



news flash

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WAGES CAN BE DEDUCTED IF WORKER REMAINS ABSENT WHERE LOCKDOWN IS LIFTED

Introduction

The Bombay High Court (Aurangabad Bench) has, on 30 April 2020, passed a landmark order in the case of *Align Components Pvt. Ltd. And Anr. V/s Union of India and Ors.*¹ tagged along with a batch of other petitions² ruling that payment of wages of employees need not be made if they fail to attend work in areas where the lockdown has been lifted.

Brief Facts

- In all these petitions, the petitioner companies have challenged the notification/ order (“**MHA Order**”) issued by the Government of India, Ministry of Home Affairs dated 29 March 2020 which directed employers to make payment of full wages during the lockdown.
- This notification was issued by invoking powers under section 10(2)(l) of the Disaster Management Act 2005.
- Consequent to the lockdown orders issued by the Government of India, the companies were forced to reduce/ shut down their manufacturing activities.

Contentions of the petitioners

- The petitioners contended that they are willing to offer work to the workers and the workers would be willing to perform the work.
- While the petitioners prayed for a full exemption from paying wages, the petitioners also stated that they are willing to pay 50% of the gross wages or the minimum rates of wages prescribed under the Minimum Wages Act, whichever is higher.
- The counsels for the respondents (i.e. Union of India and others) sought time to take instructions.

¹ Bombay High Court (Aurangabad Bench) – Writ Petition (Stamp) No. 10569 of 2020

² Bombay High Court (Aurangabad Bench) – Writ Petition (Stamp) No. 10570 of 2020; Bombay High Court (Aurangabad Bench) – Writ Petition (Stamp) No. 10571 of 2020; Bombay High Court (Aurangabad Bench) – Writ Petition (Stamp) No. 10572 of 2020; and Bombay High Court (Aurangabad Bench) – Writ Petition (Stamp) No. 10573 of 2020.

Ruling of the Bombay High Court

The Bombay High Court held as follows:

1. The Bombay High Court took note of the Supreme Court order passed on 27/04/2020 in a group of matters, in Ficus Pax Private Ltd., Vs. Union of India and others where the Supreme Court has directed the petitions to be listed in two weeks and no interim relief were granted to the companies/ employers who had similarly prayed for a stay of the MHA Order that obliged them to pay full wages.
2. The Court also noted that the Kerala High Court had stayed an order of the Finance department of Kerala by which payment of 50% salary was permitted and 50% was deferred.
3. Considering the Supreme Court is dealing with a similar cause of action, the Hon'ble Judge was not inclined to interfere with the MHA order, and stated that petitioners would be expected to pay full wages.
4. The Court however, made two notable exceptions to the general rule namely –
 - a. food allowance and conveyance allowance if being paid on month to month basis in the cases of those workers who are not required to report for duties, need not be paid; and
 - b. In the areas where the lockdown has been lifted, workers would be expected to report to work as per the shift schedules subject to adequate protection, from coronavirus infections, if such workers voluntarily remained absent, the management would be at liberty to deduct their wages. The relevant paragraph is reproduced hereinbelow:

“8. It is clarified that since the State of Maharashtra has partially lifted the lock down recently in certain industrial areas in the State of Maharashtra, the workers would be expected to report for duties as per the shift schedules subject to adequate protection, from Corona Virus infections, by the employer. In the event such workers voluntarily remain absent, the Management would be at liberty to deduct their wages for their absence subject to the procedure laid down in Law while initiating such action. This would apply even to areas where there may not have been a lock down.”
5. Leave was granted to add workers representative/Union or to intimate the workers representative to come forward with an intervention application.
6. The matter has been listed on 18 May 2020 or on the day the Hon'ble Court holds court hearing thereafter.

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