

Labour & Employment Bytes

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📌 Government Allows Movement of Stranded Labourers with Conditions

- *Yash Gupta, Legal Intern*

The Government of India is planning on preparing a Standard Operating Procedure (“SOP”) on the movement of migrant labourers and other people who are stuck amid coronavirus lockdown in pursuance of the guidelines as per the Union Home Ministry on the matter. Migrant labourers, tourists, students, and other people who are stuck in different parts of the country are allowed to move to their respective destinations with certain restraints according to the order¹ issued by the Ministry of Home Affairs (“MHA”) on 29th April, Wednesday.

There has been a phenomenal improvement in the situation because of the lockdown keeping in mind the pandemic till now. To ensure that such improvements are not wasted away, the government is keeping a regular check and strict actions are taken to maintain it. The Union Home Ministry also modified the lockdown measures in order to allow movement of migrant labourers across the states but with strict health procedures and check-ups. The ministry also mentioned that the new guidelines amid the COVID-19 outbreak will come into effect from 4th May 2020

¹<https://www.mha.gov.in/sites/default/files/MHA%20Order%20Dt.%2019.4.2020%20with%20SOP%20for%20movement%20of%20stranded%20labour%20within%20the%20State%20and%20UT.pdf>

and lead to considerable relaxations and moderations in several districts and states.

The migrant labourers would be assessed by the local health authorities and will be kept in home quarantine after they or any person travelling with them have arrived at the destination unless the assessment requires keeping a particular person in institutional quarantine. The MHA said in a directive issued on Wednesday 29th April that they would be kept under continuous surveillance with regular health check-ups, such people may be asked to use the Aarogya Setu (an initiative by the Government of India) application through which their health status can be observed and followed at timely and regular intervals of sufficient periods.

All the States and Union Territories (“UTs”) have been asked to elect certain fixed authorities and develop standard rules for welcoming and sending stranded persons. Registration of such stranded persons within their States and UTs by those authorities is mandatory.

The order also specifies the use of social distancing norms at every point of time and how they should be followed during the stranded migrants' travel to their hometowns. The order also stated that strict social distancing standards should be followed during the journey by bus, and proper sanitization of those buses used for transport should be done as per the guidelines established by the Health authorities. Further, it states that the Nationwide instructions for COVID-19 management issued under the revised guidelines² on 15th April 2020 shall be strictly followed and that the local authorities' setup by the State Governments shall also provide for water and food and other essentials for the time being of their transit.

📌 Non-Applicability of the principle of estoppel where there are clear illegalities in the selection criteria

²<https://www.mha.gov.in/sites/default/files/MHA%20order%20Dt.%2015.04.2020%20with%20Revised%20Consolidated%20Guidelines%20compressed%20283%29.pdf>

- *Rajeev Rambhatla, Head-Hyderabad*

The Apex Court on April 8, 2020, passed a judgement in the matter of *RAMJIT SINGH KARDAM vs. SANJEEV KUMAR*³, where the bench of Justice Ashok Bhushan and Justice Navin Sinha recapitulated that where there is obvious unlawfulness in the selection criteria from the part of the employer, the principle of estoppel is not applicable in that case.

The facts of the case were the Haryana Staff Selection Commission put an advertisement for the invitation of the application of post including 1,983 Physical Training Instructor (“PTI”). After receiving somewhat 20,000 applications for the post, the commission put up another advertisement to the effect that the commission has decided to hold the written examination for the same. A public notice was issued from the commission saying that due to several complaints and reports with regards to cheating and misconduct that has been committed in the exam, the written examination got cancelled after being held on January 21, 2007. Another notice was published regarding re-examination in written form, and after a mere 20 days, another notice came cancelling the same. After this whole fiasco, the commission notifies the applicants about shortlisting the eight times candidates for interviews due to a large number of applicants. On July 18, 2008 the schedule for the interview of 15,582 candidates was published by the commission. The result of the same was declared by the commission one and a half years later on 10.04.2010 and was published the next day which also included the criteria adopted for the selection which was practically vague.

The matter was first filed in the Punjab and Haryana High Court where the court set aside the selection process adopted by the Haryana Staff Selection Commission for the post of the Physical Training Instructor. The judgment given by the Haryana and Punjab High Court was upheld by the bench of Hon’ble Justice Ashok Bhushan and Navin Sinha.

The Apex Court also referred to the case of *Raj Kumar and Others Versus Shakti Raj and Others*⁴ and *Bishnu Biswas and*

³https://main.sci.gov.in/supremecourt/2013/35694/35694_2013_0_1501_21591_Judgement_08-Apr-2020.pdf

⁴ (1997) 9 SCC 527

⁵ (2014) 5 SCC 774

*Others Versus Union Of India and Others*⁵ the court mentioned that -

41. *The Division Bench of the High Court is right in its conclusion that the selection criteria, which saw the light of the day along with declaration of the selection result could be assailed by the unsuccessful candidates only after it was published.....*⁶

The Supreme Court also eminently delivers that the selection criteria which was notified was not adopted and the selection criteria which was adopted was not notified until the results were declared which resultantly declines estoppel of the writ petitioners from challenging the selection. The Court in Para 41 also mentioned that the selection and appointment on the post in the State have to conform to the fundamental rights guaranteed to the citizens under Articles 14 and 16.

✚ **Gratuity payable to an employee even after resignation post completion of 5 years of service**

- *Daksh Kwatra, Intern*

The Supreme Court on April 15, 2020, passed a judgement in the matter of *Rajasthan State Road Transport Corporation Ltd. Vs. Smt. Mohani Devi & Another*⁷, where the bench of Hon’ble Justice R. Banumathi and AS Bopanna stated that an employee who has given 5 years of continuous service in employment is liable to be paid gratuity as the resignation comes under Termination as per the section 4(1)(b) of the Payment the Gratuity Act.

The facts of the case are that the respondent has claimed for the benefits of the retirement of her late husband who was appointed for the post of the conductor in the year 1979. In the course of service, the husband started to have a health problem in the year of 2005 and applied for voluntary retirement of which he got no reply from the concerned authorities. Subsequently, he has to submit his resignation on 03.05.2006 as his health deteriorated and had depression; the said resignation was accepted within a

⁶ Para 41

https://main.sci.gov.in/supremecourt/2013/35694/35694_2013_0_1501_21591_Judgement_08-Apr-2020.pdf

⁷https://main.sci.gov.in/supremecourt/2019/5567/5567_2019_32_1502_21600_Judgement_15-Apr-2020.pdf

month. Thereafter the husband filed an application pointing out that he had mistakenly mentioned resignation instead of voluntarily retiring and he desired to be retired in view of his earlier application.

The apex court allowed the appeal and held that –

“.....As rightly pointed out by the learned counsel for the respondents, Section 4(1)(b) of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable if the termination of employment is after 5 years of continuous service and such termination would include resignation as well. In that view, if the gratuity amount has not been paid to the respondent’s husband, the liability to pay the same would subsist and the respondent No.1 will be entitled to receive the same in accordance with the provisions of the Act. In that regard it is directed that the appellants shall accordingly calculate the gratuity and pay the same to the respondent No.1, if already not paid. Such payment shall be made within four weeks from this date.....⁸”

Advisory for employers from the Ministry of Labour And Employment W.R.T. COVID-19 Crisis

- *Aishwarya Sinha, Intern*

The salaried employees are in a bind at a time when the government has instituted lockdowns in many cities to limit the movement of people outside their own homes. For those workers who are unable to attend the workplace or return to work, they are worried whether their salary will be deducted or if they will be terminated from work. A recent advisory to both public and private employers by the Ministry of Labor and Employment to help their employees and workers came as a relief to them. In this regard, the Ministry of Finance also released an Office Memorandum as, due to social distancing and isolation steps to curb the spread of COVID 19, there is a possibility that a number of contract labour and outsourced workers working for the Indian government would be unable to attend work, resulting in a deduction in wages, thus causing them hardship.

⁸ Para 13 Supra

The Office Memorandum states that whenever such contractual, temporary and outsourced ministry and department employees and other government agencies are required to stay at home in the light of the lockdown order relating to COVID 19 prevention, they shall be considered as 'on duty' during such absence time and the requisite pay or wages will be paid accordingly. Such guidelines shall be in force until April 30, 2020.

Although some state governments have even requested that certain private establishments be kept shut until March 31, there may be cases where employers may ask employees to report on duty. This could be true particularly in the case of those workers who due to the nature of their jobs could not work from home.

The Ministry of Labor and Employment has provided advisories to public and private employers and establishments not to fire their employees from their jobs or reduce their salaries, particularly casual or contractual employees.

The advisory states that the devastating situation arising from COVID 19's outbreak is a threat to society and these threats can only be neutralized by the concerted efforts of all.

The advisory states that given the COVID 19 pandemic and the government's consistent efforts to ask the citizen to stay at home and not venture out, the worker or the employee will be forced into reporting for work.

There may be occasions where the employer can, on this basis, dispense with the employees' services or compel them to go on leave without wages or salaries.

According to the advisory, if any worker takes leave, he or she should be considered on duty for this time, without any consequential pay deduction. Furthermore, if the place of employment due to COVID 19 is to become non-operational, the employees of such a unit shall be deemed to be on duty.

The advisory also recognizes that in this situation terminating the employee from work or reduction in salaries would further intensify the crises and not only worsen the employee's financial position but also hamper the employee's morale in fighting their battle against this pandemic.

The advisory issued by the Ministry of Labour and Employment has in the wake of the COVID 19 crisis, thus made efforts to safeguard the jobs of workers and provide them stability.

✚ Impact of COVID 19 on Worker Wages

- Priyanka Kwatra, Intern

A lockdown to stop the spread of COVID 19 has been announced all over the world. This also means that the business has come to a standstill until the situation normalises. All business activities, private and public sectors, educational institutions, etc are all forced to shut down to prevent the further spread of Coronavirus. Although most of the firms are expecting their employees to work from home, many of them have also been affected with a financial crisis and hence their salaries have been deducted and many employees all over the world have lost their jobs.

During this period many individuals who have lost their jobs are facing difficulties for survival, especially people of lower-income groups and hiking of prices due to lack of availability of resources in various sectors. The lockdown in the country have been extended for the third time as there are positive cases in several parts of the country. The government has divided the 7433 districts in the country as Red Zone, Orange Zone and Green Zone. These three zones are said to have different levels of restrictions in order to prevent the spread of Coronavirus. Currently, the lockdown is said to end on May 17, 2020.

A judgment⁹ was given by the Bombay High Court, Aurangabad bench by Justice R V Ghuge April 30, 2020. According to this judgment, the areas wherein the lockdown has been lifted, workers are expected to be

⁹ Writ Petition No 10569 of 2020, before the High Court of Bombay (Aurangabad Bench).

present in their workplaces and do their duties and the absence of it would cost them deductions from their salaries or wages. The same has been done in the industrial areas of Maharashtra. This has been done to allow workers to get back to work so they don't have to undergo survival issues in the lockdown. If the workers working in such areas are not present, the employers are allowed to deduct the wages of these workers. It is expected that they shall be allotted various schedules for their shifts and the working pattern shall differ from before to prevent all workers working during the same shift in order to prevent the spread of the coronavirus. The management has the power to deduct the wages of the workers who are absent subject to the procedure laid down by the law, applying to the areas in the city where there has been no lockdown.

Justice R V Ghuge has clarified while denying to interfere with the order issued by the Ministry of Home Affairs on March 29 further modified on 15th April 2020. In the case of *Align Components Pvt Ltd vs Union of India*¹⁰, as contended by the petitioners, there was ample of work being offered by management to workers for the purpose of working but there have been certain restrictions imposed on the manufacturing related activities regarding their continuance in order to prevent the spread of COVID 19. Due to this, a decision of shutting down manufacturing activities has been undertaken by the management and it is prayed by them to exempt from paying monthly wages to their workers till the waiving of lockdown and normalcy of activities. It was also submitted by the petitioners that they would agree to pay 50% of gross wages or minimum rates of wages, whichever has more value, under the Minimum Wages Act. No interim relief was granted by the Apex court to the petitioners and a two weeks' time period was given as noted by Justice Ghuge, also noting that the Kerala High Court has stayed an order which is issued by the Finance Department on April 23, 2020, stating that the permission of 50% salary and remaining 50% of the payment was deferred. It was concluded that the petitioners were to pay the gross monthly wages to their workers, save and except conveyance allowance and food allowance in case of the workers who are paid on monthly basis in case of workers not required to perform duties. Liberty was granted to the

¹⁰ Ibid.

petitioners to add workers representatives to come forward with intervention and the payment of gross wages by them to the workers was to be subject to the result of this petition, next hearing being on May 18, 2020.

The lockdown has been lifted in some parts in the districts of various states which provides a green light to get back to work or employment with the new addition to rules to prevent the spread of the virus. Some experts support the urgency to get back the country to normalcy and resume their work again in order to make up for all the losses incurred in employment during the lockdown. Some experts say that more deaths of people will cause due to unemployment and poverty than the coronavirus. The state of Karnataka has also taken the decision to slowly resuming back to normalcy as many places of work have already geared. Many workers do not intend to work during this lockdown to prevent further spreading and on the other hand, if they are not present in workplaces, they lose their salaries. This has forced the workers to be present in their workplaces.

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