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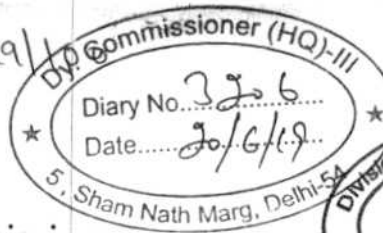
OFFICE OF THE SECRETARY-CUM-LABOUR COMMISSIONER
GOVT. OF NCT OF DELHI
5, SHAM NATH MARG, DELHI-110054

No. P.A/Ad/LC/Lab/2019/110

Dated: 19/06/2019

To

The Divisional Commissioner,
5-Sham Nath Marg, Delhi-110054



Sub: Forwarding duly approved and notified guidelines/ Protocol for recovery of money due under Labour Court Award.

Sir,

Guidelines on above subject which were formulated/recommended by a Committee constituted under Govt. Counsel Sh.Rahul Mehra were accepted by Hon'ble High Court with modifications have been duly approved by Hon'ble L.G. on 27.05.2019, these guidelines have been uploaded on the website of Labour Deptt. i.e. www.labour.dehligovt.nic.in. Art, Culture and Language Deptt., GNCTD has been requested for Hindi translation of these guidelines on receipt Hindi version shall also be uploaded on the website of Labour Deptt.

Copy of duly approved guidelines in English is being forwarded for your kind information.

2019
been action for duly
Consolidation followed

19/6

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JD(IT)

(Dr. Rajender Dhar)
Addl. Labour Commissioner

DC-III

All DMs.

(TO BE PUBLISHED IN PART IV OF THE DELHI GAZETTE EXTRA
ORDINARY)
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
(LABOUR DEPARTMENT), 5, SHAM NATH MARG, DELHI- 110054

No. 1590

Dated:- 17-06-2019

NOTIFICATION

F.No. CWP 8110/2016/Lab/1590

1. Whereas, during the hearing of W.P.(C) no. 8092/2016: Santosh Kumar Jha vs. The Deputy Labour Commissioner(South), Hon'ble High Court of Delhi has observed that there are no guidelines/timelines for recovery of amounts in terms of Labour Court/Industrial Tribunal Award in favour of workman, hence in many cases there is considerable delay in recovery of the due amount which causes financial hardships to the workmen;

2. And whereas, in order to address this issue, the Hon'ble High Court has constituted a committee for laying down procedure/guidelines prescribing for procedures for recovery proceedings under Section 33C(1) of the Industrial Disputes Act, 1947("hereinafter the said Act"), under Employees Compensation Act, 1923, under Motor Vehicles Act, 1988 and other statues, which provide for the recovery as arrears of land revenue by the Authorities concerned;

3. And whereas, on the direction of Hon'ble High Court, the said Committee (constituted by the Hon'ble High Court) convened several meetings and submitted a detailed/comprehensive report on 22.02.2017 setting out step by step procedure for issue of Recovery Certificate;

4. And whereas, the Hon'ble Court while accepting the report of the Committee has modified the said report vide its order dated 27.03.2017;

5. And whereas, the Hon'ble Court vide its order dated 27.03.2017 has also directed to Gazette notify the guidelines as detailed in the report of the Committee and also modified by the Hon'ble Court;

6. Now, therefore, the Hon'ble Lt. Governor has considered the report and modifications advised by the Hon'ble Court and duly incorporated in the notification and which are being issued as guidelines for conduct of recovery proceeding under section 33C(1) of the said Act.

A. Guidelines to be followed by the Labour Department Authorities.:-

- (i) Upon receipt of an application in Form K1/K2 from a workman/trade union/heir of workman seeking execution of an award or settlement or computation and recovery of an admitted or indisputable amount due. The said application may be filed before. Assistant Labour Commissioner/Labour Officer.

- (ii) The Assistant Labour Commissioner or Labour Officer shall issue notice for appearance to the defaulter management along with detailed self declared proforma giving details about the employer and details of his asset, bank account, as per Annexure-A.
- (iii) Not more than two-opportunities shall be provided to the defaulter management to show cause why award of the labour court/ tribunal has not been implemented and why recovery certificate be not issued against the management.
- (iv) In case nothing as mentioned above is established by the defaulter management or in case they fail to appear in any of the proceedings, in such cases Recovery Certificate shall be issued by the concerned district Joint Labour Commissioner/ Deputy Labour Commissioner.
- (v) The Labour Department while sending the recovery certificate shall also send the self declaration/affidavit(if any) received from the management to the concerned Sub-Divisional Magistrate.
- (vi) The whole process shall be completed within six-weeks (one and half month) from the date of institution of the claim.
- (vii) The Labour Department, district wise on its website shall indicate: (a) details of application filed (b) the next date of proceedings/ hearing and (c) the status of the application. The cause list and daily orders shall also be uploaded on the website of Labour Department. Hard copy of the cause list shall be displayed outside the room of Assistant Labour Commissioner/Labour Officer concerned.

B. Guidelines to be followed by the Revenue Department Authorities/ Sub-Divisional Magistrate.

- (i) The most important aspect in execution proceedings is to ascertain the assets/means of the respondent to satisfy the award/order and, therefore, in fresh cases the sub-Divisional Magistrate shall direct the respondent on the very first hearing to file an affidavit of his assets, income and expenditure in the form attached hereto as annexure-A within thirty days of the receipt of the notice. With respect to the pending matters, direction to file the affidavit of assets, income and expenditure be issued within fifteen days of the commencement of these guidelines.
- (ii) The notice issued to the respondent shall indicate the direction to file the aforesaid affidavit within thirty days of the receipt of the notice and Annexure-A shall be attached to the notice. The notice shall also indicate that the proceedings for detention of the respondent may be initiated in

the event of the non-filing of the affidavit within thirty days of the receipt of the notice. The notice shall also indicate that the respondent shall remain present before the Court.

- (iii) If the respondent files the affidavit but is not willing to satisfy the award/order, the Sub-Divisional Magistrate shall proceed to attach the assets of the respondent in accordance with law.
- (iv). Upon the aforesaid affidavit being filed, the sub-Divisional Magistrate may examine the respondent and/or conduct an inquiry to examine whether the respondent has truly disclosed his assets, income and expenditure in his affidavit.
- (v). If the respondent fails to appear and file the affidavit of his assets, income and expenditure, the sub-Divisional Magistrate may initiate proceedings for his detention in accordance with law.
- (vi). The Sub-Divisional Magistrate shall follow the principles of natural justice by affording a reasonable opportunity to the respondent.
- (vii). All proceedings before the sub-Divisional magistrate shall be held in open Court. The daily cause list of the cases shall be displayed outside the Court Room and the orders passed by the SDM shall be released on the website of the respective Sub-Divisional Magistrate /E-Courts portal within one week.
- (viii). The Sub-Divisional Magistrate shall follow this procedure in respect of the proceedings under Industrial Disputes Act, 1947 Employer's Compensation Act, 1923, Motor Vehicles Act, 1988 as well as other statutes which provides for the recovery as arrears of land revenue.

C. Common guidelines for Labour and Revenue Departments.

- (i). Suitable software programme/ web service for revenue officers shall be devised by National Informatics Centre which will be interconnected with labour department so that both the departments have interface.
- (ii). A co-ordination committee comprising of Secretary (labour) and Divisional Commissioner shall review all the non-implemented cases on bi-monthly basis. The agenda and minutes of meeting shall be put in the public domain.

D. Guidelines for non-pecuniary benefits in service.

- (i). In case where award of reinstatement in service is granted by the court and if the management fails to reinstate the workman, the workman files an application before the district Assistant Labour Commissioner/Labour Officer for his reinstatement. The officer concerned deputed area labour Inspector with the workman to the management for reinstating the workman. In case management refuses to reinstate the workman the complaint stands disposed of and closed, In case the management refuses to reinstate the workman in terms of court award, a report to that effect is prepared by the labour inspector and given to workman.


- (ii). The workman produces/files Labour Inspector report to the concerned Assistant Labour Commissioner and same is taken on record.
- (iii). Thereafter, a show cause notice is issued to the management giving him fifteen days time as to why he should not be proceeded for prosecution for not implementing the court award in terms or reinstatement of workman.
- (iv). In case management still does not reinstate the workman, proceedings are concluded and a proposal for seeking prosecution sanction is then prepared by Labour Officer/Assistant Labour Commissioner and is submitted to district Joint Labour Commissioner/Deputy Labour Commissioner for submission to competent authority i.e. Hon'ble Lt. Governor through proper channel.
- (v) The entire process is to be completed within a period of three-month(03 months) by the Labour Department.

E. Guidelines for prosecution for not implementing the award specially relief of reinstatement in service.

- (i). In case management fails to implement the award (reinstatement in service), the workman files an application before ALC for implementation of the award praying for implementation of award failing which prosecution of the management is done either u/s-29 or under Item- 13 of 5th Schedule of I.D Act, 1947.
- (ii). Notices for appearance are issued to both the parties by Assistant Labour Commissioner, in case management appears and reinstates the workman back in services as per award of the court the complaint stands disposed off. However, in case management does not appear, not more than 02- opportunities shall be afforded to the management under principles of natural justice and in case they still fail to appear then a show cause notice giving fifteen days time shall be issued by the Assistant Labour Commissioner.
- (ii). In case event of failure on the part of the management, proposal for prosecution of management (proprietor/managing partner/managing director individually by name) or any other person as suggested by the workman/ Authorized Representative of workman shall be prepared by Assistant Labour Commissioner and shall be submitted to area Joint Labour Commissioner/Deputy Labour Commissioner.
- (iii). District Joint Labour Commissioner/ Dy. Labour Commissioner shall examine the proposal/s for prosecution for further processing, for onward submission and seeking approval of competent authority i.e. Hon'ble Lt. Governor, through proper channel (through Secretary(labour), Chief Secretary, Hon'ble Minister of labour, and finally submit the same to Hon'ble Lt. Governor). The whole process needs to be completed within time limit of three months (3-months) i.e. up to seeking approval of competent authority.

(iv). In case there is a delay in seeking approval of prosecution, it is proposed to set up a 'Ombudsman' of two member committee comprising of Secretary(labour) and Divisional Commissioner which will monitor all such cases where three-months time limit has been exhausted due to any reason, the said committee will act in supervisory capacity and will have access to all documents, can call concerned officers of the district and other officers dealing with such cases where delay of more than 03 months has occurred and shall examine the reasons for delay. This committee shall submit its finding within 03 months of such delayed cases. The said committee shall be empowered to fix responsibility in cases which warrant so.

These guidelines shall come into effect immediately.


17/6/19.
BY ORDER IN THE NAME OF THE
LT. GOVERNOR OF THE NATIONAL
CAPITAL TERRITORY OF DELHI.

ADDITIONAL SECRETARY(LABOUR).