
“PAYMENT OF WAGES TO WORKERS DURING EPIDEMIC”

Abstract

This article explores in the field of the beneficial legislation related with workers i.e. the payment of wages Act, 1936 and Minimum wages Act, 1948 are to make sure that the employer has to make a payment of wages to the workers who works for the employment but this article will also emphasis on the employer's rights. Now, the real question arises that whether an employer has a responsibility to pay the wages during lockdown? On the other side, due to covid-19 pandemic, India has declared complete lockdown and because of that the factories, industries & Companies are not working and because of that production has stopped. This article will be dealing the core intention behind the enacting the Act and analysis the situation created due to novel coronavirus. Every worker has a right to get minimum wages but now the question again arises whether the workers entitled to get 100% wages from the employer? Or how the government plays an important role to get rid from this problem. In this article, the author will also be analysis the situation which can be resolve by judiciary & government support.

Index Terms: wages, lockdown, beneficial legislation, employer, worker, minimum wages etc.

**[I]. INTRODUCTION**

Novel Coronavirus is spreading rapidly day by day in the world including India and public health emergency declared by World Health Organisation because of that the Indian Government has declared complete lockdown throughout the country so that it can be stopped from spreading in in a country.¹ Moreover, it affects the commercial market as well as industries & factories. All the Industries, companies & factories have shut down and stopped the production. Most of the workers who earned money on daily wages are mostly affected by this lockdown.² In this situation labour laws play any important role to provide wages to employees. There are always two side of the problem i.e. on the welfare of the workers and on the other side, burden on the employer to pay wages without any revenue. However, the Government intervention is really needed to solve out this problem and in order to attain equilibrium, the government should come

¹*Circulars of Covid-19, Ministry of Home Affairs, Government of India,*
<https://www.mha.gov.in/notifications/circulars-covid-19>

²*ILO Monitor: COVID-19 and the world of work, 3rd Edition, International Labour Organisation.*
https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_743146.pdf

up with a subsidized scheme that would finance the employers towards the wage payment during lockdown. This would in turn rescue both the employers and workers.

At the present, the govt. has passed the order to employers to pay wages to workers without any deductions and treat as the workers are on duty. Will the govt. has the power to issue order under Disaster Management Act or any other statutory law? The question remain debated and in this article, the author will analysis the legality of order passed by Government. Moreover, the legality of order should be explain by analyzing the Disaster Management Act, 2005, Industrial Disputes Act, 1947, Epidemic Disease Act or any other statutory law. This article examines the validity and enforceability of the Government Order.

[III]. PAYMENT OF WAGES DURING NATIONAL LOCKDOWN: TO PAY OR NOT TO PAY?

There are two views from the perspective of contract law or labour laws. In the view of contract law, an employer is obligated to pay the wages to the workers who works for the employer and the employees rendered services to the employer and he is under the contractual obligation to pay the amount but on the other side, during lockdown, the workers have not rendered any services or work which can be benefitted to the employers. Therefore, employer is not obliged to pay the wages to the workers

Now, from the point of Industrial dispute Act gives the right to employer to go for lay off. The situation of lay off arises when the employer is unable to give employment to employee for any reason i.e. natural calamity, breakdown of machinery, shortage of coal and any other reason related not to give employment. If he do so, then he has to pay 50% compensation of basic wages to workers for 45 days and after lay off continues he is not liable to pay wages.³ Apart from that, there is no specifically a provision which deals with payment of wages during natural calamity.

Due to lockdown, the employers are not getting any revenues and if the government puts the burden to pay the wages without any rendering services then the establishment will lead into insolvency and that would not be good for economy too. The government cannot cause the financial hardship to industrial establishment by forcing them to pay the wages to workers.

[III]. LEGALITY OF ORDER: ADVISORY OR MANDATORY?

³ Section 25C and Section 25M of Industrial Dispute Act, 1947

Government has passed two orders i.e. the first order in the form of advisory and second is mandatory and violation of it made punishable in Disaster Management Act and Indian Penal Code. After looking at the Epidemic Diseases Act & Disaster Management Act, the author found out is that it gives only power to central or state government to control the disaster or take measure to stop spreading the diseases but these Acts never gives a power to give directions to any private establishment to pay wages to workers during lockdown. Therefore, paying the wages to workers is the responsibility of workers and it cannot be shifted to employers. Instead of compelling the employers to pay the wages, the government can utilize the funds collected under State employees insurance Act.

Moreover, in the recent judgment of Maharashtra High court⁴, the Court held that employer can deduct wages of absentee workers in areas where restrictions are relaxed. However, the Government is also bound by the principles which says that when law creates a duty or obligation and party unable to perform it without his default then, it will be valid excuse i.e. impossibility of performances is a good excuse.

[IV]. PAYMENT OF WAGES: MORAL OR LEGAL OBLIGATION?

In the normal circumstances, it is a statutory or legal obligation to pay the wages to workers but it cannot be legal obligation during lockdown where there is no source for making revenue. There is a difference between moral or legal obligation because if we will take the example of Corporate Social Responsibility in which payment of wages during lockdown cannot be treated as CSR expenditure and in the normal circumstances, it will be statutory obligation but during lockdown it cannot be treated as legal obligation. Moreover, it is settled principle of law is that Moral obligation cannot be made legal obligation.⁵ Salary or wages is a legal not moral but payment of salary during lockdown is mere moral obligation.

[V]. FROM THE PERSPECTIVE OF CONSTITUTION OF INDIA

Our constitution is the law of the land (Jus Commune) and According to the principle mentioned under Article 39 which say that Equal pay for equal work and no work no pay. Therefore, the government order is a violation of Article 14 a well because many industries or companies

⁴ *Align Components Pvt. Ltd., and another Vs. Union of India and others, writ petition stamp no.10569 of 2020*

⁵ *Raghunathrao Ganpatrao and Ors. vs. Union of India (UOI) AIR 1993 SC 1267*

allows workers to work from home but some work cannot be done from home. Hence, payment of wages during lockdown to those workers who are not working then the employer is not liable to pay wages to them.

If we read the Article 43 of Constitution which says that living wages to workers and it is the duty of the State to provide basic living wages to the workers and when there is any natural calamity, state is the guardian of the people and State has to provide every opportunities, help & assistance to people.⁶ The State cannot shift its burden to any other entities i.e. passed government order to make employer to pay wages.

The state is bound to protect its citizens and Article 21 guarantees right to life and personal liberty and the citizen has right to live with dignity also. Moreover, it clarifies that the state has to secure the livelihood of people. Further, in the case of *Olga Tellis v. Bombay Municipal Corporation*⁷, the Court held that right to life also includes right to livelihood and it is more important to protect fundamental rights under Part III of Constitution by the State and current lockdown is not due to employers and not have responsibility to pay wages to workers but the state has duty to protect.

[VI]. CONCLUSION

On the basis of above mentioned points, the author concluded that state has a duty to protect its citizen and bound to pay the wages to workers instead of putting the burden of employers. There is no any particular legislation which deals with the problem arises due to lockdown and covid-19. It shows that there is a lacuna in the law for dealing the situation exists during lockdown. The state has to provide helps and assistance to the workers who earns on daily wages and on the other side, if it is mandatory for employer to pay wages then, the establishment will be forced into insolvency and it will be bad for economy. Moreover, Micro, small & medium enterprises has a more contribution in our growth and it will badly impact on development if it is in loss.

Therefore, without any revenues the employer unable to pay the salary and employer has a right under labour laws to lay off and retrench its workers. No provisions in epidemic diseases Act, Disaster Management Act and Industrial laws specifically mentioned about payment of wages by employer nor mentioned about the duty of the employer to give salary to workers. This article

⁶ *B.J. Diwan vs. State of Gujarat AIR 2002 Guj 99.*

⁷ *Olga Tellis v. Bombay Municipal Corporation, 1986 AIR 180*

concludes that it's a State duty to provide wages to workers. It is more in the favor of employer and provide a solution to resolve this problem.

