

GOMANTAK MAZDOOR SANGH

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v.

STATE OF GOA & ANR.

(Civil Appeal No.2982 of 2022)

MAY 10, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Minimum Wages Act, 1948 – ss.4, 5 and 10 – Determination / revision of minimum wages – Errata Notification dated 14.07.2016 issued by the State of Goa in purported exercise of s.10 of the 1948 Act modifying /correcting its earlier notification dated 23/24.05.2016 – Validity of – Held: Notification dated 23/24.05.2016 was issued in consultation with the Minimum Wage Advisory Board and thereafter the minimum wages were revised under clause (i) of subsection (1) of s.4 of the 1948 Act after following due procedure as required u/s.5 – A conscious decision was thus taken by the State Government after consultation with the Minimum Wage Advisory Board – Therefore, it cannot be said that there was any arithmetical and/or clerical mistake, which could have been corrected in exercise of powers u/s.10 of the 1948 Act – Even assuming that the State was having the power to amend, vary or rescind the notification in exercise of powers u/s.21 of the General Clauses Act, in that case also, when the earlier notification dated 23/24.05.2016 was issued after following the due procedure as required u/ss.4 and 5 of the 1948 Act, the same procedure ought to have been followed even while varying and/or modifying the notification – Hence, notification dated 23/24.05.2016 could not have been modified by an Errata Notification issued in purported exercise of s.10 – Errata Notification dated 14.07.2016 was wholly without jurisdiction and contrary to provisions of the 1948 Act, and is thus quashed – Earlier notification dated 23/24.05.2016, accordingly, restored – General Clauses Act, 1897 – s.21.

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Minimum Wages Act, 1948 – s.10 – Fixation / revision of minimum rate of wages – Notification issued by State Government – Correction of errors in the notification – Scope – Held: As per s.10, only the clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages can be corrected.

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- A *Words and Phrases – Expressions “arithmetical error” and “clerical error” – Meaning of – Held: An arithmetical mistake is a mistake of calculation while a clerical mistake is a mistake in writing or typing.*

Allowing the appeal, the Court

- B **HELD:**1. Vide Notification dated 23/24.05.2016, the State Government determined the minimum wages, which included the basic rates of wages and the special allowance. The notification specifically stated that the said notification has been issued in exercise of powers conferred by clause (b) of sub-section (1) of section 3 read with clause (i) of sub-section (1) of Section 4 and sub-section (2) of Section 5 of the Minimum Wages Act, 1948. As can be seen from the contents of the said notification, the said notification was issued in consultation with the Minimum Wage Advisory Board and thereafter the minimum wages were revised. Thus, the minimum wages were revised under clause (i) of sub-section (1) of Section 4 after following the due procedure as required under Section 5. [Para 6][168-C-E]

2. Once the minimum wages were revised and determined, which included the basic rates of wages and the special allowance as per Section 4(1)(i) of the Act, 1948, thereafter it cannot be

- E said that there was any clerical and/or arithmetical mistake in mentioning clause (i). The minimum wages were revised and determined even after consultation with the Minimum Wage Advisory Board as required under Section 5 of the Act, 1948. Therefore, once there was no mistake, the same could not have F been corrected in exercise of powers under Section 10 of the Act, 1948. [Para 7][170-B-C]

3. Even as per Section 10, only the clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages can be corrected. An arithmetical mistake is a mistake of

- G calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless or inadvertent mistake or omission unintentionally made. [Paras 7.1 and 7.2][170-C-D, F]

Master Construction Co. (P) Ltd. vs. State of Orissa and Anr., [1966] 3 SCR 99 – relied on. A

4. In the present case, a conscious decision was taken by the State Government after consultation with the Minimum Wage Advisory Board and thereafter the minimum wages were revised and determined in exercise of power under Section 4(1)(i). Therefore, it cannot be said that there was any arithmetical and/or clerical mistake, which could have been corrected in exercise of powers under Section 10 of the Act, 1948. [Para 7.3][170-G-H] B

5. Even by applying Section 21 of the General Clauses Act and assuming that the State was having power to amend, vary or rescind the notification, in that case also such power can be exercised in a like manner, namely after following the procedure, which was followed while issuing the original notification. Therefore, in the present case, assuming that the State was having the power to amend, vary or rescind the notification in exercise of powers under Section 21 of the General Clauses Act, in that case also, when the earlier notification dated 23/24.05.2016 was issued after following the due procedure as required under Sections 4 and 5 of the Act, 1948, the same procedure ought to have been followed even while varying and/or modifying the notification. Hence, the notification dated 23/24.05.2016 could not have been modified by such an Errata Notification which was issued in purported exercise of Section 10 of the Act, 1948. [Para 9][172-E-G] C D E

6. The Errata Notification dated 14.07.2016 was wholly without jurisdiction and contrary to the relevant provisions of the Minimum Wages Act, 1948. The Errata Notification dated 14.07.2016 is hereby quashed and set aside and the earlier notification dated 23/24.05.2016 revising and determining the minimum wages, which included the basic rates of wages plus special allowance is hereby restored. [Paras 10, 11][172-G; 173-B-C] F G

Case Law Reference

[1966] 3 SCR 99	relied on	Para 3.3
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A CIVIL APPELLATE JURISDICTION : Civil Appeal No.2982
of 2022.

From the Judgment and Order dated 01.08.2016 of the High Court of Bombay at Goa in Writ Petition No.710 of 2016.

B Mayank Pandey, Shivraj Gaonkar, Advs. for the Appellant.

B Abhay Anil Anturkar, Ms. Bhavya Pande, Dhruv Tank, Dr. R. R. Deshpande, M/s Dr. R. R. Deshpande And Associates, Advs. for the Respondents.

The Judgment of the Court was delivered by

C **M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.08.2016 passed by the High Court of Judicature of Bombay at Goa in Writ Petition No. 710 of 2016 by which the High

D Court has dismissed the writ petition preferred by the appellant herein in which the appellant herein challenged the validity of the Errata Notification dated 14.07.2016 issued by the State of Goa modifying/ correcting its earlier notification dated 23/24.05.2016 by which the State of Goa fixed the rates of minimum wages in various sectors, the appellant has preferred the present appeal. `

E 2. The State of Goa issued a notification dated 23/24.05.2016 in exercise of the powers conferred by clause (b) of sub-section (1) of section 3 read with clause (i) of sub-section (1) of Section 4 and sub-section (2) of Section 5 of the Minimum Wages Act, 1948 (hereinafter referred to as the “Act, 1948”) determining the minimum rates of wages

F payable to the various categories of the employees employed in various trades in the Scheduled Employment, which included the basic rates of wages plus special allowance. The revised minimum rates of wages as per the said notification is as under:-

G “a) Basic rates of wages as set out in Columns (3) of the Schedule, annexed to this notification and payable to the categories of employees mentioned against them in Column (2) thereof; and

b) Government also hereby introduce payment of special allowance (hereinafter referred to as variable dearness allowance) in addition to the revised minimum rates of wages as notified above at the

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rate of Rs. 0.95 paise for every point rise or fall beyond 269 points of All India Consumer Price Index for Industrial Workers base year 2001=100. Commissioner, Labour and Employment, Panaji shall calculate, adjust and notify such special allowance first time on and from 01-10-2016 based on the average All India Consumer Price Index for Industrial workers (2001=100) for the period 1st January to 30th June, 2016. Thereafter, Commissioner, Labour and Employment, Panaji shall periodically adjust and notify the rate of special allowance once in every six months on 1st April and 1st October every year based on the average of All India Consumer Price Index (2001=100) for the period from July to December and January to June of the preceding period respectively.”

2.1 That thereafter the State Government issued the impugned Errata Notification dated 14.07.2016 under which it corrected the earlier notification dated 23/24.05.2016. The word clause (i) was substituted as clause (iii). The relevant part of the said Notification reads as under:-

“PUBLISHED IN OFFICIAL GAZETTE- GOVERNMENT OF GOA, (EXTRAORDINARY N0.3) SERIES I No. 15

DATED 14TH JULY 2016

Department of Labour

Errata

24/21/2009-LAB-II/472

In the Notifications from the Labour Department published in the Official Gazette, Series I No. 7 (Extraordinary No. 3) dated 24-5-2016 regarding revision of minimum rates of wages, the following may be corrected:-

(1) At page 311, the word “clause (i)” may be read as “clause (iii)”.

XXXXXXXXXXXXXX”

At this stage, it is required to be noted that the Act, 1948 allows the State Government under Section 4(1) to fix the rates of minimum wages in three different ways as under:-

- A “(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; or
- B (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
- C (iii) an **all-inclusive rate** allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.”

- 2.2 The State Government while issuing the notification dated 23/24.05.2016 chose the first option and fixed the minimum rates of wages plus special allowance. Now, as per the Errata notification dated 14.07.2016, the State Government fixed the minimum rates of wages as per Section 4(1)(iii) namely an all-inclusive rate, the result and effect would be that instead of the basic rate of wages plus special allowance, as per the Errata Notification dated 14.07.2016, there shall be no minimum wages plus special allowance, but as per the Errata Notification, the minimum wages would be the basic rate of tax – an all-inclusive rate excluding the special allowance.

- 2.3 Feeling aggrieved and dissatisfied with the Errata notification dated 14.07.2016, the appellant herein preferred the writ petition before the High Court. It was the case on behalf of the State before the High Court that there was a mistake while issuing the notification dated 23/24.05.2016 and instead of clause (iii) clause (i) was mentioned and therefore, by the subsequent Errata Notification, the same has been corrected. The High Court accepted the same and by the impugned judgment and order, the High Court has dismissed the said writ petition.

- 2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the writ petition, the original writ petitioner has preferred the present appeal.

3. Shri Mayank Pandey, learned counsel appearing on behalf of the appellant has vehemently submitted that the High Court has committed a grave error in holding that there was a mistake while issuing the first

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notification dated 23/24.05.2016 in which by mistake instead of clause A (iii), clause (i) was mentioned.

3.1 It is submitted that as such the notification dated 23/24.05.2016 was issued after following due procedure as required under Section 4 read with Section 5 of the Act, 1948. It is submitted that as such there was a conscious decision, as after the draft notification was published, objections were invited and considered and thereafter the notification was issued determining the minimum rates of wages, which included the basic rates of wages plus special allowance. In support of above, learned counsel appearing on behalf of the appellant has heavily relied upon paras 8 and 9 of the counter filed before this Court. It is submitted that in that view of the matter and as there was no mistake either clerical and/or arithmetical, even in exercise of power under Section 10 of the Act, 1948, the same could not have been corrected unless a fresh procedure as required under Section 4/5 has been followed. Reliance is placed on Section 21 of the General Clauses Act.

3.2 It is submitted that according to the respondent State, there was a clerical error, which has been corrected vide Errata Notification dated 14.07.2016. It is submitted that if the original notification dated 23/24.05.2016 is considered, it can be seen that a conscious decision was taken while determining the minimum wages and the minimum wages were fixed as per Section 4(1)(i). It is contended that therefore, once a conscious decision was taken, it cannot be said that there was any clerical mistake, which could have been corrected in exercise of the powers under Section 10 of the Act, 1948.

3.3 Learned counsel appearing on behalf of the appellant has heavily relied upon the decision of this Court in the case of **Master Construction Co. (P) Ltd. Vs. State of Orissa and Anr., (1966) 3 SCR 99** on what can be said to be an arithmetical and/or clerical error.

Making the above submissions, it is prayed to allow the present appeal.

4. Shri Abhay Anil Anturkar, learned counsel appearing on behalf of the respondent State has tried to support the impugned judgment and order passed by the High Court as well as the Errata Notification dated 14.07.2016.

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- A 4.1 It is submitted that as such when the draft notification was issued, clause (iii) of Section 4(1) was under consideration. However, by mistake, thereafter when the notification was issued clause (i) of Section 4(1) was mentioned and therefore, the same was corrected in exercise of the powers under Section 10 of the Act, 1948. It is urged
B that Section 10 of the Act, 1948 permits the correction of a clerical or arithmetical mistake in any order fixing or revising the minimum rates of wages. It is submitted that therefore the High Court has rightly dismissed the writ petition.

- C 5. We have heard the learned counsel appearing for the respective parties at length.

- D 6. Vide Notification dated 23/24.05.2016, the State Government determined the minimum wages, which included the basic rates of wages and the special allowance. The notification specifically stated that the said notification has been issued in exercise of powers conferred by clause (b) of sub-section (1) of section 3 read with clause (i) of sub-section (1) of Section 4 and sub-section (2) of Section 5 of the Act, 1948. As can be seen from the contents of the said notification, the said notification was issued in consultation with the Minimum Wage Advisory Board and thereafter the minimum wages were revised. Thus, the minimum wages were revised under clause (i) of sub-section (1) of Section 4 after following the due procedure as required under Section 5. Sections 4 and 5, which are relevant for our purpose are extracted asunder:-

- F “**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—

- G (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
H (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, A
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, 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 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

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- A clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also.”

7. Therefore, once the minimum wages were revised and determined, which included the basic rates of wages and the special allowance as per Section 4(1)(i) of the Act, 1948, thereafter it cannot be said that there was any clerical and/or arithmetical mistake in mentioning clause (i). The minimum wages were revised and determined even after consultation with the Minimum Wage Advisory Board as required under Section 5 of the Act, 1948. Therefore, once there was no mistake, the same could not have been corrected in exercise of powers under Section 10 of the Act, 1948.

7.1 Even as per Section 10, only the clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages can be corrected. Section 10 of the Act, 1948 reads as under:-

- D “**10. Correction of errors.**—(1) The appropriate Government may, at any time, by notification in the Official Gazette, correct clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under this Act, or errors arising therein from any accidental slip or omission.
- E (2) Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information.”

- 7.2 What can be said to be an arithmetical or clerical error has been dealt with and considered by this Court in the case of **Master Construction Co. (P) Ltd. (supra)**. It is observed and held that an arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless or inadvertent mistake or omission unintentionally made.

- 7.3 In the present case, as observed hereinabove, a conscious decision was taken by the State Government after consultation with the Minimum Wage Advisory Board and thereafter the minimum wages were revised and determined in exercise of power under Section 4(1)(i). Therefore, it cannot be said that there was any arithmetical and/or clerical mistake, which could have been corrected in exercise of powers under Section 10 of the Act, 1948.

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7.4 At this stage, it is required to be noted that in the Errata Notification dated 14.07.2016, as such nothing has been mentioned as to under which provision of law, the said notification has been issued. Only from the submission on behalf of the State before the High Court, the State has come out with a case that there was a clerical mistake, which is corrected by the Errata Notification. Therefore, we presume that the Errata notification has been issued in exercise of powers under Section 10 of the Act, 1948. As observed hereinabove, as such, there was no clerical mistake at all and a conscious decision was taken while issuing the notification dated 23/24.05.2016 and therefore, the same could not have been corrected in exercise of powers under Section 10 of the Act, 1948.

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8. Even from the counter affidavit filed on behalf of the respondent before this Court, it is crystal clear that when the earlier notification dated 23/24.05.2016 was issued, the same was issued after due application of mind and after the draft notification was issued in which the minimum wages were sought to be revised as per Section 4(1)(iii). However, after the objections and suggestions were invited, the Labour Union submitted their representations and then a final decision was taken to revise the minimum wages as per Section 4(1)(i). In paragraphs 8, 9 and 10, it is stated as under:-

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“**8.** That, the Respondent No. 1 in exercise of the powers conferred by clause(b) of Sub-Section (1) of Section 3, read with clause (iii) of Sub-Section (1) of Section 4 and Section 5 (1) (b) of the Minimum Wages Act, 1948, published a Draft Notification in the Official Gazette, Series I, No. 9, dated 28/05/2015 in Order to consider objections, suggestions, and representations by the Respondent No. 1 from all the concerned stakeholders.

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9. That, I state that at this stage, the representatives of the Labour Union objected to the draft Notification by putting forth their views for introduction of a special allowance in the form of ‘Variable Dearness Allowance’ (VDA). That, the deliberations continued over a long period of time thereby resulting in delay in issuing the Final Notification for minimum wages.

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10. That, I further state that taking into consideration the demand and need for introduction of special allowances in the form of

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- A Variable Dearness Allowance (VOA) and the delay caused in the deliberations resulting in hike in Consumer Price Index and to avoid any further delay, the State Government had in the Final Notification raised the minimum rates of wages proposed in Draft Notification and also provided for introduction of VOA to be notified for the first time in October 2016, and the same was to be revised every six months i.e. in the month of October and April each year.”
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8.1 Therefore, considering paragraphs 8 to 10 of the counter, even according to the State, after the representation of the Labour Union, C which objected to the draft notification by putting forth their views for introduction of a special allowance in the form of ‘Variable Dearness Allowance’ and after due deliberations for a longer period of time, the final notification was issued determining the minimum wages with special allowance. Therefore, subsequent case on behalf of the State that under the notification dated 23/24.05.2016, there was a clerical mistake by D mentioning clause (i), which was corrected by issuing the subsequent Errata Notification cannot be accepted.

9. Even by applying Section 21 of the General Clauses Act and assuming that the State was having power to amend, vary or rescind the notification, in that case also such power can be exercised in a like E manner, namely after following the procedure, which was followed while issuing the original notification. Therefore, in the present case, assuming that the State was having the power to amend, vary or rescind the notification in exercise of powers under Section 21 of the General Clauses Act, in that case also, when the earlier notification dated 23/24.05.2016 F was issued after following the due procedure as required under Sections 4 and 5 of the Act, 1948, the same procedure ought to have been followed even while varying and/or modifying the notification. Hence, the notification dated 23/24.05.2016 could not have been modified by such an Errata Notification which was issued in purported exercise of Section 10 of the Act, 1948.

G 10. Therefore, we are of the opinion that the Errata Notification dated 14.07.2016 was wholly without jurisdiction and contrary to the relevant provisions of the Minimum Wages Act, 1948, which ought to have been set aside by the High Court. The High Court has erred in H dismissing the writ petition challenging the Errata Notification dated

14.07.2016 by accepting the case on behalf of the State that there was a clerical mistake, which is subsequently corrected by the Errata Notification.

11. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court dismissing the writ petition is hereby quashed and set aside. The subsequent Errata Notification dated 14.07.2016 is hereby quashed and set aside and the earlier notification dated 23/24.05.2016 revising and determining the minimum wages, which included the basic rates of wages plus special allowance is hereby restored.

Present appeal is allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

Bibhuti Bhushan Bose

Appeal allowed.