

Kalyan Singh
 v.
 Tej Kaur

 G. D. Khosla,
 C. J.

from Order No. 194-M of 1958, decided on 22nd September, 1959, and First Appeal from Order No. 28-M of 1959, decided on 17th March, 1960, that the appeal lay to the High Court and not to the District Court. It seems to me that the provisions of sections 38 and 39 of the Punjab Courts Act do not warrant the filling of appeals under the Hindu Marriage Act to the Court of the District Judge. The insolvency law does not provide an adequate analogy, because section 75 of the Provincial Insolvency Act, which deals with appeals, specifically provides that where an order in the exercise of insolvency jurisdiction is made by a Court subordinate to the District Court, the appeal would lie to the District Court, and where the order is made by the District Court, the appeal would lie to the High Court. There is no such provision in the Hindu Marriage Act.

I am, therefore, of the view that the present appeal lies to the High Court. The matter will now be placed before a learned Single Judge for disposal according to law.

Gurdev Singh, J.

GURDEV SINGH, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before D. Falshaw and Gurdev Singh, JJ.

THE SADHAURA TRANSPORT COMPANY, (P). LTD,—
 Petitioner.

versus

THE PUNJAB STATE AND ANOTHER,—*Respondents.*

Civil Writ No. 1291 of 1960.

1960
 August, 30th.

Minimum Wages Act (XI of 1948)—S. 5(2)—Notification under, by the Governor of Punjab revising and fixing the minimum rates of wages in respect of the employment in public motor transport in the Punjab State—Whether valid—S. 3 (I)(b)—Revision of wages—Whether can be made after an interval of more than 5 years.

Held, that the notification by the Governor of Punjab under Section 5(2) of the Minimum Wages Act, 1948, revising and fixing the minimum rates of wages in respect of the employment in public motor transport in the Punjab State issued in the Punjab Government Gazette on the 12th February, 1960, is valid. The power of the State Government to revise the minimum rates of wages previously fixed under the provisions of the Act has not been affected by the decision of the Central Government as a matter of policy to leave it to the State Governments to legislate on the subject.

Held, that a perusal of section 3(1)(b) along with the proviso clearly shows that even where a Government has for any reason failed to revise the minimum scales of wages in respect of any scheduled employment, it is not debarred from doing so after the lapse of more than five years from the fixation of the original scales, and the only effect of the failure to revise the rates within five years is that the old rates will continue to remain in force for more than five years until the revision is at last undertaken.

Petition under Article 226 of the Constitution of India praying that an appropriate writ order or directions be issued quashing the notification No. 470-3 Lab-11-60/2754, issued by the Punjab Government on 12th February, 1960 and respondent No. 1 be restrained from enforcing the same.

C. L. AGGARWAL, ADVOCATE, for the Petitioner.

N. N. GOSWAMY, ADVOCATE, for the Advocate-General,
and Y. P. GANDHI, ADVOCATE, for the Respondents.

ORDER.

FALSHAW, J.—This is a petition under article 226 of the Constitution filed by the Sadhaura Transport Company (Private) Limited, who are carrying on a public motor transport business, in the district of Ambala, challenging the validity of a notification issued in the *Punjab Government Gazette*, on the 12th of February, 1960. The State

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of Punjab and the District Motor Transport Workers Union, Ambala, have been impleaded as respondents. The impugned notification reads—

“In exercise of the powers conferred by sub-section (2) of section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948), the Governor of Punjab, after considering the advice of the committee appointed under clause (a) of sub-section (1) of the said section, is pleased to revise and fix the following minimum rates of wages in respect of the employment in public motor transport in the Punjab State as originally fixed,—*vide* erstwhile Punjab Government notification No. 1927-LP-52/1145, dated the 14th March, 1952, and erstwhile PEPSU Government notification No. 80, dated the 23rd December, 1954, respectively.”

Then follows a detailed list of all categories of employees concerned with motor transport. They fall into three groups:—Section A—General Staff, containing categories Nos. 1 to 52, ranging from Head Clerk and Head Accountant to *Punkha Puller*, Section B—Workshop Staff, containing 33 categories, ranging from Head *Mistry* to Lorry Washer; and Section C—Running Staff, containing 3 categories, the minimum wages of each category are fixed, ranging from Rs. 175 to Rs. 60 per month for the lowest range. The relevant provisions of the Act read—

“Section 3(1). The appropriate Government shall, in the manner hereinafter provided—

(a) fix the minimum rates of wages payable to employees employed (i) in an employment specified in Part

I of the Schedule at the commencement of this Act, before the 31st day of December, 1959 ;

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- (b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary :

Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force."

It may be mentioned that by the provisions of section 2(b) "appropriate Government" is the State Government except in relation to scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oilfield or major port, or any corporation established by a Central Act. Section 5 provides the procedure for fixing and revising minimum wages. It reads—

"5(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

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fixed, the appropriate Government shall either—

- (a) appoint as many committees and sub-committees as it considers necessary to hold enquires and advise it in respect, 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, not 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 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."

The main case of the petitioner is that the notification, by which the minimum wages of all categories have been considerably raised, particularly those in the lower grades for which the minimum now fixed is Rs. 60 per mensem, whereas formerly it was as low as Rs. 20 or even Rs. 15 per

mensem, is illegal because under the provisions of The Sadhaura section 3(1)(a)(i) the power of the State Government to fix minimum wages ceased on the 31st of December, 1959. In this connection reliance was placed on a copy of a letter from the Central Ministry of Labour and Employment, dated the 15th of March, 1960, Annexure 'A' to the petition. This letter was apparently addressed to the Secretary of another transport company, the New Chenab Co-operative Transport Society, Limited, of Ambala in reply to a letter sent on behalf of that company, dated the 24th of February, 1960. The purport of the letter is that the Government of Punjab as the appropriate Government can fix minimum rates of wages under the Minimum Wages Act beyond the 31st of December, 1959, by undertaking their own legislation, as had been decided by the sixteenth session of the Labour Ministers' conference held on the 4th of January, 1960. It is not in dispute that legislation on matters of this kind is in the Concurrent List in the Constitution, and these matters can, therefore, be the subject of legislation either by the Central or the State Government, and now apparently it has been decided as a matter of policy to leave it to State Governments to legislate for the fixation of minimum wages in respect of any scheduled employment as from the date last fixed in the Central Act by the amending Act 30 of 1957.

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It is, however, contended on behalf of the State and the Employees Union that this does not affect the power of the State Government to revise the minimum rates of wages previously fixed under the provisions of the Act, and this contention appears to be correct. All that the letter of the Central Ministry of Labour and Employment means is that scales of minimum wages are henceforth to be fixed by means of legislation to be undertaken by the States in the case of Scheduled industries not yet tackled.

It was, however, contended by the learned counsel for the petitioner that the minimum rates

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of wages in respect of the motor transport indus-
try were fixed by the erstwhile Punjab Govern-
ment and the erstwhile Pepsu Government in 1952
and 1954, i.e., in both cases more than five years
before the revising notification of the 12th of Feb-
ruary, 1960, and that, therefore, the notification is
hit by the provisions of section 3(1)(b) which pro-
vides for revision at intervals not exceeding five
years.

In my opinion there is no force in this conten-
tion, since a perusal of section 3(1)(b) along with
the proviso clearly shows that even where a Gov-
ernment has for any reason failed to revise the
minimum scales of wages in respect of any schedul-
ed employment, it is not debarred from doing so
after the lapse of more than five years from the
fixation of the original scales, and the only effect
of the failure to revise the rates within five years
is that the old rates will continue to remain in force
for more than five years until the revision is at
last undertaken. I am, therefore, of the opinion
that the notification is not illegal or invalid on this
ground.

A further ground put forward was that even
if it was open to the Government to revise the
scales of minimum wages after a lapse of more
than five years, the notification in the present case
was illegal because, in the words of paragraph 16
of the petition, "under the cloak of the revision of
the rates the Punjab Government has added more
than 15 to 20 new categories of workmen in the
new notification, and even if the Government can
revise the rates of wages after the 31st of Decem-
ber, 1959, it could not fix wages anew for these new
categories."

Although none of the counsel concerned in the
case had a copy of the original notification of the
Punjab and Pepsu Governments referred to in the
impugned notification, we have traced them in the
appropriate Official Gazettes and a perusal thereof
shows that the allegation in para 16 is a reckless

misstatement. In the Punjab notification dated the 14th of March, 1952, published in the Gazette of the 21st of March, 1952, there are exactly the same 52 categories in Section A—General Staff, the same 33 in Section B—Workshop Staff, and the same 3 in Section C—Running Staff. In the Pepsu notification which was published in the Gazette of the 27th of December, 1954, and in which, incidentally, the minimum rates of wages for the lower categories are higher than in the Punjab notification of two-and-a-half years earlier, the lowest rate being Rs. 30 per mensem, there are the same 52 categories in Section A and the same 3 in Section C. The only difference is in Section B—Workshop Staff, in which only 29 categories have been shown as against 33. Since Pepsu has been merged with the erstwhile State of Punjab since November, 1956 and there are no new categories introduced in the impugned notification as compared with the Punjab notification of 1952, I do not consider that the introduction of 4 new categories in the Workshop Staff as compared with the Pepsu notification of 1954 in any way invalidates the notification. The result is that I find that there is no force in the petition and I would accordingly dismiss it with costs. Counsel's fee Rs. 50.

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GURDEV SINGH, J.—I agree.

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REVISIONAL CIVIL.

Before D. Falshaw and Gurdev Singh, JJ.

ISHER DASS TARA CHAND,—Petitioners

versus

HARCHARAN DASS,—Respondent.

Civil Revision No. 318 of 1954.

East Punjab Urban Rent Restriction Act (III of 1949)—
S. 13(2)(i) Proviso—Arrears of rent—meaning of—Whether
rent due upto the date of first hearing or the date of the
application.

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