

IN THE HIGH COURT OF SINDH, KARACHI

**Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal**

1	C. P No. D-1567 / 2022	M/s Aziz Tabba Foundation VS Fed. of Pakistan and Others
2	C. P No. D-928 / 2022	Lucky Cement Ltd. VS Fed. of Pakistan and Others
3	C. P No. D-1316 / 2022	M/s ISIS Pharmaceuticals & Chemicals Works VS Fed. of Pakistan and Others
4	C. P No. D-1211 / 2022	M/s Al-Shirkat Ind VS Fed. of Pakistan and Others
5	C. P No. D-1816 / 2022	M/s Bari Textile Mills (Pvt) Ltd and Others VS Fed. of Pakistan and Others
6	C. P No. D-271 / 2022	EPLA Laboratories Pvt Ltd VS Fed. of Pakistan and Others
7	C. P No. D-4227 / 2022	M/s Holy Family Hospital VS Fed. of Pakistan and Others
8	C. P No. D-780 / 2022	M/s Towellers Ltd VS Fed. of Pakistan and Others
9	C. P No. D-781 / 2022	M/s Sami Pharmaceuticals (Pvt) Ltd VS Fed. of Pakistan and Others
10	C. P No. D-945 / 2022	M/s ISIS Pharmaceuticals VS Fed. of Pakistan and Others

Petitioners: Through M/s Zaheer-ul-Hassan Minhas, Syed Mohsin Ali, Ghulam Muhammad, Advocates.

Respondents: M/s Ali Asadullah Bhullo, Arif Baloch, Moiz Ahmed, Ubaidullah, Advocates.

Mr. Syed Yasir Shah, Assistant Attorney General.
Mr. Abdul Jalil Zubedi, Additional Advocate General Sindh.

Date of hearing: 14.12.2022

Date of Order: 14.12.2022

ORDER

Muhammad Junaid Ghaffar, J: In all these Petitions the Petitioners have impugned notices issued by Employees Old Age Benefits Institution on the basis of Notification dated 17.02.2016 bearing No.F.9(32)/2015-Legis being Act No.VII of 2016. It is the case of the Petitioners that earlier a dispute had arisen in respect of the authority to collect contribution(s) either under the Employees Old Age Benefits Act, 1976, (“**EOBI Act**”) or Sindh Employees Old Age Benefits Act, 2014, promulgated post 18th Amendment, and by way of order dated 07.09.2021 in C.P. No. D-4668 of 2015 and other connected matters, the petitions were disposed of by directing the Petitioners to deposit contribution and other dues according to the EOBI Act, 1976 with further directions to continue the old practice while depositing the contribution with the Federal EOBI until the issue is finally resolved between Federation and the Province and legislation is implemented and departments are made functional. It was further observed that Provincial EOBI will not claim the

amount from the Petitioners. The operating part of the said order dated 7.9.2021 reads as under;

"Under these circumstances, until the issue is resolved, without commenting on the ultra vires of enactment of the federal law we deem it fit that **priority must be given to the employees as the Old Age Benefit law is a beneficial law, aimed for the benefit of the employees therefore in case contribution amount is not received by the EOBI ultimately it is the employees who will suffer.** Hence these petitions are disposed of in terms that petitioners shall deposit the contributions and other dues according to EOBI Act 1976; all amount deposited with the Nazir shall be returned in favour of the EOBI established under the EOBI Act 1976. Petitioner shall continue old practice while depositing contribution with the Federal EOBI until issue is resolved between the Federation and the Province and legislation is being implemented and departments are functional, however, Provincial EOBI will not claim that amount from the employer (petitioners). It is pertinent to mention that if Province feel that they have any claim with regard to contribution deposited with the federal EOBI, they would be at liberty to sue that remedy against the Federal EOBI and will not drag the employer for that controversy".

2. It further appears that thereafter, the employers / various Petitioners were issued notices for contribution at the rates as notified after amendment in the minimum wages for Unskilled Workers Ordinance, 1969 through Notification dated 17.02.2016 bearing No.F.9(32)/2015-Legis being Act No.VII of 2016, and they filed respective petitions before this Court seeking the following relief:

- i. "To declare that since Employees Old Age Benefit Act, 2014 is a valid piece of legislation which has the Constitutional mandate and it holds the field in respect of every industry and commercial establishment situated in the Province of Sindh.
- ii. To declare and hold that Employees Old Age Benefit Act, 1976 has been repealed to the extent of Province of Sindh therefore, it has lost its validity being a legal institution and cannot demand the contribution from the Petitioner.
- iii. To hold and declare that Notification dated 17.02.2016 bearing No.F.9132)/2015-Legis being Act No.VII of 2016 is applicable to Islamabad Capital Territory and not to the Province of Sindh or to the petitioner.
- iv. That it may also be held that Notification dated 17-02- 2016 bearing No.F 9132)/2015-Legis being Act No.VII of 2016 cannot be imposed with retrospective for charging of contribution for fixing the minimum wages for unskilled workers.
- v. That the demand notice made to the Petitioner by Respondent No.2 and 3 by virtue of Act of 1976 and by virtue of Notification dated 17.02.2016 No.F.9132)/2015-Legis being Act No VII of 2016 is illegal and void and beyond the domain and/or jurisdiction of Respondent No.2 and 3.
- vi. Cost of the petition may be granted.
- vii. Any other, better, consequential, adequate and / alternative relief which this Honourable Court may deem fit under the circumstances to grant"

3. A learned Division Bench of this Court (incidentally speaking through the same learned Judge who had passed order dated 7.9.2021 as above) in the case of **Dairy Land (Private) Limited v Federation of Pakistan** and other

connected matters vide its Judgment dated **03.12.2021** was pleased to dismiss all Petitions, whereas, the said Judgment was then impugned before the Hon'ble Supreme Court in Civil Petition No. 35 of 2022 (*Phoenix Armour (Pvt.) Ltd. & another v Employers Federation of Pakistan & Others*) and other connected matters and vide order dated 17.05.2022 notice has been ordered to the Respondents as well as Attorney General for Pakistan and Advocate General Sindh. Today, we have been informed that those Petitions are still pending and there are no restraining orders in field. In fact, even leave is yet to be granted.

4. Now once again through these Petitions similar notices issued to the present set of petitioners have been impugned; but apparently the same are based and dependent upon the Notification of 2016 dated 17.2.2016 against which various petitions already stand dismissed. Therefore, insofar as the impugned notices are concerned, in view of Judgment already passed by this Court as above, no final relief in respect of the applicability of Notification dated 17.2.2016 can be granted as the matter already stands decided and is now pending before the Hon'ble Supreme Court as above. It appears that while filing these petitions, apparently without proper assistance, restraining orders have been obtained by all the Petitioners on the basis of earlier disposal order dated 7.9.2021 which in the given facts and circumstances ought not to have been obtained as there is no pending issue which is now to be decided by this Court finally, as apparently, the issue regarding validity of the Notification dated 17.2.2016 already stands decided against the Employers. Even otherwise, now due to pendency of the issue before the Hon'ble Supreme Court regarding validity of the Notification dated 17.02.2016, this Court must also show restrain, whereas, no case has been made out before us as to the earlier judgment being not a binding precedent. Admittedly, the impugned demands are based on such Notification against which petitions stand dismissed; hence no case for indulgence is made out. Accordingly, in view of the above facts and circumstances all these petitions being misconceived are hereby dismissed. Office shall place copy of this order in all listed petitions.

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