

# **MHA Order Directing Employers to Pay Wages During Lockdown, Not Applicable to Workers Who Were Unemployed or Unpaid Before the Lockdown: Bombay HC**

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In a significant order, the Bombay High Court has held that order passed by the Union Ministry of Home Affairs under the Disaster management Act directing all states and union territories to ensure that all the employers shall make payment of wages to their workers without any deduction during the lockdown, is not applicable to those workers who remained unpaid and unemployed for a long period before the lockdown. Division bench of Justices Ujjal Bhuyan and Riyaz Chagla heard together the writ petition led by a heavy machinery manufacturing company from Pune named M/s Premier Limited against an order of the Industrial Court directing payment of back wages to the workers who have not been paid since May 2019 along with the writ petition led by Premier Employees Union seeking compliance of MHA's order dated March 29, 2020 and subsequent state GR dated March 31, 2020.

However, Court modified the order of the Industrial Court dated March 20, 2020 to the extent that workers will now be paid half their wages (instead of full wages as directed by the Industrial Court) on or before the tenth day of each month effective from March 1, 2020 till disposal of complaint.

The union raised a grievance of unfair labour practice against the management of the company and on that a complaint was registered before the Industrial Court, Maharashtra at Pune. The company obtained NOC from the office of Commissioner of Labour, Maharashtra for shifting of its plant from the original site. The NOC was conditional in as much as the company had to give an undertaking that it would make full payment of wages and dues to the workmen and ensure continuity of their employment.

In this backdrop, company issued a notice dated March 3, 2020 addressed to all the workmen and staff stating that the management had decided to suspend operations with immediate effect until further notice/orders as per clause 18 of the Model Standing Orders in respect of the workmen and under clause 19A in respect of the staff.

Raising the grievance that the aforesaid suspension notice amounted to unfair labour practice, the union led a complaint before the Industrial Court against the company.

The Industrial Court found that the company did not follow proper procedure while issuing the notice dated March 3 and arrived at the conclusion that the company had committed unfair labour practice. Consequently the Industrial Court directed the company to pay full back wages to the workmen w.e.f. March 1, 2020 on or before the tenth day of each month.

In view of the undertaking given by the company, the workmen did not oppose shifting of the plant, however, the company defaulted and has not paid wages and dues to the workmen since May, 2019. Even after the industrial court order, wages have not been paid, said Senior Advocate Gayatri Singh appearing on behalf of the petitioner union.

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Singh argued that management also did not make any payment towards the legal dues, such as, employers' provident fund contribution, gratuity of retired employees and renewal payment of medical claim insurance premium. Though the workmen expressed willingness to work at the relocated plant but they have not been provided any such work by the management, Singh said.

MHA's order dated March 29, 2020 and the consequent GR issued by the State of Maharashtra on March 31 directing employers to make full payment of wages to workers, labourers, daily wagers etc. was relied upon by the petitioner's advocate.

On the other hand, Advocate Kiran Bapat along with Advocate Manish Lekkar appeared for the Company and argued that because of non-cooperation and "obstructionist approach" of the union, certain customers withdrew their orders thereby causing heavy loss of business and earnings of the company

Therefore to ensure that manufacturing activities are carried on smoothly, the company took loans from several banks over a period of time amounting to Rs.330 crores. As of March, 2020, the company had outstanding dues of Rs.417 crores. That apart, the company also owed Rs.95 crores to other creditors and for payment of employee related dues, Adv Bapat submitted.

Edelweiss Asset Reconstruction Company was engaged for revival of the company. After the factory land was sold, wages until May 2019 were paid to the workers. Moreover, Adv Bapat contended that since the two opposing parties are locked in an industrial adjudication for a cause of action which arose much prior to the lockdown, neither the MHA order dated March 29 nor the government resolution dated March 31 of the Government of Maharashtra would be applicable to the claim of the workmen.

After hearing submissions of both parties, Court observed-

"A conjoint reading of the central government order and the Maharashtra government resolution would go to show that those have been issued to meet the situation arising out of the lockdown.

But the moot question is could the central government order and the Maharashtra government resolution be invoked in a situation where the management and workmen are engaged in an industrial adjudication relating to non-payment of salary / wages and suspension of work much prior to closure of the establishments due to the lockdown? Or where the related cause of action arose prior to the lockdown?

Let us take a hypothetical case. Say an employee / worker is not in employment, for whatever reason, and has not been paid wages for one year prior to declaration of the lockdown. Can he still avail the benefit of the above central government order and the Maharashtra government resolution? In our view the answer to this question would have to be in the negative."

The bench explained -

"To be deemed to be on duty one should be on duty on the date when the lockdown was declared. To be entitled to or for continuity of salary / wages during the lockdown, an employee / worker should receive the same till the month which is previous to closure on account of the lockdown. That apart, when there is an ongoing industrial adjudication pertaining to the claim of the workmen to wages, the claim to wages would be subject to such adjudication. The central government order and the Maharashtra government resolution cannot be invoked to short circuit an industrial dispute which is being adjudicated upon before the competent forum."

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Thereafter, the bench examined the order passed by the Industrial Court and noted that the Company committed unfair labour practice but said-

"We find the above view of the Industrial Court to be contradictory. It is a settled proposition of law that ordinarily the final relief may not be granted by way of an interim order. Power to grant interim relief is discretionary. Such discretion has to be exercised on well-established principles. Since a prima facie view has been taken that the management has committed unfair labour practice, certainly an interim order is called for.

But what should be the nature of the interim order? It is an admitted position that the workmen have not been paid wages post May, 2019. Since their employment has not been disturbed because even as per the management the notice dated 03.03.2020 has only declared suspension of operations, the workmen cannot be left in the lurch."

Thus, Court modified the Industrial Court's order and directed 50% wages to be paid to the workers. Also, the Industrial court has been directed to dispose of the complaint within six months.