



18th May 2020

CIRCULAR

CONSTITUTIONAL PETITION CHALLENGING SINDH COVID-19 EMERGENCY RELIEF ORDINANCE 2020 RESTRICTING LAYOFF/ TERMINATION AND REQUIRING FULL PAYMENT OF WAGES DURING LOCKDOWN PERIOD

We would like to inform our members that the Notification under Section 3 of Sindh Prevention of Epidemic Disease Act 2014 placing ban on laying off and direction under Section 3 of Payment of Wages Act 2015 to make payment of salaries irrespective of the fact that the industry is closed down have been challenged in the High Court of Sindh by way of constitutional petitions.

While the hearing of the constitutional petition is going on by this honorable Sindh High Court, the Government of Sindh has promulgated SINDH COVID-19 EMERGENCY RELIEF ORDINANCE 2020 which overrides the provision of the Standing Order.

The Constitutional petition challenging the notification was fixed before the Division Bench of the Sindh High Court and the Honorable Court has allowed to amend the existing petition and is going to hear the case on regular basis for a final disposal.

We have obtained legal opinion on the Sindh COVID-19 Ordinance which is as under:

“Covid-19 Emergency Relief Ordinance 2020 is violative of article 8, 18 and 38 of the Constitution of Islamic Republic of Pakistan.

Article 8 provides that:-

8 (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

(3).....

(4).....

(5) The rights conferred under this chapter shall not be suspended except as expressly provided by the constitution.

Article 18 provides the freedom of trade, business or profession in the following words:-

18. Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Similarly, Article 38(4) provides as follows:

38. The State shall-

(a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;



EMPLOYERS FEDERATION OF PAKISTAN

THE ONLY MEMBER OF INTERNATIONAL ORGANIZATION OF EMPLOYERS, GENEVA, A CONSTITUENT OF INTERNATIONAL LABOUR ORGANIZATION, MEMBER OF COMMONWEALTH ENTERPRISE AND INVESTMENT COUNCIL, CONFEDERATION OF ASIA - PACIFIC EMPLOYERS & SOUTH ASIAN FORUM OF EMPLOYERS.

THE APEX BODY OF EMPLOYERS OF PAKISTAN

(b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure;

(c) provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means;

(d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment;

If three articles referred above be read in juxtaposition; it becomes clear that:--

- Every citizen has a right to do a lawful business
- Any law which take away right to do business is violative of Article 8
- And in case of permanent /temporary unemployment, it is duty of state to provide basic necessities of like such as food, clothing, housing, education, and medical relief.

Therefore, in my humble opinion, the provisions of Covid-19 Emergency Relief Ordinance 2020; are violative of article 8, 18 and 38 of the Constitution of Islamic Republic of Pakistan 1973 and is an escape of state from its duties prescribed by the Constitution.

Therefore, it is advisable, that Covid-19 Emergency Relief Ordinance 2020; be challenged in Honorable High Court of Sindh."

In view of the above legal opinion, companies aggrieved by the Sindh COVID-19 Ordinance have an opportunity to join the constitutional petition in the High Court by filing their petition and joining the case for final disposal of the matters.

Any company desirous to join in the proceedings as a party may do so by sending the following documents immediately but not later than 2nd June 2020 to the EFP Secretariat:

1. Consent letter on the attached format.
2. Board Resolution on company's letterhead and company seal on the attached format.
3. A cheque of the amount of Rs 100,000/- only net of tax in favour of "Zaheer & Zaheer Advocates "On line deposit may also be made in the following account:-Title of Account: Zaheer & Zaheer Advocates, Bank Name: Habib Metropolitan Bank Ltd., Account No.112220311714120425 IBAN No.PK54MPBL112220311714120425, Branch: Shahbaz Commercial sub branch.

Looking forward to your response.

Work Safe, Be Safe.

Sincerely:

Zaki Ahmed Khan
Vice President
& EFP Focal Person

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