of 'Scheduled Employment'. Same is the case with a Safai Karamchari. Thus, inclusion of 'domestic worker' or 'Safai Karamchari' is beyond the scope of the expression 'Scheduled employment'.

9. Mr. Kanwaljit Singh, Sr. Advocate appearing in CWP No.25517 of 2015 argued against fixation of a basic rate of minimum wage which

cannot be permitted to be segregated in the form of allowances by the employer. With particular reference to house rent allowance, he argued that house rent allowance is included in the definition of wages in Section 2(h) of the Act. He contended that except for items, specifically, excluded from the definition of wages in Section 2(h) of the Act, it is prerogative of the employer to grant such allowances and to make them a part of the minimum wages of the employees. He also impugned Note 9 of the notification as per which '*The above rates do not include food charges. Where ever food is given customarily, it shall be extra*'. He argued that this provision is against the provisions of the Act. Many employers have been providing subsided food as a welfare measure to its employees and workers. Section 11 of the Act, provides that wages may be paid in kind as well. Wages can be wholly or partly in kind. Where wages are paid partly in kind by providing subsidized food or other usable articles like clothes etc. the same is a welfare measure and the employer cannot be debarred from charging for subsided food or other subsidized items given to the employees. It is to the benefit of the employee that such segregation is permitted.

10. In CWP No.2324 of 2016 and CWP No.2383 of 2016, the challenge is to Note 1 of the impugned notification to the extent it provides as follows:

> *"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. x x x"*

11. Mr. Ashwani Talwar, learned counsel appearing on behalf of the petitioners, in these cases argued that this clause besides being contradictory to the other provisions of the notification, is also at variance

with Section 4 (1) of the Act. He argued that the 4th line of the impugned notification provides that revision of minimum wages is (all inclusive), whereas, in the Note 1 (extracted above), it is specified that the wages notified above are the rate of minimum wages, which are not permitted to be segregated into components in the form of allowances by the employers. Section 4 itself provides that the minimum wages shall consist of a basic rate of wages and a special allowance which will be a variable component. Thus, the statute itself provides for segregation of the minimum rates into different components, which is also clear from the notification itself that the minimum rates of wages are all inclusive. However, Note 1 of the notification provides that the minimum wages are the basic rates, which are not permitted to be segregated into components in the form of allowances by the employer. This is contradictory and illegal.

12. A detailed written statement has been filed on behalf of the respondents. It has been stated that earlier vide notification dated 27.06.2007 the State of Haryana had fixed/ revised the minimum rates of wages with regard to different scheduled employments. The said notification was challenged by various industrial associations broadly on similar grounds as raised in the present petitions. **CWP No.9942 of 2007** titled '**Apparel Exporters and Manufacturers Association vs. State of Haryana and another**' and a bunch of other writ petitions were dismissed by this Court, by a common order dated 6.9.2007. Against this common judgment, the petitioner in CWP No.11326 of 2007 titled 'Hindustan Sanitary and Industries Limited and another Versus State of Haryana etc' filed SLP No.3595 of 2008 'Hindustan Sanitary and Industries Limited and another Versus State of Haryana etc'. In the said Special Leave petition, the

petitioner had challenged the alleged promotion policy. The Special Leave Petition stands admitted but no stay have been granted.

13. Explaining and justifying the impugned provisions, it has been asserted that over the years industrial establishments have embarked upon methods of diluting, circumventing and even misinterpreting the law to evade payment of minimum wages or escape the liabilities to pay other statutory dues and benefits based on the minimum rates of wages. This adversely affect payments like overtime (wages), leave encashment or differential deductions for unauthorized leave for providing minimum statutory social security for the poorest level of workers in the industry. The provision made in Note 1 of the impugned notification is actually a corollary of the provisions of Section 4 of the Minimum Wages Act, 1948. The question as to whether the factors which have been detailed in the above Section 4 are mutually exclusive or not, has already been considered by this Court in **Sudhir Kumar Yadav v. State of Haryana ILR (2008)1 P&H 598** and it has been held that sub-section (1) of Section 4 of the Act nowhere states that the components which are ingrained in sub clauses (i) to (iii) thereof cannot coexist. It was held that a narrow interpretation of its intent by holding that they are mutually exclusive would only defeat the very intent and object of the Act.

14. Further, indicating the malpractices of segregation being adopted by the employers, to remedy which, the Note 1 has been introduced, it has been stated that most of the employers bifurcate minimum rates of wages fixed by the Government arbitrarily into components with no principle of law to govern such whimsical segregation resulting in loss of minimum benefits assured by law. The simplest way adopted is to show the

component of house rent at a very high proportion. For example, where the minimum rate of wages of a category of worker was ₹ 3,500/-, the component of house rent used to be shown in the range of ₹ 1,000/- to ₹ 1,500/-. This disproportionate component of house rent would result in depriving the right of the workers by way of reducing the contribution of employer's share in respect of the Employees Provident Fund, the E.S.I. contribution and payment of gratuity as while working out the liability to pay gratuity, the Employees Provident Fund and E.S.I. Contributions, the component of house rent is not taken into consideration. Not only this, the employers further make other components like conveyance allowance, city compensatory allowance, washing allowance, uniform allowance etc. with the sole motive to reduce their liability towards payment of contribution. Thus, the workers were highly disadvantaged and taking note of this, the minimum rates of wages were fixed/revised as `all inclusive' and Note 1 was inserted to ensure that the wages are not permitted to be segregated into components in the form of allowances by the employer.

15. Another serious malpractice noticed was that, different yardsticks of calculation were being adopted for different purposes. When the calculation of wages was to be made for the purpose of deliverables like calculation of overtime as per Section 14 of the Act, encashment of earned leave, payment of bonus or terminal benefits like gratuity or retrenchment compensation etc., the calculation was made without the large proportion of allowances created arbitrarily, but when deductions were to be made e.g. for unauthorized absence, then the monthly wages were simply divided by 30 days and the allowances were also 'included' for deductions made for daily rate. Thus, besides the loss to the poor workers for calculation of social

security schemes like the Provident fund or pension etc. the object of such schemes is defeated when basic wages are fixed at a lower level than the statutory amount fixed.

16. The written statement further goes on to clarify that where an employer is paying beyond the scale of prescribed minimum rates of wages fixed by the Government there is no prohibition on segregation.

17. Repelling the argument of the petitioners in favour of segregation of allowances based on Section 2(h) of the Act, it has been stated that Section 2(h) defines only "wages" and components thereof, but does not define 'minimum wages', whereas, section 4 of the Act specifically describes various components of minimum wages. The employers are misinterpreting and confusing the two sections in order to split/ segregate the minimum wages; whereas, they are not authorized under Section 4 to dismember this figure fixed by the appropriate Government.

18. It has been stated that the specific question regarding the payment of wages to a 'trainee', has already been considered by this Court in **Apparel Exporters and Manufacturers Association's** case (supra) and it has been held that the requirement of payment of minimum wages to trainees is clearly within the scope of jurisdiction conferred under Section 3 of the Act.

19. Justifying Note 10 regarding payment of 75% of the wages applicable to the category to the trainees, it has been explained that it had been observed over the years that provision of specialized training had been misused for exploitation of workers in the garb of continuing with the training period even longer than the period for acquiring the academic qualification. It was also observed that though such trainees were engaged

in regular production, but they were not paid the minimum wages or given other benefits like their co-workers. There was need to stop this exploitation to ensure payment of minimum wages and to limit the number of the years, for which they could be engaged as such. It has been pointed out that such workers, when absorbed as regulars, have to again undergo a probation period and so called training again. It was noticed that unbridled training periods have been a cause of much Industrial unrest. Note 10 was introduced in the year 2007 and its validity was upheld. It has been explained that the clause does not in any manner debar an employer from engaging workers as trainees beyond the minimum wage level at higher scales beyond the period of one year for the purpose of imparting specific skills or operation of sophisticated machinery. Such specialized training must be specified and provided for under the Standing Orders duly certified under the Industrial Employment (Standing Orders) Act, 1946. The professional training governed and regulated under the Apprentices Act, 1961 Act has not been touched. Note 3 of the impugned notification specifically states that wages of apprentices appointed under the Apprentices Act, 1961 shall be regulated under the said Act.

20. Regarding Note No.9 it has been submitted that giving subsidized food etc. to the employees cannot give licence for the employer to bifurcate the bare minimum wages fixed by the government into components. As per Note 9 only the food being given customarily shall be extra and there is nothing illegal in this. Thus, provision is applicable only where such practice is prevalent and not to all industries.

21. Dealing with the objection to the categorization of unskilled employees having 5 years experience as semi-skilled 'A', and semi-skilled

'A' employees with 3 years experience as Semi-skilled 'B' etc., it has been explained that this has wrongly been projected as grant of automatic time bound promotion. Justifying this categorization, it has been explained that the minimum needs of the workers change with time and age. Workers were being made to work for years together with no change in their grading of wage rates, irrespective of the efficiency and skills acquired by them. This led to their frustration and stagnation in terms of capacity to work and standard of living. It has been explained that this clause does not entail a promotion, but only provides for entitlement of a certain level of wages to a worker of a particular category after certain years of service. Identical provision in the 2007 notification was upheld by this Court. It is asserted that the clause successfully checked the exploitation of workers employed for long years at the lowest rate of minimum wages.

22. It has further been pointed out that in the concluding meeting dated 28.01.2015 of the State Minimum Wages Advisory Board, it was unanimously felt by all the members representing both the employers and employees that skill development needs to be encouraged by financial incentive and recognition of years of service as a component of minimum wages and it was unanimously opined that the years of experience for entitlement to next category should be reduced and the categorization in general requires a re-look. Accordingly, the Government decided to reduce the period only in the case of entitlement of minimum wages of unskilled workers to the next higher category of semi-skilled “A” to five years from 10 years in the 2007 notification. No change has been made in the higher categories to which the employers could have any objection.

23. The workers are segregated based on their tenure in the factory

on account of following reasons:

(a) Those who have put in 5 year of service, have higher needs in terms of family requirement vis a vis those entering employment.

(b) Normally, when a person who is in the system for a longer period finds that a fresh entrant is also getting the same wage, it creates unrest and discontentment.

(c) Five years is a long enough period even for a purely unskilled worker to develop neuro-motor coordination, leading to managing even most unskilled work in a more productive fashion.

(d) Even the Gratuity Act was enacted to reward the workers who are in the system for five years onwards, on similar principles, without creating any concept of promotion.

24. Regarding the objection to the inclusion of `Domestic Worker' and` Safai Karamchari' in the list of Scheduled Employments, it has been stated that this category falls within the purview of the definition of 'employee'. Their inclusion is only with a view to prevent their exploitation.

25. It has been explained that by the impugned notification no onerous burden has been fastened on the petitioners. What has been fixed is only the barest minimum rates of wages. The last revision of minimum wages took place in 2007 and the present revision has taken place after a gap of about 8 years, whereas, as per Section 3(1)(b) of the Act, the rates of minimum wages are required to be revised at least every five years, if not not done earlier.

26. Mr. Ankur Mittal, Additional Advocate General, Haryana defended the impugned provisions of the notification on the basis of the stand in the written statement. He asserted that except for the prohibition of segregation of the wages into components in the form of allowances in Note 1 and the inclusion of `Domestic Worker' and `Safai Karamchari' in the list of scheduled employments, the 2015 notification is identical to the 2007 notification, a challenge to which was negated by this Court.

27. Heard Ld. Counsel for the parties and perused the record.

28. On the arguments raised by the Ld. Counsel, the following questions arise for determination :

(1) Regarding Note 1 -

(i) The minimum wages having been fixed as `all inclusive' is Note 1 legal in providing for six monthly adjustment of wages?

(ii) Is the provision of 100% neutralization of the rise and fall of consumer price index legal and valid?

(iii) Is non permitting segregation of wages into components in the form of allowances legal and valid?

(2) Is Note 9 legal and valid?

(3) Is the provision of minimum wages for trainees in Note No.10 legal and within the ambit of the Act?

(4) Is the provision for categorization of the unskilled employees as semi-skilled etc. legal and valid?

(5) Is inclusion of Domestic Worker and Safai karamchari in the list of scheduled employments legal and valid?

29. Before proceeding to consider the questions, it may be necessary to refer the relevant provisions of the Minimum Wages Act, 1948.

Sections 2(*h*) defines wages 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 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 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."*

Section 3 , 4 and 5 which deal with the fixing of minimum rates of wages, the minimum rates of wages and the procedure for fixing the minimum rates are as under:

> *"**3. Fixing of minimum rates of wages**.— (1) The appropriate Government, shall, in the manner hereinafter provided,— (a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under Section 27;*
>
> ***4. Minimum rate of wages.**— (1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under Section 3 may consist of—*
>
> *(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.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

5. Procedure for fixing and revising minimum wages. *(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this act or in revising minimum rates of wages so fixed, the appropriate Government shall either—*

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or

(b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, nor less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (a) of sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section,

the appropriate Government shall, by notification in the Official Gazette, fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also."

Section 11 which deals with the payment of wages in kind is as under:

***"11.Wages in kind**.— (1) Minimum wages payable under this Act shall be paid in cash.*

(2) Where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette, authorise the payment of minimum wages either wholly or partly in kind.

(3) If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the Official Gazette, authorise the provision of such supplies at concession rates.

(4) The cash value of wages in kind and of concession in respect of supplies of essential commodities at concession rates authorised under sub-sections (2) and (3) shall be estimated in the prescribed manner."

30. **Questions (1)** :

(i) The question as to whether clauses (i) (ii) and (iii) of sub-section (1) of Section 4 of the Act are mutually exclusive or the minimum

wages can be fixed incorporating features/components of all three, has already been considered by a Division Bench of this Court in ***Sudhir Kumar Yadav's*** *case (supra).*

The question was formulated by the Division Bench as under**:**

> ***"8.*** *Learned counsel for the petitioners contended that notification dated 11th June, 2003 refers to the minimum rates of wages as being all inclusive, but, at the same time, in clause (3) thereof, it has been provided that adjustment in the 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, which is not permissible under Sections 3 and 4 of the Act. They argued that either the rates should be all inclusive as per the provisions of Section 4(1)(iii) or the same should be in consonance with Section 4(1)(i) and (ii), which provide for basic rate of wages and special allowance or basic rate with or without the cost of living allowance, but once the State Government resorts to provide an all inclusive rate, then it cannot have the other components to form the basis of minimum wages....."*.

For answering this question, the Court analysed Sections 3, 4 and 5 of the Act and summarized the result thereof as under:

> **"*12.*** *An analysis of the above extracted provisions, when summarized, brings out the following essence:—*
>
> *(i) The appropriate Government shall, in the manner prescribe under Sections 3 and 4, fix the minimum rate of wages payable to the employes employed in an employment.*
>
> *(ii) The appropriate Government is to review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise them appropriately, if necessary.*

(iii) While fixing the minimum wages under Section 3, the Government is to see that components shall include,—

(a) the basic rate of wages and special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct so as to accord as nearly as practicable with the variation in the cost of living index;

(b) a basic rate of wages with our 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;

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

(iv) The rates so fixed shall be notified by the Government which are to be made applicable after expiry of three months from the date of its issue unless the notification provides otherwise."

The Court rejected the contention of the petitioners therein about the mutual exclusivity of clauses (i), (ii) and (iii) of Section 4(1) of the Act by observing as under:

"19. *The next question that is to be determined is as to whether the factors which have been detailed in Section 4 of the Act are mutually exclusive or not. A perusal of Section 4 shows that sub-section (1) thereof contemplates a minimum rate of wage fixed or revised by the appropriate Government in respect of a scheduled employments which may consist of the components which are ingrained in sub-clauses (i) to (iii). It nowhere states that these components cannot co-exist in oneness.*

> ***20.*** *The Act is an essentially a beneficial piece of legislation which has been enacted to protect the interest of the workers.*
>
> ***21.*** *Even though an employer and an employee have always had a symbiotic relationship, but at the same time, the relationship is as divergent as the banks of a river which are distant and destined not to meet always remaining non-convergent. Further, in a venture 'of the kind' pursued by the petitioners, the labour force is often floating, drawn of migrants from other states and are mostly ignorant, illiterate and an unskilled workforce leaving them exposed to easy exploitation by those, who are motivated with a blinding desire to maximize the profits.*
>
> ***22.*** *It is in this context that the Act assumes significance and for this reason, it contemplates the periodical revision by taking into consideration various factors as detailed in Section 4.*
>
> ***23.*** *A narrow interpretation of its intent by holding that they are mutually exclusive would only defeat the very intent and object of the Act. The components as indicated in Section 4 and merely guidelines and nothing prevents the State to incorporate these components in one single decision together so as to provide and maximize the benefit of revision which leans towards the employees/workers.*
>
> ***24.*** *We, therefore, do not find any merit in the contention raised by the learned counsel for the petitioners in this behalf and reject the same."*

It was held that the components enumerated in clauses (i), (ii), and (iii) of Section 4(1) are not mutually exclusive. They are in the nature of guidelines and it would be open to the State to incorporate the components of all the three clauses while fixing/ revising the minimum wages in order to provide the maximum relief to the employees.

31. We are in respectful agreement with the aforesaid view.

32. Thus, even though the wages fixed are stated to be all inclusive, Note 1, in so far as it provides for adjustment of wages to be made every six months, cannot be faulted. It is held to be legal and valid.

(ii) The prohibition in Note 1 of segregation of the `all inclusive' wage into components in the form of allowances also cannot be faulted.

33. In ***Manganese Ore (India) Ltd. v. Chandi Lal Saha*****, 1991 Supp (2) SCC 465** the minimum rates of wages of workers of manganese mines were fixed by the Government of India**.** The appellant company which had an agreement with its workers to pay them attendance bonus and food grains at concessional rates paid them the wages after deducting the cash value of the benefits of concessional supply of food grains and attendance bonus. Some workers filed applications under Section 33-C(2) of the Industrial Disputes Act, 1947 for recovery of deficit amount of wages on account of such deduction which were decided wholly or partly in their favour. The question for consideration before the Supreme Court was `*whether the monetary value of the grain supplied at concessional rates and the amount paid as attendance bonus can be included and counted into the minimum wages payable to the employees*' under the above minimum wages notification.

On behalf of the management it was argued that :

(1) The notification fixing the minimum wage specifically mentions that the minimum rates of wages are all inclusive rates. Hence the wages so fixed would include the amount paid by the management towards the attendance bonus as well as the monetary benefit of the grain concession.

(2) The grain concession and the attendance bonus are the benefits which can be computed in money and as such are part of the minimum wage under the Act.

Rejecting the contentions, the Supreme Court held as under:

"***10.*** *We may now consider the first argument of Mr Sanghi. Section 11(1) reproduced above lays down that the minimum wages payable under the Act shall be paid in cash. Sub-sections (2) and (3) of Section 11 are exceptions to the mandate contained in Section 11(1). It is clear from the scheme of the section that the minimum wages payable under the Act are to be paid in cash unless there is a notification in the official Gazette to the contrary under Section 11(2) or 11(3) of the Act. Admittedly, no such notification has been issued by the appropriate government in the present case. The supply of essential commodities at concessional rates can only form part of the minimum wage, if it is authorised by the appropriate government by a notification in the official Gazette under Section 11(3) of the Act.*

11. *Mr Sanghi, however, contended that in view of para 2 of the notification issued under the Act the compliance of sub-sections (3) and (4) of Section 11 was not required. The said para in as under:*

> *"The minimum rates of wages are all inclusive rates, and include also the wages for weekly day of rest".*

12. *According to Mr Sanghi, reading para 2 of the notification along with Section 4(1)(iii) of the Act, the minimum rates of wages being all inclusive, the management was entitled to deduct from the minimum wages the cash value of the grain concession. We do not agree with Mr Sanghi. Section 4(1)(iii) and Section 4(2) have to be read with Section 11 of the Act. There cannot be a wage in kind under the scheme of the Act unless there is a notification by the appropriate government*

under Section 11(3) of the Act. Section 4(1)(iii) mentions only such "cash value of the concession" as has been authorised "wage in kind" under sub-section (3) of Section 11 of the Act. It is only the appropriate government which can authorise the payment of minimum wages partly in kind. In the absence of any notification by the appropriate government for the supply of essential commodities at concessional rates the cash value of such concessions cannot be treated as wage in kind and cannot be deducted from the minimum wages which have to be paid in cash under Section 11(1) of the Act. There being no notification by the appropriate government under Section 11(3) of the Act, the appellant cannot take any advantage from para 2 of the notification or from the provisions of Section 4(i)(iii) of the Act. We, therefore, reject the contention raised by Mr Sanghi.

13. *The second argument of Mr Sanghi is based on the definition of "Wages" under Section 2(h) of the Act. According to him the attendance bonus and the supply of grain at a concessional rate are the concessions which are capable of being expressed in terms of money and as such are remunerations within the definition of "Wages" under Section 2(h) of the Act.*

14. *The scheme of the Act recognises "Wages" as defined under Section 2(h) and also "wages in kind" under Section 11 of the Act. Reading both the provisions together "wages in kind" can only become part of the "wages" if the conditions provided under sub-sections (2), (3) and (4) of Section 11 of the Act are complied with. Admittedly, there was no notification by the Central Government under Section 11(3) of the Act and as such the supply of grain at a concessional rate cannot be considered "Wages" under Section 2(h) of the Act. We may examine the question from another angle. The supply of grain at concessional rate to the workers is in the nature of an amenity or an additional facility/service. The managements specially of public undertakings, are bound by the Directive Principles of*

the State Policy enshrined under Part IV of the Constitution of India. The workers must be ensured a living wage, just and human conditions of work and a decent standard of life. The management must endeavour to secure for the workmen apart from "Wages" other amenities like supply of essential commodities at concessional rates, medical aid, housing facility, education for children, old age benefits and opportunities for social, cultural and sports activities. All these amenities may be capable of being expressed in terms of money but it is clear from the scheme of the Act that these concessions do not come within the definition of "Wages" as given under Section 2(h) of the Act. We have thus no hesitation in holding that the supply of grain at a concessional rate to the workmen is an amenity and cannot be included in the rates of wages prescribed by the notification.

15. *As regards the attendance bonus it was an additional payment made to the workmen as a means of procuring their regular attendance with the ultimate object of increasing production. The bonus was in the nature of extra remuneration for regular attendance. The said bonus was not payable to all the workmen at the time of joining the employment. It was payable to a workman who had put in continuous service for a specified period and who was loyal to the management. The attendance bonus was only an incentive and it was not a wage. There is a basic difference between the incentive bonus and the minimum wage. Every workman is entitled to the minimum wage from the very first day of his joining the employment whereas the bonus has to be earned and it becomes payable "after the event". In the present case the attendance bonus was payable after regular attendance for a specified period and remaining loyal to the management. The scheme of payment of attendance bonus was thus an incentive to secure regular attendance of the workmen. It was an additional payment made to the workmen as a means of increasing production.*

In Titaghur Paper Mills Co. Ltd. v. Its Workmen [1959 Supp 2 SCR 1012 : AIR 1959 SC 1095 : (1957) 2 LLJ 9] this Court held that the payment of production bonus is in the nature of an incentive and is in addition to the wages. We are, therefore, of the view that the attendance bonus is in the nature of an incentive and it cannot be treated as part of the minimum wages fixed under the Act."

34. It was held that it is clear from the scheme of the section that the minimum wages payable under the Act are to be paid in cash unless there is a notification in the official Gazette to the contrary under Section 11(2) or 11(3) of the Act. In the absence of any notification by the appropriate government for the supply of essential commodities at concessional rates, the cash value of such concessions could not be treated as wage in kind and could not be deducted from the minimum wages which had to be paid in cash under Section 11(1) of the Act. In the present case also, there is no notification under Section 11 for payment of wages in kind. Hence, there is no merit in the argument of the petitioners against the prohibition of segregation of the wages into components in the form of allowances.

(iii) The challenge to the 100% neutralization also has to be negated.

35. Considering the question of grant of 100 % neutralization in the context of grant of dearness allowance, the Hon'ble Supreme Court in ***Killick Nixon Ltd. v. Killick & Allied Companies Employees' Union*, (1975) 2 SCC 260**, stressed that in so far as the lowest paid employees or the employees just above the subsistence level are concerned, they are entitled to

100 per cent or at any rate not less than 95 per cent neutralization of the rise in the cost of living.

The same principle would hold for neutralization in the minimum wages.

The Court elaborately discussed the rationale of the grant of Dearness Allowance as under:

> ***"8.*** *Like all changes in life and in continuous march in progress of society the concept of DA also may change to take in a wider range of commodities and services to make life worth living as far as practicable subject to compelling limitations of general interest. We recognise that the old definition of DA may not even serve the climate of new aspirations of various classes of employees of this vast country. Luxuries of yesterday may be the comforts of today and necessities of tomorrow. Economic solutions must reckon the turn-abouts in social urges. Because even the worm turns. Industrial adjudication which has not the limitations of the ordinary courts has to respond to the needs of changing society and it may be possible to widen the scope of DA if that serves the cause of general welfare. There may be no inexorable rule tying down economic existence to definitions of bygone days, if unsuitable or irrelevant in the context of the times.*
>
> ***9.*** *The National Commission on Labour (1969) while dealing with DA observed:*
>
> > *"We consider that payment of DA has to be viewed in broader context of wage policy, many elements of which have been discussed in the previous chapter. In a developing economy where price stabilisation has proved ineffective, or the inflationary potential cannot be controlled, any arrangement for compensating for price rise will have its raison d'etre. At the same time, a direct linkage between a rise in the index and the DA may*

create problems for price stabilisation. It can hardly be disputed that the index is the best available indicator of changes of price level. The reason for a disproportionately high DA is the fixation of basic wage on a date far remote from the present." (Para 16.39, p. 240).

The Commission further observed:

"It is obvious that unless money wages rise as fast as the consumer prices, it would result in an erosion of real wages. But the extent of its impact will depend on the margin of cushion available at different levels of income.... We accordingly recommend that 95 per cent neutralisation should be granted against rise in cost of living to those drawing minimum wage in non-scheduled employments." (Para 16.47, p. 242.)

The Third Pay Commission in its Interim Report made some significant observations:

"We need hardly emphasise that it would be an exercise in futility to keep on increasing the emoluments of Central Government employees, if these increases are largely wiped out soon afterwards by increases in prices of goods and services. There is, therefore, paramount need to maintain price stability and we are confident that the Government will take all necessary fiscal, monetary and other measures, including control over production and distribution, to maintain the price line."

xxx xxx xxx

11. *In considering the question of DA the total wage packet of the employee must be kept in view. The first and foremost consideration is the case of the employees at the minimum wage level. It must, however, be remembered that minimum wage should enable an employee not merely for the bare sustenance of life but for the preservation of his efficiency by providing for some measure of education, medical requirements and*

amenities. The concept of minimum wage as also of fair wage cannot be static. It will change with the progress of time and development.

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xxx xxx xxx

37. *There is, however, one thing which we must point out, lest there should be some misconception about it and that is that so far as the lowest paid employees at or just above the subsistence level are concerned, they are entitled to 100 per cent or at any rate not less than 95 per cent neutralisation of the rise in the cost of living and hence there should be no ceiling on dearness allowance payable to employees within the slab of first Rs 100, unless it can be shown by the management that the rate of neutralisation in their case is more than 100 per cent. So far as the employees in the higher slabs are concerned, it would be for the Tribunal to consider, having regard to the aforesaid principles, whether a ceiling should be imposed at the second slab of Rs 100 or only at the last slab of Rs 201 to Rs 500. The manner in which the ceiling may be imposed would also have to be decided by the Tribunal in the exercise of its judicial discretion keeping in view the aforesaid principles. The ceiling may be fixed either by prescribing a certain amount as the outside limit of the dearness allowance or by reference to the quantum of dearness allowance payable at a certain wage level. We do not wish to lay down as an invariable rule that in all*

cases there should be ceiling on DA. Whenever a case of this nature comes for industrial adjudication it will always be a delicate task for the Tribunal to strike a balance keeping in view the above principles, weightage of each one of which being variable according to conditions obtaining. Whether or not there should be a ceiling on dearness allowance in a given case must depend on the facts and circumstances of that case. There can be no inexorable rule in that respect. We have formulated the various principles which must be taken into account by the Tribunal in determining this question but the most dominant of these must always be that of social justice, for that is the ideal which we have resolved to achieve when we framed our Constitution."

36. **In *Silk and Art Silk Mills' Assn. Ltd. v. Mill Mazdoor Sabha*, (1972) 2 SCC 253,** the challenge was to the award of the Industrial Court, Maharashtra, Bombay directing that the employees in Silk and Art Silk Industry shall be granted with retrospective effect from January 1, 1971, dearness allowance at the rate of 99 per cent neutralization of the rise in the Bombay Consumer Price Index 106 (old series) on the basis of the minimum wage of ₹ 30/- per month of 26 working days.

The Mill Mazdoor Sabha had claimed 100 per cent neutralization before the Labour Court which claim was opposed by the Millers' Association.

Rejecting the contentions of the appellants, the Supreme Court observed as under :

"18. *Counsel next contended that the Industrial Court was not justified in relying upon Exhibit U-8 for coming to the conclusion that 99 per cent of neutralization on account of rise in cost of living should be granted to the employees on the basis of the percentage of neutralization in other industries in the*

region. Counsel said that granting 99 per cent neutralization has not been countenanced by this Court, that the basis of fixation of dearness allowance is industry-cum-region and that the Industrial Court went wrong in taking into account the percentage of neutralization in other industries in the region for fixing the extent of neutralization on account of the rise in cost of living to the employees in question here and relied on the decision of this Court in Bengal Chemical and Pharmaceutical Works Ltd. v. Workmen [AIR 1969 SC 360 : (1969) 2 SCR 113 : (1969) 1 LLJ 751] . In that case, Vaidialingam, J., speaking for the Court, laid down among other things, the following propositions: (1) Full neutralization is not normally given, except to the very lowest class of employees, (2) the purpose of dearness allowance being to neutralize a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for are increase in the rise in the cost of living and decrease on a fall in the cost of living, (3) the basis of fixation of wages and dearness allowance is industry-cum-region.

19. *We do not think that the Industrial Court went wrong in relying upon Exhibit U-8, or, in granting 99 per cent neutralization on account of the steep rise in the cost of living. Exhibit U-8, it may be recalled, is a comparative table showing the minimum basic wages and dearness allowance paid in other industries in the region like the engineering, pharmaceuticals, etc. The Court relied upon it only to show the trand in the region. The Court also relied upon the report of the Norms Committee which stated that the trend for the last decade in industrial adjudication as well as in settlements and awards, was to allow 100 per cent neutralization in the case of lowest-paid employees. The Court was of the view that if 80 per cent neutralization could be allowed in the industry under the statement arrived at in 1957, there was no reason why 100 per cent neutralization should not be granted in view of the steep*

rise in the cost of living from 1957, to the lowest paid employees. We cannot agree with the contention of the appellant that the Industrial Court went wrong in relying upon Exhibit U-8 or the report of the Norms Committee to find out the trend in the region as to the extent of neutralization to be allowed to the employees concerned. The question of the extent of neutralization to the workmen in the units does not depend solely upon the fact whether neutralization to that extent has been allowed to the employees in comparable concerns in the same industry in the same region. Much distinction cannot be made in this respect among the lowest paid employees in the region merely because some of them are employed in other industries. In other words, for finding the trend or the norm in the region as regards the extent of neutralization for the lowest paid employees, the Industrial Court cannot be said to have gone wrong in relying upon either the Norms Committee Report or on Exhibit U-8."

37. In **Saurashtra Paper And Board Mills Mills Pvt. Ltd., Rajkot v. State Of Gujarat And Anr.** (Gujarat)(D.B.), ***1995(3) LLJ 540,*** the grant of 100% neutralization has been held to be permissible under the Act. In the petition, the prayer was to quash the Notification dated 2nd July, 1979 issued by the Government of Gujarat in its Labour, Social Welfare and Tribal Development Department fixing minimum rates of wages in respect of employees employed in the scheduled employment known as 'Employment in any Pulp and Paper or Board Manufactory'. It was argued on behalf of the petitioners that the State Government had over-looked the fact that more than 100% neutralization has been granted while fixing special allowance under the impugned Notification. It was pleaded that the neutralization in the case of unskilled, semi-skilled and clerical (B) categories of employees was to the tune of 130.43%, 111.82% and 101.29% respectively.

The Court held that cent per cent neutralization in the case of the most lowly paid employees is permissible. In this case, even though the neutralization was marginally higher than 100%, the Court did not strike it down.

> "*11. As mentioned hereinabove, the neutralization sought to be achieved, is more than 100% in the categories of unskilled, semiskilled and clerical-B employees. In the case of the Management of* ***Shri Chalthan. Vibhag Khand Udyog Sahakari Mandali Ltd. v. G.S. Barot, Member, Industrial Court, Gujarat reported in 1979 II LLJ 383*** *the Hon'ble Supreme Court of India had occasion to consider the validity of an award passed by the Industrial Court, by which the graduated dearness allowance of the unskilled employees was increased. It has been held by the Hon'ble Supreme Court that though 100% neutralization is not advisable as it will lead to inflation, full neutralization may be permissible only in the case of lowest class of employees. It has been further held in the said case that the purpose of grant of dearness allowance is to neutralise the increase in the costs of living due to rise in price and full or cent per cent neutralization can be achieved if the increase, in the cost of living is fully compensated so that the pay of the worker is not adversely affected. It is also held that an award of more than 100% of an increase in the costs of living would be more than neutralization and would in effect give the worker an increased wage and the result would be the worker would be getting an increased wage packet whenever there is a price rise, a result which would not have been envisaged in making provision for grant of dearness allowance. In view of the above referred ruling of the Hon'ble Supreme Court of India, we are of the view that the neutralization sought to be achieved in the three categories of employees, namely, unskilled, semi skilled and clerical-B which is more than 100%*

is clearly not permissible in law and the part fixing rate of Rs. 0-15 ps. per day or Rs. 3-90 ps. per month as special allowance with every rise of five points in the costs of living index number 260 in the Notification at Annexure-'D' to the petition, is not in accordance with law.

12. However, having regard to the totality of the facts and peculiar circumstances, we are of the view that it is not necessary for us to strike down the impugned notification at Annexure 'D' to the petition on the ground that it is bad in law. It may be noted that the notification in question is a beneficial piece of work under the benevolent piece of legislation and it is bound to affect adversely the workmen engaged in the industries if it is struck down. The neutralization can be said to be marginally higher than 100% permissible under the law only in three categories of employees. It could be the result of a mistake in arithmetical calculation. Again, such neutralization of more than 100% which is permissible under the law, is with respect to only lowly paid workmen engaged in the scheduled employment in question....."

38. Thus, there is no merit in the contentions of the Ld. Counsel for the petitioners that 100% neutralization is illegal.

Question (2).

39. For the same reason as discussed in 1(ii) above, the argument of the petitioners impugning Note 9 that the minimum wage rates do not include food charges and that the food where ever given customarily, it shall be extra, cannot sustain.

Question (3).

40. The issue regarding the applicability of the Act to trainees has been settled by a Division Bench of this Court in ***Apparel Exporters and Manufacturers Association case (supra).*** This was a bunch of petitions , wherein, the notification dated 27.06.2007 of the State of Haryana fixing minimum wages was challenged. As per Note 10 of the said notification, the trainees were to be paid 75% of the wages applicable to the category which was not to be less than the Minimum Wages for an unskilled category of worker. It also provided that the period of training shall not be more than one year. The Court held that the requirement of minimum wages to Trainees was clearly within the scope of the jurisdiction conferred under Section 3 of the Act. The relevant observations are as under:

> *"Contention raised in C.W.P. No.11323 of 2007 about classification is clearly misconceived. The judgments relied upon in* ***Bidi, Bidi Leaves*** *(supra) and* ***Airfreight*** *(supra) are distinguishable on facts. Requirement of payment of minimum wages to Trainees is clearly within the scope of jurisdiction conferred under Section 3 of the Act."*

Thus, there is no merit in the contention of petitioners regarding Note 10 as well.

Question (4).

41. The argument of the petitioners against the provision in the notification for categorization of unskilled workers as semi-skilled and skilled "A" as skilled "B" based on their experience also does not merit acceptance. A similar provision existed in the 2007 notification. The only

change from that notification is in the reduction in the experience requirement from ten years to five years for unskilled employees to be deemed categorized as semi skilled "A". There is no change in the experience requirement for deemed categorization of semi skilled "A" employees as semi-skilled "B" or for categorization of skilled "A" as skilled "B" which period is three years like in the 2007 notification.

42. We agree with the argument of the Ld. Counsel for the respondents that this categorization is justified, and is indeed necessary, as making workers work for years together with no change in their grading of wage rates, irrespective of the efficiency and skills acquired by them leads to their frustration and stagnation in terms of capacity to work and standard of living. We are satisfied that provision only deals with entitlement of a certain level of wages to a worker of a particular category after certain years of service and is aimed at checking exploitation of workers employed for long years at the lowest rate of minimum wages. Besides, it has been explained in the written statement that in the concluding meeting dated 28.01.2015 of the State Minimum Wages Advisory Board, it was unanimously felt by all the members representing both the employers and employees that skill development needs to be encouraged by financial incentive and recognition of years of service as a component of minimum wages and it was unanimously opined that the years of experience for entitlement to next category should be reduced. It was, thereafter, that the requirement of experience was reduced only in the case of entitlement of minimum wages of unskilled workers to the next higher category of semi-skilled "A" to five years from ten years in the 2007 notification. No change has been made in the higher categories to which the employers could have any objection. This

fact has not been controverted by filing any replication. Thus, it appears that the representatives of the employers had concurred in and endorsed the proposal. There is no illegality in the provision.

Question (5).

43. The term 'Employer', 'Employee' and 'Scheduled Employment' is defined in Section 2(e), 2(i) and 2(g) :

> *(e)* ***"employer"*** *means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of Section 26,—*
>
> *(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under 6 [clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948 (63 of 1948)], as manager of the factory;*
>
> *(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;*
>
> *(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;*
>
> *(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;*

> *(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]

(g) ***"Scheduled employment"*** *means an employment specified in the Schedule, or any process or branch of work forming part of such employment.*

Section 27 confers power on the Government to add to either part of the Schedule any employment, in respect of which, it is of the opinion that minimum rates of wages should be fixed and, thereupon, the Schedule shall in its application to the State be deemed to be amended accordingly. Section 27 is reproduced below:

"27. Power of State Government to add to Schedule*.—The appropriate Government, after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may, by like notification add, to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the [State] be deemed to be amended accordingly."*

44. Mr. Mutneja contended that the concept of employment involves three ingredients namely 'employer', 'employee' and 'contract of employment'. He relied on the following observations in ***Chintaman Rao v. State of M.P AIR 1958 SC 388 :***

"9. .....The concept of employment involves three ingredients: (1) employer (2) employee and (3) the contract of employment. The employer is one who employs, i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision....."

He contended that `Safai Karamchari' and `Domestic Worker' are

`employees' and, hence, cannot conceivably be said to be an `employment' which necessarily has the three ingredients referred to above. The argument of the respondents is that their inclusion in the list of scheduled employments is to prevent their exploitation. And in any case, the petitioners have not disputed their wages.

45. We are inclined to agree with the petitioners on this question. As per its very definition "Scheduled employment" means an employment specified in the Schedule, or any process or branch of work forming part of such employment. Thus, it is only an `employment' or `any process or branch of work forming part of such employment' which has to be specified. Safai Karamchari and Domestic worker are only categories of workers or employees. Their inclusion without reference to the employment where they are working does not satisfy this requirement.

46. Hence, their inclusion in the list of scheduled employment without further reference to any employment has to be held to be incomplete and as such cannot be upheld. This is an omission, which, it would be open to the respondents to rectify.

47. It needs to be noticed that in the notification *`safai karamchari in any employment'* have been listed among the `categories of workers' and minimum rate of wages have been specified in relation thereto.

Conclusion

48. Thus, Note 1, Note 9, Note 10 are held to be legal and valid. The provision in the notification for categorization of unskilled workers as sem-skilled `A' and semi skilled "A' as semi skilled 'B' and skilled `A' as skilled `B' on gaining experience of the number of years as specified therein is also legal and valid.

49. Inclusion of Domestic Worker and Safai Karamchari as Entry 49 and 50 in the list of Scheduled Employment without further reference to any employment is held to be incomplete and as such is not upheld. It would be open to the respondents to rectify the omission.

Disposed of.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 18, 2017
gian

Whether speaking/ reasoned:	*Yes/No*
Whether Reportable:	*Yes/No*