

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN QUETTA.

Constitution Petition No. 410/2016
(CC-24976)

Employers' Federation of Pakistan & others.
v.
Federation of Pakistan through Secretary Ministry
of Human Resource Development & others.

Constitution Petition No. 581/2016
(CC-25711)

M/S LRBT
v.
Federation of Pakistan through Secretary Ministry
of Human Resource Development & another.

Date of hearing 15.06.2022 Announced on 18.08.2022

In CP No.410/2016:

Petitioners by: Mr. Munir Ahmed Kakar, Advocate.

Respondent

No. 1 by: Mr. Sanaullah Ababaki, Additional Attorney
General.

Respondent

Nos. 2 & 3 by: Mr. Muhammad Riaz Ahmed, Advocate.

In CP No.581/2016:

Petitioner by: Mr. Munir Ahmed Kakar, Advocate.

Respondent

No. 1 by: Mr. Sanaullah Ababaki, Additional Attorney
General.

Respondent

No.2 by: Mr. Muhammad Riaz Ahmed, Advocate.

ORDER

Naeem Akhtar Afghan, CJ. This common order disposes of
Constitution Petition Nos.410 & 581 of 2016 as common questions of
facts and law are involved in both the petitions.

2. In CP No.410/2016, the petitioners have claimed the following relief:-

“It is prayed that this Honorable Court in view of the facts and grounds set forth hereinabove may graciously be pleased:-

- a. To declare that Amendment as contained in Act VII of 2016 is applicable to Islamabad Capital Territory and not elsewhere in the country.*
- b. To declare that circular of Respondent No.2 and consequent demand of subordinate regional officers of Respondent No.2 regarding enhanced contribution with retrospective effect is absolutely illegal;*
- c. AND restrain the Respondents from adversely acting in pursuance of such amendment, circular, or demand.*
- d. And/ or pass any other order as this Honorable Court may deem fit and proper”.*

3. The above Constitution Petition has been contested by respondent No.1 by filing parawise comments.

The Petition has also been contested by respondent Nos.2 & 3 by filing parawise comments.

4. While issuing pre-admission notice to the respondents on 02.05.2016 in CP No.410/2016, the operation of the impugned notices issued to the petitioners by the Regional Head Employees Old Age Benefits Institution (‘EOBI’) Hub Region claiming Employer’s share of contribution on the basis of revised rates was suspended by this Court.

5. In CP No.581/2016, the petitioner has claimed the following relief:-

“It is prayed that this Honorable Court in view of the facts and grounds set forth hereinabove may graciously be pleased:-

- a. To declare that Amendment as contained in Act VII of 2016 is applicable to Islamabad Capital Territory and not elsewhere in the country.*
- b. To declare that circular of Respondent No.2 and consequent demand of subordinate regional officers of Respondent No.2 regarding enhanced contribution with retrospective effect is absolutely illegal;*
- c. AND restrain the Respondents from adversely acting in pursuance of such amendment, circular, or demand.*
- d. And/ or pass any other order as this Honorable Court may deem fit and proper”.*

6. The above Constitution Petition has been contested by respondent No.2 by filing parawise comments.

The respondent No.1 also contested the petition without filing parawise comments and relied upon the parawise comments of respondent No.2.

7. While issuing pre-admission notice in CP No.581/2016 on 16.06.2016, the operation of the impugned notice issued to the petitioner by EOBI Regional Office Quetta claiming Employer’s share of contribution on the basis of revised rates was suspended by this Court.

8. After hearing learned counsel for petitioners, learned Additional Attorney General and learned counsel for EOBI, we have perused the available record which reveals that on 16.02.2016 Minimum Wages for Unskilled Workers (Amendment) Act 2016

(hereinafter “**the Amendment Act 2016**”) was promulgated with its application to the Islamabad Capital Territory only and the entries in column No.2 of the schedule of the Ordinance XX of 1969 were substituted as follows:

“8000 pm (w.e.f. 1st July, 2012 till 30th June, 2013)
 10,000 pm (w.e.f. 1st July, 2013 till 30th June, 2014)
 12,000 pm (w.e.f. 1st July, 2014 till 30th June, 2015)
 13,000 pm (w.e.f. 1st July, 2015)”.

9. In pursuance of Amendment Act 2016 (which was applicable only to the Islamabad Capital Territory), EOBI Head Office Karachi issued Circular No.01/2015-16 dated 01.03.2016, para-2 whereof being relevant for decision of both the petitions reads as follows:

2. *Both the Employer’s and Employees’ shares of contribution will now be calculated on the basis of revised minimum wages as amended through the Minimum Wages for Unskilled Workers (Amendment) Act, 2016. Accordingly contributions shall be collected with, effect from 1st July, 2012 as specified below:-*

i) *The Employer’s share of contribution, i.e. 5% of the minimum wages shall be calculated in the following manner:*

Rs.400/- per insure person per month w.e.f. 1st July, 2012 till 30th June, 2013.

Rs.500/- per insured person per month w.e.f. 1st July, 2013 till 30th June, 2014.

Rs.600/- per insured person per month w.e.f. 1st july, 2014 till 30th June, 2015.

Rs.650/- per insured per month w.e.f. 1st July, 2015.

ii). *The Employees’ share of contribution, i.e., 1% of the minimum wages shall be calculated in the following manner:*

Rs.80/- per insured per month w.e.f. 1st July, 2012 till 30th June, 2013.

Rs.100/- per insured person per month w.e.f. 1st July, 2013 till 30th June, 2014.

Rs.120/- per insured per month w.e.f. 1st July, 2014 till 30th June, 2015.

Rs.130/- per insured per month w.e.f. 1st July, 2015”.

10. On the basis of above Circular No.01/2015-16 dated 01.03.2016, the Regional Office Hub and Quetta of EOBI issued the impugned notices to the petitioners claiming Employer's share of contribution on the basis of revised rates in pursuance of Amendment Act 2016 which has been challenged by the petitioners by filing the instant Constitution Petitions.

11. While issuing impugned notices to the petitioners, the Regional Office Hub and Karachi of EOBI have failed to appreciate that the Circular No.01/2015-16 dated 01.03.2016 issued by the Head Office of EOBI in compliance of Amendment Act 2016 has its applicability only to the Islamabad Capital Territory and it cannot be made applicable in the Provinces.

12. While issuing the impugned notices to the petitioners for demanding Employer's share of contribution on the basis of revised rates, the Regional Office Hub and Quetta of EOBI have erred in law and have wrongly applied the Amendment Act 2016 to the Province of Balochistan whereas in the Amendment Act 2016, its applicability has specifically been mentioned only for Islamabad Capital Territory.

13. Similar notices were issued by the Regional Offices of EOBI in other Provinces which were challenged by the concerned

Employers and the issuance of similar notices to the Employers of other Provinces by the Regional Offices of EOBI were declared void and of no legal effect by the High Courts of the sister Provinces.

14. Reference in the above regard is made to the common judgment dated 13.05.2016 passed by the Lahore High Court in Writ petition Nos.10433/2016 & identical petitions wherein it was declared as follows:

“10. For the above reasons, it is declared that impugned Circular dated 01.03.2016 issued by EOBI in pursuance to the aforesaid Amendment Act has no application to the Province of the Punjab. AS a consequence the demand raised against the petitioner, by EOBI in Punjab in pursuance to the impugned Circular, is therefore, held to be unconstitutional and illegal, hence set aside.

11. This writ petition, as well as the petitions mentioned in the Schedule-A are allowed in the above terms”.

15. Reference in this regard is also made to the judgment dated 30.01.2018 passed by Peshawar High Court in Writ Petition No.1465-P/2016 concluding para whereof reads as follows:

7. In view of what has been discussed above, as the impugned notices have been issued by the EOBI in pursuance to the Amendment Act ibid which is not applicable to the province of Khyber Pakhtunkhwa, therefore, the upwardly demand against the petitioners by EOBI in Khyber Pakhtunkhwa in pursuance to the impugned notices is therefore, held to be unconstitutional

and illegal, hence set aside. Resultantly this writ petition as well as the connected writ petitions mentioned above are allowed in the above terms”.

16. Reference in this regard is also made to the order dated 08.05.2017 passed by Lahore High Court Multan Bench in Writ petition No.5648/2016 concluding para whereof reads as follows:

“6. The facts and circumstances of judgment referred supra are on all four to facts and circumstances of these cases. I also agree with the reasons recorded and conclusion drawn in the afore-noted writ petition. Therefore, these writ petitions are also allowed in same terms as of judgment dated 13.05.2016 passed in W.P. No.10433/2016. Consequently it is declared that impugned circular has no application to Province of Punjab. Resultantly demand raised against the petitioners in pursuance to impugned circular dated 01.03.2016 is held to be unconstitutional and of no legal effect, hence set aside”.

17. The objection raised by learned counsel for EOBI about non-maintainability of the instant Constitution Petitions in view of alternate available remedy of filing complaint under section 33 of the Employees’ Old-Age Benefits Act, 1976 (hereinafter “**the Act 1976**”), filing of review application under section 34 of the Act 1976 and appeal to the Board under section 35 of the Act 1976 is overruled as the controversy raised in the instant Constitution Petitions relates to applicability of Amendment Act 2016 to the Province of Balochistan or otherwise and applicability of the same by Regional Offices of

EOBI to the Employers of different organization in the sister Provinces has already been declared unconstitutional by the respective High Courts in constitutional jurisdiction.

For the above reasons, the Constitution Petition Nos.410 & 581 of 2016 are accepted. It is declared that Circular No.01/2015-16 dated 01.03.2016 issued by EOBI Head Office and the Amendment Act 2016 are not applicable to the Province of Balochistan. The demand notices issued by the Regional Office Quetta and Regional Office Hub of EOBI to the petitioners claiming Employer's share of contribution at the revised rates on the basis of Amendment Act 2016/Circular No.01/2015-16 dated 01.03.2016 are declared illegal, void and of no legal effect.

Announced in open Court
on 18th August, 2022.

CHIEF JUSTICE

JUDGE.