

Payment of wages during lockdown - An alternate view

The onset of the Covid-19 pandemic has brought about unprecedented challenges globally. Economic activity has come to a grinding halt and many industries are struggling to stay afloat. The Government of India, in the larger interest of safeguarding lives, imposed a nationwide lockdown from the night of March 24, 2020. The first phase was followed by an extension which is likely to last till May 3, 2020.

The objective of imposing a lockdown was to restrict public movement in order to contain the spread of the deadly Covid-19 virus. Due to the lockdown, several persons including *migrant workers* were stranded across the nation, which posed a greater challenge regarding their means of livelihood. As a result, the Ministry of Home Affairs (MHA), Government of India, issued Notification No. 40-3/2020-D -(A) dated March 29, 2020, whereby the Chairperson, National Executive Committee, while exercising its powers under section 10 (2)(1) of the Disaster Management Act, 2005, directed all the employers to make payment of wages to their '*workers*' without any deductions. This was also followed by several similar notifications issued by different states.

As the lockdown was imposed in the last week of March 2020 followed by this notification issued in the end of March, most of the employers did not have any issues when it came to payment of wages for the month of March.

However, as we stepped into the month of April, followed by the second phase of lockdown, the bigger question that started bothering employers across the country, was that in the absence of any work coupled with low or zero business income, whether such employers are legally bound to pay wages to their workers in the light of the notification dated March 29, 2020.

Now this brings us to the most crucial question as to the intent and objective of the notification in the light of the prevailing circumstances.

The purpose of this notification was to contain the spread of Covid-19 by restricting the movement of workers and also entitle them to wages so that those who are working in a different city are able to overcome the hardships of being away from home. This is increasingly evident from the second paragraph of the notification which says:

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“Whereas, movement of a large number of migrants has taken place in some parts of the country so as to reach their hometowns. This is a violation of the lockdown measures on maintaining social distance.”

The emphasis in the above paragraph of the notification is on stopping the movement of ‘*migrant workers*’ to reach their hometowns.

Now let us focus on Clause (iii) of the notification, which says:

“(iii) All the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages to their workers at their workplaces on the due date, without any deduction for the period their establishments are under closure during the lockdown”.

On finer analysis of Clause (iii), we come across the most crucial words used in the notification, ‘*at their workplaces*’, which indicate or refer to the intention of this notification which focuses on the migrant workers who were left stranded at their place of work due to the sudden lockdown.

Thus the notification impliedly classifies two categories of workmen – firstly, the *local workers* or *resident workers*, and secondly, the *migrant workers*.

In the light of the foregoing discussion, I am of the view that the direction given in the notification dated March 29, 2020 to pay wages is with respect to migrant workers only. I have an apprehension that with this line of argument, the courts may take recourse to “The beneficial rule of interpretation”. But it also has to be kept in mind that the government, while issuing this notification, would also have kept in mind the interest of the employers whose survival is crucial to not only to generate employment, but also to ensure that jobs are kept safe. This notification seems more like a balancing act rather than something for the leverage of only the workmen. The above views are personal based on my understanding of the law and the prevailing environment in the country and is subject to approval by Court of Law.

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