

IMPACT OF COVID-19 ON EMPLOYMENT

Impact of Covid-19 on Employer-Employee Relationship

In view of the COVID-19 pandemic and the lockdown implemented nationwide as a result thereof, there is a chaos and confusion on many contractual relationships and way forward. Due to the spread of the COVID-19 pandemic, the Central and State Governments directed all non-essential services to shut down and to practice social distancing. Due to the aforesaid lockdown the industries across all sectors are suffering grave economic losses as their operations are completely halted. Consequently, even the temporary workers and daily wagers are impacted.

The outbreak of the COVID-19 pandemic has had a huge catastrophic effect on the earnings globally whose effects have further percolated to the working classes. The International Labour Organization (“ILO”) estimates that 1.25 billion workers, representing almost thirty eight (38) percent of the global workforce which are employed in sectors that are now facing a severe decline in output, could be at a high risk of displacement.

According to Guy Ryder, ILO Director General:

“Workers and businesses are facing catastrophe, in both developed and developing economies... We have to move fast, decisively, and together. The right, urgent, measures, could make the difference between survival and collapse”

According to a study:

“Large-scale, integrated, policy measures are needed, focusing on four pillars: supporting enterprises, employment and incomes; stimulating the economy and jobs; protecting workers in the workplace; and, using social dialogue between government, workers and employers to find solutions”

According to the ILO, *“The COVID-19 crisis is expected to wipe out 6.7 percent of working hours globally in the second quarter of 2020 – equivalent to 195 million full-time workers”.*

ILO states that *“Policy responses need to focus on providing immediate relief to workers and enterprises in order to protect livelihoods and economically viable businesses, particularly in hard-hit sectors and developing countries, thus ensuring the conditions for a prompt, job-rich recovery once the pandemic is under control.”*¹

As a result of the complete shut-down of industries, the employers face immense hardships on account of lack of generation of revenues and no order books to fulfil, this has further had a cascading effect on the employees as well. Keeping in mind the economic losses suffered by the industries and the plausible measures that the companies may take (by terminating employment and withholding salaries of workers) to mitigate these losses, which may further lead to widespread social and economic problems, the Central and the State Government in India have issued circulars directing the companies and industries across sectors to refrain from terminating and withholding salaries of the worker class.

The Ministry of Home Affairs issued an Order dated March 29, 2020 (**“MHA Order”**) under the powers conferred upon it under Section 10(2) (I) of the Disaster Management Act, 2005 (the **“Act”**). The MHA Order in view to mitigate the economic hardships of the migrant workers directed the authorities to implement the following measures. The relevant portion of the MHA Order which deals with employment issues is reproduced herein below:

*“All employers, be it in the Industry or in the shops and commercial establishments, shall make **payment of wages of their workers**, at their work places, on the due date, **without any deduction**, for the period their establishments are under closure **during the lock-down.**”*

Pursuant to the issuance of the MHA Order, the Government of Maharashtra vide a resolution dated March 31, 2020 (**“GOM Resolution”**) under the powers conferred upon it by Rule 24 of the Disaster Management Rules, 2005, also issued similar guidelines to safeguard the employment status of workers.

The relevant portion of the GOM Resolution is reproduced herein below:

*“.....All the workers (either on contract basis or outsourced worker/ employees, temporary worker/employee or daily wage workers) working in private organizations, industries, companies, shops (except essential services organizations) etc., who have to stay at their houses due to spread of covid-19 virus **shall be assumed to be on work and these workers/employees shall be given complete salaries and allowances to which they are entitled to.***

These orders shall apply to all semi-governmental, industrial, commercial institution, traders and shops within the State of Maharashtra. For the purpose of the strict compliance of this order, the concern authority shall take all necessary measures.”

The aforesaid MHA Order and GOM Resolution apply to workers across all sectors who are drawing wages and whose establishments are closed during the lockdown period.

Furthermore, the provisions of the aforesaid MHA Order and GOM Resolution have been made mandatory and non-compliance of the same in respect of the MHA Order will attract penalty under the Act and in respect of the GOM Resolution will be looked into by the concerned authority enforcing the said GOM Resolution. The MHA Order and GOM Resolution address two core issues in respect of the employment. In this Article the MHA Order and GOM Resolution have been analysed in respect of two broad classes of persons employed:

A. Workers:

1. Payment of wages:

The MHA Order and GOM Resolution state that the workers have to be paid full wages during the lockdown period. For the purpose of the aforesaid MHA Order and GOM Resolution, it is pertinent to understand the meaning of the term “worker” under various statutes:

(a) Section 2(l) of Factories Act, 1948

“a person employed, directly by or through any agency (including a contractor) with or without the knowledge of the

principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of manufacturing process

(b) Section 2(26) of the Maharashtra Shops and Establishment Act, 2017:

“any person (except an apprentice under the Apprentices’ Act, 1961) employed to do any manual, skilled, unskilled, technical, operational or clerical work for hire or reward, whether the terms of employment be express or implied”

(c) Section 2(s) of the Industrial Disputes Act, 1947

“any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial

Dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.....”

Further, for the purpose of the MHA Order and GOM Resolution, it is also important to understand the meaning of the term “wages” under various statutes:

(a) Section 1(6) of the Payment of Wages Act, 1936 (“POWA”) states that the provisions of the POWA are applicable to persons who draw a monthly remuneration of Rs. 24,000/ (Rupees Twenty-Four Thousand Only).

(b) Section 2(vi) of the POWA defines “wages” as follows:

“all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done employment, and includes ...”

(c) Section 2 (rr) of the Industrial Disputes Act, 1947 defines “wages” as follows:

“all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes.....”

In view of the above legal provisions read along with the MHA Order and GOM Resolution, it is inferred that the employers have to pay their workers’ (who fall within the categories as defined herein above) across sectors, full salaries during the lockdown period and non-compliance of the same will attract penalty under the applicable Act. The GOM Resolution further clarifies that the worker class staying home in order to curb the spread of COVID-19 virus will be assumed to be on duty.

2. Termination/retrenchment of services of the workers

The termination/retrenchment of employment of any worker is regarded as dismissal and if disputed will tantamount to industrial

disputes. The term dismissal is stated in Section 2A of the Industrial Disputes Act, 1947 the relevant portion of the Section is reproduced below:

*“Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute”*The term retrenchment and termination is defined as under Section 2(o) of the Industrial Disputes Act, 1947:

“retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the

employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.”

Upon analysis of the aforesaid MHA Order and GOM Resolution, it is inferred that the said MHA Order and GOM Resolution have directed the payment of wages until the period of the lockdown and hence in view thereof, no termination of employment (of workers) will be permitted during the period of lockdown. Anything done contrary to the same will attract penalty under the applicable Act and necessary action taken by the concerned authority. It is to be noted that the companies as well as employees have filed petitions before the Hon'ble Supreme Court challenging the MHA Order and the GOM Resolution and have also filed

filed intervening applications in such cases challenging the aforesaid MHA Order and GOM Resolution cases². In response to the aforesaid petitions, the trade unions have also filed intervening applications stating sympathetic grounds which should be considered given the financial condition of the workers.

3. Reduction of wages of workers

Upon the analysis of the MHA Order and GOM Resolution, it is inferred that until the lockdown is in effect, employers will have to pay the workers full salaries on their respective due dates, any deductions of the same will be seen as a contravention of the said MHA Order and GOM Resolution and will be acted upon under the provisions of the applicable Act and by the concerned authority.

B. Employees:

1. The term “employee” is defined in various statutes including Section 5 (s) the Industrial Act, 1947 to mean persons who hold managerial or administrative positions. The roles of such persons are supervisory in nature. The relevant portion of the Section is reproduced herein below:

“5(s)

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature”

2. The term “employee” can be further understood from Section 3(11) the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 which states that it will not apply to a worker who occupies a managerial or supervisory position in an establishment. The relevant portion of the Section is reproduced herein below:

“3. The provisions of this Act shall not apply to,

.....

11) A worker occupying position of confidential, managerial or supervisory character in an establishment”

3. The term “employee” is further defined in Section 2(6) of the Bombay Shops and Establishment Act, 1953. The relevant portion of the Section is reproduced herein below: *‘2(6) "Employee" means a person wholly or principally employed, whether directly or through any agency, and whether for wages or other consideration in or in connection with any establishment; and includes an apprentice, but does not include a member of the employer's family’.*

4. Payment of wages to employees

Upon the analysis of the MHA Order and GOM Resolution, it is inferred that the MHA Order and GOM Resolution do not extend the same relief to the employees of an organization. As the employees are not worker class as is evident from the definitions stated herein above, they do not fall within the ambit of the MHA Order and GOM Resolution. The decision for non-payment of salaries to employees can be executed provided the same is done in consonance with the relevant policies, employment contract and applicable laws.

In order to overcome the hardship, the employer could also negotiate with the employees on deferred or reduced salary for certain period of time or part time or any other workable proposal in view of such tough times which is impacting employers as well as employees.

5. Termination of services of employees

Upon the analysis of the aforesaid MHA Order and the GOM Resolution, it is inferred that the said MHA Order and GOM Resolution is in respect of workers (which are defined herein above) and it directs that the services of the workers will not be terminated during the lockdown period. While the workers have been protected under the said MHA Order and GOM Resolution, the same blanket relief has not been provided to the employees.

In view thereof, we are of the view that the services of employees in senior cadre is more likely to be impacted. Such termination shall be governed by their respective contracts, applicable laws and company policies.³

It will be an uphill but inevitable task for the Government to take decision on way to balance interests of all citizens. In our opinion, Government will have to seek for avenues of supporting the industry as well as employees/workers by offering loan on provident fund or early withdrawal, direct subsidy, etc. and tax exemptions or other subsidies to industries to assist in these unprecedented times preceded by recession. It may be interesting to defer to steps taken by other countries while making a decision balancing interests of capitalists as well as socialists. For example, The Governments of the United Kingdom has introduced the Coronavirus Job Retention Scheme (CJRS) in an effort to support employers whose operations have been severely affected by COVID-19. The CJRS is also known as the "furlough" scheme. Under the CJRS, the Government of United Kingdom will reimburse employers for 80% of 'usual monthly pay'⁴. Whilst the Canadian Government has introduced measures to support small employers, wherein they will be eligible for a temporary wage subsidy to help prevent lay-offs. Furthermore, employers who are directly or indirectly affected by a downturn in business caused by COVID-19 could consider

3- Arun Saravanan Vs the Government: Writ Petition (Civil) No. 7519 of 2020

4- <https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme>

opting for the federal Work-Sharing program. This program, provides benefits for eligible employees. The income support is designed to help eligible employers avoid layoffs during certain temporary reductions in business activity, such as the COVID-19 outbreak. For Canadians who risk losing their jobs or face reduced hours as a result of COVID's impact, the Government has introduced an Emergency Support Benefit delivered through the CRA to provide up to \$5.0 billion in support to workers who are not eligible and who are facing unemployment amongst other measures.⁵ The Spanish⁶ and Italian⁷ Government have also taken steps to ensure that the employers and employees are both taken care of and that in under no circumstances does one feel burdened to take over the responsibilities of the other.

5- <https://www.canada.ca/en/employment-social-development/services/work-sharing.html>

6- <https://www.lamoncloa.gob.es/lang/en/gobierno/councilministers/paginas/2020/20200327council-extr.aspx>

7- <http://www.mef.gov.it/en/inevidenza/Protect-health-support-the-economy-preserve-employment-levels-and-incomes-00001/>

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