



W.P. No.1774/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
31.07.2023	10.08.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.1774 OF 2017
AND
W.M.P. NO.1757 & 1758 OF 2018**

The Pharmaceutical Manufacturers'
Association of Tamil Nadu
Rep. By its Hony. Secretary
Shri R.Murugan
Block D-1, Baid Metha Complex
No.16, Anna Salai, Little Mount
Saidapet, Chennai 600 015.

.. Petitioner

- Vs -

1. The Government of Tamil
Nadu

Rep. By its Secretary
Labour & Employment Department
Fort St. George, Chennai 600 009.

2. The Tamil Nadu Medical &
Sales

Representatives Association
39, Kambar Street, Abith Colony
Chennai 600 015.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in G.O. (2D) No.11, Labour & Employment (J1) Department dated 15.02.2016 published in Part II – Section 2 of the Tamil Nadu Government Gazette dated 09.03.2016 and quash the same.

For Petitioner : Mr. S.Ravindran, SC, for
M/s. S.Bazeer Ahmed

For Respondents : Mr. V.Ajay Khose for R-2
Mr. P.Kumaresan, AAG, Assisted by
Mr. S. John J.Raja Singh, AGP for R-1

ORDER

The fixation of minimum wages for the sales representatives in the pharmaceutical industry by issuance of the impugned notification, without eliciting the views of the petitioner, is assailed by filing the present writ petition.

2. It is the case of the petitioner that the pharmaceutical industry in India is not akin to other industries as the sale of the drugs is not through any public advertisements or through sale by the general stores. It is by means of a



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prescription from the Doctor through medical stores, which is manned by a qualified pharmacist. It is the further case of the petitioner that the medical representatives do not come under the direct control of the managerial person, unlike the other industries, and, accordingly, their remuneration pattern is by way of fixation of a small quantum of basic wages and the substantial part of the remuneration is based on the sale of the products in the market, which is by means of commission on the basis of prescription and purchase.

3. It is the further case of the petitioner that the critical activity of the medical representative is to generate sales revenue by means of constant meeting with the doctors and briefing about the products, which leads to generating prescriptions, which results in stocking and selling of the products by the chemists thus generating revenue for the company. It is the further case of the petitioner that the medical representatives regularly meet the doctors and chemists in their area of operation to ensure more prescription of drugs and ensure free availability of the products with the medical stores. Further, the working time of the medical representatives are also not fixed and it depends on the availability of the doctors.



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4. It is the further case of the petitioner that the remuneration of the medical representatives include a portion of salary apart from daily allowance on the working day in addition to incentives for achieving targets set by their organisation, excluding the commission, which is paid to them for generating business.

5. It is the further case of the petitioner that the 2nd respondent is one of the trade unions, which represent the medical and sales representatives in the pharmaceutical industry and the unions enter with long term settlement on wages and other benefits relating to the medical and sales representatives with individual pharmaceutical companies. The service conditions of the medical and sales representatives of the pharmaceutical industry are covered by the provisions of the Sales Promotion Employees (Conditions of Service) Act, 1976 (for short 'the Act').

6. It is the further averment of the petitioner that Section 2 (d) of the Act defines "Sales Promotion Employee" and explanation appended thereto denotes



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the procedure for arriving at the wages per month of a sales promotion employee, wherein the component of commission is recognized as part of the wages. Section 2 (h) of the Minimum Wages Act defines 'wages' meaning all remuneration in terms of contract of employment in respect of work done, but excluding certain amenities, travelling allowance or the value of a travelling concession and any sum paid to the employee to defray special expenses due to the nature of employment and commission to the medical and sales representatives comes within the scope of Section 2 (h) of the Minimum Wages Act.

7. It is the further averment of the petitioner that the definition of "employee" u/s 2 (i) of the Minimum Wages Act is analogous to the definition of "workman" u/s 2 (s) of the Industrial Disputes Act. It is the further averment of the petitioner that a sales promotion employee is not covered under the definition of "workman" u/s 2 (s) of the Industrial Disputes Act, as held by the Apex Court in ***Burmah Shell OS & D Co. Of India Ltd. – Vs – Burmah Shell Management Staff Association (1970 (2) LLJ 50)***. It is the further averment of the petitioner that a sales promotion employee is entitled to invoke the



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provisions of the Industrial Disputes Act in terms of Section 6 of the Act.

However, for the purpose of Minimum Wages Act, a sales promotion employee cannot be deemed to be an employee u/s 2 (i) of the Act. Therefore, minimum wages cannot be fixed by the appropriate Government by bringing the sales promotion employee within the scope of “scheduled employment” u/s 2 (g) of the Minimum Wages Act.

8. It is the further averment of the petitioner that the Government of Tamil Nadu, for the first time, fixed minimum wages for employment as medical and sales representatives by Notification in G.O. (2D) no.59, Labour & Employment (J1) dated 6.11.2000, which was unsuccessfully challenged and, thereafter, vide further notification dated 5.4.2010, there was further revision in minimum wages in the minimum wages for employment as medical and sales representatives.

9. It is the further averment of the petitioner that a draft notification in G.O. (2D) No.89, Labour & Employment (J1) Department dated 11.12.2013 was published revising the minimum rate of wages payable to the classes of



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employees employed as medical and sales representatives, which notification was issued by following the procedure prescribed u/s 5 (1)(b) of the Minimum Wages Act. It is the further averment of the petitioner that Section 5 (2) of the Act provides for calling objections and suggestions from the stakeholders.

10. It is the further case of the petitioner that the draft notification provided for basic wage of Rs.8166/- per month for medical and sales representatives in pharmaceutical manufacturing and marketing units and a basic wage of Rs.7017/- per month for salesmen in pharmaceutical wholesale or distributor units and the notification also prescribed for dearness allowance.

11. It is the further case of the petitioner that for certain reasons, the petitioner could not submit their objections or suggestions to the draft notification, which, however, does not bar the petitioner from assailing the impugned notification fixing the minimum wages as aforesaid. It is the further case of the petitioner that the above notification references a letter of the Commissioner of Labour dated 16.11.2005, which points to the recommendations of the Minimum Wages (State) Advisory Board and based on



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the same, the Commissioner of Labour had requested to change the minimum basic wages of class of medical and sales representatives in pharmaceutical manufacturing or marketing units as Rs.10,518/- instead of Rs.8166/-. Para 4 of the above order states that the preliminary notification is confirmed with the above amendment by fixing the minimum wages of medical and sales representatives in pharmaceutical manufacturing and marketing units as Rs.10,518/- instead of Rs.8166/-. Aggrieved by the same, as the said amendment had been carried out without consultation and calling for objections from the stakeholders, the present writ petition has been filed.

12. Learned senior counsel appearing for the petitioner submits that the fixation/revising of minimum rates of wages for medical and sales representatives is wholly erroneous as the said persons would not fall within the meaning of Section 2 (i) of the Minimum Wages Act.

13. It is the further submission of the learned senior counsel that when the draft notification had prescribed the minimum wages that are likely to be fixed for medical and sales representatives, modifying the said amount by means



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of an amendment, without calling for further objections and suggestions from the stakeholders like the petitioner is against the procedure prescribed u/s 5 (2) of the Minimum Wages Act. The failure of the 1st respondent to adhere to the mandatory principles prescribed under the Act vitiates the impugned notification.

14. It is the further submission of the learned senior counsel that the Commissioner of Labour has acted upon the letter of the Advisory Board without putting the stakeholders on notice and inviting objections/suggestions and the said act of the Commissioner of Labour lacks transparency, as only the minimum wages of the medical and sales representatives in the pharmaceutical manufacturing or marketing units alone is changed to the exclusion of the other persons, which is arbitrary, as it is devoid of any reason and the said notification suffers from discrimination while revising the minimum rates and, therefore, it is liable to be interfered with.

15. It is the further submission of the learned senior counsel that the emoluments in the pharmaceutical industry is based on the productivity and



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not merely on the days worked in a month and the emoluments of the medical and sales representative is performance related, which is recognized as a wage component in terms of explanation to clause 2 (d) (ii) of the Act.

16. It is the further submission of the learned senior counsel that once the notification is sought to be amended, necessarily the procedure prescribed u/s 5 (1) (b) has to be followed, followed by the procedure prescribed u/s 5 (2) of the Minimum Wages Act. However, contrary to the aforesaid procedure, the 1st respondent had issued the notification by carrying out the amendment put forth by the Commissioner of Labour, which vitiates the impugned notification. Therefore, he prays for quashing the impugned notification.

17. To substantiate the aforesaid submission, learned senior counsel for the petitioner placed reliance on the decision of the Apex Court in ***Gomantak Mazdoor Sangh – Vs – State of Goa and Anr. (2022 SCC OnLine SC 587)***.

18. Per contra, learned counsel appearing for the 2nd respondent submitted that the preliminary notification prescribing the minimum wages that



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are likely to be increased is not the final one and only to arrive at the minimum wages, the procedure contemplated u/s 5 (2) of the Minimum Wages Act is resorted to. The procedure contemplated u/s 5 (1) (b) for publishing the preliminary notification and calling for objections u/s 5 (2) is only to arrive at the minimum wages that are to be notified. The mere preliminary notification prescribing the minimum wages is not final and it is always subject to the objections and suggestions called for u/s 5 (2). That being the case, once preliminary notification is issued and objections and suggestions have been called for and considered, it is within the purview of the 1st respondent to fix the minimum wages, as it has been held by this Court that the medical and sales representatives would come within the purview of Minimum Wages Act.

19. It is the further submission of the learned counsel that the minimum wages shown in the preliminary notification is only a guidance for the purpose of submitting the suggestions/objections by the various stakeholders and it is not a final one, as it is a necessity for the 1st respondent to consider the objections/suggestions before finalising the minimum wages payable.



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20. It is the further submission of the learned counsel that the applicability of minimum wages to the medical and sales representatives of the pharmaceutical companies has already been settled and, therefore, it is not open to the petitioner to raise the issue once over. In fine, it is the submission of the learned counsel that the contentions of the petitioner is wholly misconceived and, therefore, the writ petition deserves to be dismissed.

21. This Court paid its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

22. The issue relating to the fixation of minimum wages in respect of medical and sales representatives has already been settled by this Court and in tune with the same the minimum wages have been fixed once in the year 2001 and, thereafter, in a gap of 10 years. Therefore, the issue having already been settled, there is no necessity for this Court to adjudicate upon the same and, therefore, the said contention is not being deliberated by this Court.



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23. The only issue that falls for consideration in the present petition is *whether the provisions of Section 5 (2) is required to be taken up once again in view of the amendment made to the Notification.*

24. Vide G.O. (2D) No.89 dated 11.12.2013, the draft notification was ordered to be published in the Government Gazette in and by which the minimum wages of the medical and sales representatives in pharmaceutical manufacturing or marketing units and salesmen in pharmaceutical wholesale or distributor units was sought to be fixed. For better appreciation, the relevant portion of the draft notification is quoted hereunder :-

"APPENDIX

NOTIFICATION

The following draft of a Notification which it is proposed to issue in exercise of powers conferred by clause (b) of sub-section (1) of Section 3 and sub-section (2) of Section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948) is hereby published for information of all persons likely to be affected thereby, as required under clause (b) of sub-section (1) of section 5 of the said Act.

2. Notice is hereby given that the draft Notification will be taken into consideration on or after the expiry of two months from the date of publication of this Notification in the Tamil Nadu



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Government Gazette and that any objection or suggestion, which may be received from any person with respect thereto, before the expiry of the aforesaid period will be considered by the Government of Tamil Nadu. Objection or suggestion, if any, should be addressed to the Principal Secretary to Government, Labour and Employment Department, Secretariat, Chennai – 600 009 through the Commissioner of Labour, Chennai – 600 006.

DRAFT NOTIFICATION

* * * * *

25. It is the admitted case of either parties that the notification appended vide the aforesaid Government Order is a draft notification in and by which objections/suggestions were called for from the stakeholders and persons interested. It would be even evident from the said notification that the said objections/suggestions to be given within the period to the concerned, meaning thereby, that the said objections and suggestions would be taken into consideration when the final notification is released. The draft notification is not a final notification, but only putting the stakeholders and others on notice, so that they can avail their opportunity to ventilate their side of the case for fixation of minimum wages.



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26. From the above it is evident that the draft notification is not a final notification and it is only a draft, which is amenable to modification upon consideration of the objections/suggestions from the stakeholders.

27. The Government Order was issued on 11.12.2013 calling upon objections/suggestions from the various interested persons, with regard to fixation of minimum wages. It transpires even from the averment of the petitioner that based on the letter of the Commissioner of Labour dated 16.11.2015, which is referenced in the Government Order, the minimum wages, which was initially notified in respect of the Medical and Sales Representatives in pharmaceutical manufacturing or marketing units was enhanced to Rs.10,518/- from Rs.8,166/-, as per the recommendations of the Minimum Wages (State) Advisory Board.

28. It is this letter, which is put in issue by the petitioner to contend that the said recommendation, which in turn, modifies the notification, results in a fresh notification and in such a scenario, Section 5 (2) ought to be followed



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afresh as the notification is a fresh notification. However, it is countered by the respondents contending that it is a continuation of the draft notification, which was the result of deliberations on the basis of the objections/suggestions filed by the various interested persons and, therefore, there is no necessity to follow Section 5 (2) of the Minimum Wages Act once over.

29. As stated above, the notification dated 11.12.2013 is a draft notification, which called for objections/suggestions from the various interested persons, meaning thereby that based on the objections/suggestions, necessarily the notification requires modification upon proper consideration of the objections/suggestions. If the argument put forth by the petitioner is to be followed that whatever was mentioned as minimum wages in the draft notification, it cannot be changed or upward revision is not permissible, then the draft notification would partake the character of final notification and if such a finding is to be rendered, the procedure contemplated u/s 5 (2) to call for objections/suggestions from the stakeholders and other interested persons would be an act in futility, as no change could be made to the draft notification.



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30. The draft notification is published not as a measure of finality, but only to put the stakeholders and persons interested on notice about the intent to modify the minimum wages upon consideration of the objections/suggestions that would be filed by the stakeholders/persons interested. The procedure is nothing but affording an opportunity for the various entities to put forth their objections/suggestions for the fixation of minimum wages and to arrive at the final minimum wages that is to be offered. Considering the above objections/suggestions, the final notification is finalised, which notification could only be held to be a continuation of the draft notification and it cannot be presumed to be a fresh notification, which necessitates the compliance of the procedure contemplated u/s 5 (2).

31. In the case on hand, as aforesaid, the draft notification was issued on 11.12.2013 and upon receipt of objections/suggestions, the same were placed before the Minimum Wages (State) Advisory Board, which, upon consideration of the objections/suggestions, had given its recommendation to enhance the minimum rates of basic wages fixed for Medical and Sales representatives in



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pharmaceutical manufacturing or marketing units from Rs.8,166/- to Rs.10,158/-

32. When the Government, after careful consideration of the recommendations of the Minimum Wages (State) Advisory Board, which had considered the objections/suggestions of the various stakeholders/persons interested and had thought it fit to amend the preliminary notification/draft notification by fixing the minimum wages as recommended by the Minimum Wages (State) Advisory Board, the said notification, which is a continuation of the draft notification cannot be said to be a fresh notification so as to attract the procedure contemplated u/s 5 (2) of the Minimum Wages Act. If any such construction, as put forth by the petitioner, is given, , it would lead to an anomalous situation, where the draft notification, inspite of suggestions/objections received could not be modified, resultantly the draft notification would be deemed to be a final notification and, thereby, it renders the procedure u/s 5 (2) otiose.



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33. Further, the Government Order in G.O. (2D) No.11 dated 15.2.2016 merely points to the letter of the Commissioner of Labour, who had forwarded the suggestions/objections to the consideration of the Minimum Wages (State) Advisory Board for its recommendation. The said act cannot in any way be said to be one, which is to be placed before the stakeholders/persons interested for further objections/suggestions and for deliberation. Once the stakeholders/persons interested have given their objections/suggestions, it is within the purview of the Government to consider the same and the manner in which it is dealt with by the Government cannot be a ground to invoke Section 5 (2) once again. The 1st respondent is well within its power and jurisdiction to act upon the objections/suggestions of the stakeholders/persons interested and take a final decision and the process of taking decision by the 1st respondent cannot be the matter of deliberation once again u/s 5 (2).

34. Further, the impugned Government Order merely subscribes the preliminary notification, with certain amendments to the minimum rates of basic wages, which is upon due consideration of objections/suggestions. If the draft notification, as issued by the 1st respondent, is merely accepted and acted upon,



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the act of the stakeholders/persons interested giving suggestions/objections would be an act in futility. Therefore, rightly, the 1st respondent, upon recommendations of the Minimum Wages (State) Advisory Board, which had considered the objections/suggestions, had amended the minimum wages, which act cannot be said to be perverse, arbitrary, illegal and irrational.

35. The decision of the Apex Court in *Gomantak Mazdoor case (supra)* relied on, on behalf of the petitioner, would not be applicable to the case on hand. In the said case, the notification, which was the subject matter of consideration before the Apex Court was a final notification, which was after consideration of the objections/suggestions u/s 5 (2). However, errata was issued by making certain modifications in the original notification. In the said context, the Apex Court held that once the final notification was issued, any modification or correction, other than arithmetical and clerical cannot be made by issuance of an errata and the proper course would be to follow the procedure prescribed u/s 5 (2).



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36. However, in the case on hand, the first notification, even as per the the substance of the notification, is a draft notification, which had called for objections/suggestions. Thereafter, considering the objections/suggestions, the final notification, which is impugned herein, had come to be issued. The tenor and substance of both the notifications clearly reveal that what was issued at the first instance is a draft notification, which is subject to revision upon consideration of the objections/suggestions. Even the body of the notification clearly shows that the first notification is a draft notification, while the impugned notification is the final notification. The terminology and the language employed in the draft notification and the final notification are wholly different and, therefore, the final notification is merely a continuation of the draft notification. That being the case, there being no modification made to the final notification, which has been issued vide G.O. (2D) No.11, Labour & Employment (J1) Dept., dated 15.2.2016, the same cannot be said to be in violation of Section 5 (2). Therefore, the decision in *Gomantak Mazdoor case (supra)* cannot be applicable to the case on hand as the said decision is totally on a different factual matrix. Therefore, the impugned Government Order is well within the scope and



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ambit of the procedures laid down under the Minimum Wages Act and the same does not call for any interference.

37. For the reasons aforesaid, the writ petition fails and, accordingly, the same is dismissed. Consequently, connected miscellaneous petitions are also dismissed. There shall be no order as to costs.

10.08.2023

Index : Yes / No

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To

The Secretary to Government
Labour & Employment Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO. 1774 OF 2017**

**Pronounced on
10.08.2023**



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