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Duty to Give Notice under Section 9A of the Industrial Disputes Act, 1947: Critical Analysis of Case Laws

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ABSTRACT

Change in working condition is a common phenomenon that is very likely to be noticed in the industrial operation and the operative process in a particular industry and the establishment. This practice of first informing the employee about the working conditions and the changes that are thereby going to be introduced are for the purpose to bring in consonance a belief of joint unity so that there is more and more productivity generated in the industry as the workers and the employer are sharing a same feeling of belief and unity which leads to increment in profits. The practice which this particular section tries to acclaim and nurture in the faith of the section a natural justice principle which gives both the employer and the workmen working in the industrial establishment to know about the changes that are going to happen which shall affect the working condition or also the nature of the job of the workmen in the industrial establishment. Also, when a particular employer furnishes or gives a notice of this kind to the employee or the workers working therein, then it in the sense creates a feeling of unity and trust among the worker and the employer, which also helps for the smooth and successful administration of the company, also the new scheme will also be requiring changes. It should be never considered implied that the transfer of a particular employer can be made by the employer for the company started therein by the employer subsequent, also the employer of the corporation do not have any vested right in him. The said essential conditions that are mentioned under the paper and shall be discussed in details is mentioned under section 9A of the Industrial and Disputes Act of 1947. Also, in addition and coherence to the section of the act, Fourth Schedule of the act defines the entitlements on what issues the employer is free to make certain changes in the working condition of the workmen.

Keywords: *Change in Working Condition, Industrial Establishment, Industrial Disputes Act,1947, Natural Justice, Notice.*

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I. INTRODUCTION

Section 9A of the Industrial Disputes Act, 1947, was added to the said act through the means of **Act number 36 in the year of 1956**, the basic idea behind the purpose of this section is, that, a notice in the name of the employer to the workman should be duly given in the event when an employer wants to implement in any change in the service to be provided by the workman to the employer. Also the notice shall be in coherence to **Fourth Schedule of the Act of 1947**. Fourth Schedule of the Act of 1947, do give enlistment of eleven items that should be considered by the employer while proposing in the change in the working condition or services, some of the contents of the list are as follows:

1. There should be an inclusion of wages for the prescribed period giving in the payment method;
2. Detailing of the contribution of the sum amount that is paid by the employer in the Provident fund;
3. General compensation and other exempted allowances;
4. Specific working and resting hours of the employee;
5. Whenever there is a condition that seemingly arises for a worker to not come to job for a day, then in those cases, the wages of the workman should not be compromised. In cases where there is change in the day of holiday and it shifts from Sunday to any other day, then that case, item 4 and 5 should come into play. Vice versa if there is any other change by keeping Sunday as the main holiday then in that case item number 8 shall be considered.

   Therefore in the case of **Tata Iron and Steel Co. Ltd. v. Workmen**,[3] it was held that, it shall not be considered to be good in law and legally sound of the employer compels the worker to change the terms of the service without complying to the ingredients mentioned under Section 9A of the Industrial Disputes Act, 1947.

Remaining items mentioned under Fourth Schedule do mention about:

6. Working condition in accordance to standing orders,
7. Grade classification of the workers,
8. Privilege compromise of workers,
9. Development of plant.

[3] Tata Iron and Steel Co. Ltd. v. Workmen, 1967 (1) LLJ 581.

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Brief Purpose of Section 9A

The main aspect of proposing this section in the act, is to give a fair point of view and aspect to the workmen to represent his thoughts upon the change of service as it is proposed by the employer, also this section plays the role of a guardian angel by giving proper time to the employee working to consider the new terms and if necessary to pose reasonable questions before the employer regarding the same[4]. This practice of first informing the employee about the working conditions and the changes that are thereby going to be introduced are for the purpose to bring in consonance a belief of joint unity so that there is more and more productivity generated in the industry[5] as the workers and the employer are sharing a same feeling of belief and unity which leads to increment in profits[6]. In order to properly avail the aspects of Section 9A of the act, it is important to duly consider the provision and the items that are present in fourth schedule of the act or else if the workman is retrenched and if it is not in coherence to fourth schedule then, the benefit of section 9A is prohibited[7].

II. BRIEF REVIEW OF THE LITERATURE

1. **A. Khan,** have authored a journal titled and articled as **Settling of Industrial Disputes,** wherein the author have briefly given the idea about the development and the evolution of the Disputes Act in India and how important it is for the Indian workforce and the labourers working therein. The Article also suggests and gives us the idea about that what significance this Act holds in the Indian scenario. Also, the journal tells us about the purpose and meaning of the supplying and the furnishing up of the notice to the parties. This article plays the role of a guardian angel by giving proper time to the employee working to consider the new terms and if necessary to pose reasonable questions before the employer.

2. **K.K. Chaudhari,** have written a paper titled as, **Changing the meaning, nature and meaning of the Term 'Industry',** India, over the years have seen significant changes due to the coming up of the LPG scheme, therefore in today's world the nature and meaning of Rights of the workers have changes, this article explains us briefly about the essential eleven element that are there present in the Schedule No. IV of the IDA. the paper also explains each and every element and the essential needed to take the advantages of the same.

[4] Khan, A. (1981). *SETTLEMENT OF INDUSTRIAL DISPUTES*. Journal of the Indian Law Institute, 23(3), 446-463. Retrieved August 23, 2020, from http://www.jstor.org/stable/43950763.
[5] K. K. Chaudhuri. (1983). Changing Concept of 'Industry' under Industrial Disputes Act. Economic and Political Weekly, 18(22), M67-M84. Retrieved August 23, 2020, from http://www.jstor.org/stable/4372151
[6] Dr. HK Saharay, *Textbook on Labour and Industrial Law*, Universal Law Publishing House, Seventh Edition, 2017, pp. 134-138.
[7] L Roberts D'Souza v. Executive Engineer, Southern Railway, AIR 1982 SC 854.

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3. **Dr. H.K. Saharay,** have titled the book as, Book and Labour Laws in India, which have taken into consideration each and every act with regards to the Labour dispute adjudication in India, the book have tried to cover each and every act. The book was helpful as it helped the researcher in finding out the true and full initiative about the act and the importance of the Notice, the essentials and ingredients which play an important role for application of Section 9 of the Act.

4. **S. Shukla and A. Sachatey,** have authored an e-article titled as India's Dilemma in COVID, this article has helped the researcher get to know the intricacies and technicalities that were present in the Act and Section 9A of the same, as the pandemic has struck the labourers in India very hard, therefore this article brings out the idea that where and what changes should be needed.

5. **K.R.S. Sundar,** have authored a journal paper titled as, Flexibility of the Laws wrt labours in India, gave us the idea about the concept of the strikes and different modes that can be used by the labours so as to make and implement their rights, als this article says that how these laws are labour friendly rather than only focusing upon the capitalist progression as it is seen in the federal laws.

6. **Supriya Routh,** have authored the paper titled as, **The Judicial Idea of Labour Laws,** this article stated about the development and the future development that should be brought in the Labour laws in the Indian scenario, as more and more good initiatives are being taken by the government like "Make in India", therefore this article states that before more initiatives comes in there is a dire need in the labour reforms.

7. **A. Ghosh,** have authored to a e-article by **Live Mint,** titled as **No Make in India, without new Reforms,** this article explains that in today's scenario as there are more and more new scheme coming up therefore, it is high time that the labourers can implement and amend their rights in accordance to the changes which are being posed by the society.

(A) Research Methodology

This Research Project proposal focuses and does critical study of this paper tries to explain the practical and legal approach of **Duty to give notice under Section 9A of Industrial Disputes Act, 1947**. The sources of this article are cases on this subject. The method used in making the paper and the information which has been gathered are from various scattered sources such legal sites and also newspaper articles. Analytical reasoning shall be used.

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III. ANALYSIS OF SECTION 9-A

Under the said section and the concept postulated therein, when a particular employer wants to amend the changes and the conditions for the workers to work in then a sufficient notice and a pro-forma shall be furnished by the employer to the head of the Union so as to tell them what his point of view is and also how the changes shall be affecting the rights of the workers in a good manner, but the notice and the changes to be made by the employer shall be bona fide in intent or else it shall hold no good in the administration of the company[8]. Also, when a particular employer furnishes or gives a notice of this kind to the employee or the workers working therein, then it in the sense creates a feeling of unity and trust among the worker and the employer, which also helps for the smooth and successful administration of the company, also the new scheme will also be requiring changes[9]. So as to make most out of the section 9A of the act, it is condition precedent in order that there should be a coherence between the objects present under section 9A and also the fourth schedule mentioned under the act.

Some of the instances of the interpretation mentioned under the act to be liberal enough are under the head and meaning of "leaves, holidays or the rest days", under this head, it is broad enough to mention that when a particular employer shall be giving the rests to the employee working therein, also, there shall be no need for the notice then, as the practice shall prevail over the formality. Also, if we go a little ahead in pretext then the head mentioned under Entry 8 of the schedule, it was held by the SC in the case, where the court said that, the essential elements under the section 9A shall not be brightly attraction the attention of the provision therein, where there is a case, in which the consent and consensus of the people are already taken and workers have also adhered to the same[10].

The conditions as the author have discussed with regards to contents mentioned under fourth schedule of the act. The said conditions should be fulfilled if an employer wants to make any change in service and its condition. In addition to the condition if changed then the said two conditions shall be considered, which are as follows:

1. The notice should be given to the workmen in the format as specified under the act and also the contents should match as present in fourth schedule,

[8] K. R. Shyam Sundar. *"Labour Flexibility Debate in India: A Comprehensive Review and Some Suggestions."* Economic and Political Weekly, vol. 40, no. 22/23, 2005, pp. 2274–2285. JSTOR, www.jstor.org/stable/4416707. Accessed 28 Oct. 2020.

[9] Abhik Ghosh, "No Make in India, without the coming of new reforms", Live Mint, (28th Octiber, 2020, 12:24PM), https://www.livemint.com/Opinion/lNkV6AhezWrzAmUJjYUAeM/No-Make-in-India-without-labour-reforms.html.

[10] Tata Iron and Steel Co Ltd. v. Workmen of M/s Tata Iron and Steel Co. Ltd., AIR 1972 SC 1917.

2. The notice should be given to the workmen in the period before twenty one days.

The notice that is given to the worker is for the sole purpose to stop the unilateral decisions to be made by the employer. The principle of good conscience, equity are bestowed in this particular section[11]. But, there are certain conditions wherein there is no requirement of notice to be provided to the workmen, which are as follows:

1. The people who are outside the scope of governance of this act are unlikely to be given notice under Section 9A of the act;
2. The notice shall not be given in case when there is ample of option available to the worker but he decides to reside with the existing terms of the employment[12];
3. The notice and the requirement henceforth mentioned in the section 9A, can't be used if the employee entered in the contract with the employer after the coming up of the said act, which was brought into effect for the first time since[13].

Now the term present in the section saying the condition of service very clearly depicts the condition of sustainable relation between the employer and employee working therein, it should be noted that termination of the service on the part of employer is no change in the condition to provide the service. With respect to the transfer of the employee, it should be done post the inter-departmental enquiries that an employer is obliged to make, there are some conditions of transfer which are as follows:

1. Transfer can't be done is that transfer is not in coherence to the standing order or to the terms under which the employee signed;
2. Transfer should be prejudicing the rights of the employee;
3. The transfer shall not be under the scope of colorable legislative practice so as to harass the employee;
4. The transfer of an employee at a relatively higher post to the relatively should not be done and if done then should be questioned.

The terminology used in the section that is **"condition of the services used",** as mentioned in due coherence under Section 9A of the act, is indicative and descriptive of the mutual relation of trust a growth between the employer and the employee. Therefore under this broad

[11] Routh, Supriya. *"The Judiciary and (Labour) Law in the Development Discourse in India."* Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America, vol. 44, no. 2, 2011, pp. 237–257. JSTOR, www.jstor.org/stable/43239609. Accessed 28 Oct. 2020.
[12] TNEWF v. MS Electricity Board, 1962 (2) LLJ 136.
[13] CI Kannan v. Employees' Corporation, 1968 (I) LLJ 770.

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descriptive ambit there is no reference of the cases where there is illegal termination of the contract of the worker by the employer[14]. But, there are certain where there was transfer of the employee of the employer between different branches of the same corporation, these kind of transfer are in the following manner[15]:

1. A particular inter-department transfer of the employee cannot be made by the employer if the contract mentions about this and if the contract is negating such kind of transfer and if there is no mention about the same kind of transfer in the orders published by the government through the orders in official gazette,
2. The nature of the transfer made by the employer of the employee should not be depleting of the rights of the worker unless and until it is specifically mentioned by the expressive consent,
3. There shall be no practice of hurting or making the worker a victim, the use of this kind of power should be direct and should not be having an essence of a colorable exercise by the employer, the act of the employer shall not be against the wishes and working environment which a particular worker considers to be healthy,
4. The employer should not be using crooked practices like, the transfer made for the sole purpose to degrade the position of the worker and making him work in unsustainable working conditions.

It should be never considered implied that the transfer of a particular employer can be made by the employer for the company started therein by the employer subsequent, also the employer of the corporation do not have any vested right in him, to do any kind of act as mentioned above. The same instance in the scenario of the government can be understood by a ruling of the court, which stated, when a particular person is transferred from a government al organization to an enterprise then, the employee thus transferred is not allowed to take the compliance and benefits of the governmental services[16].

IV. COVID-19 & SECTION 9A OF THE ACT

Before understanding the concept of the effect of COVID on the particular section, for this purpose we should try and understand the meaning of allowance to be provided to the workers, there are considerately two types of allowances, which are, compensatory and key. The compensatory type of allowance are the one which an employer gives to the worker

[14] Manu v. Anwal and Co. Ltd., 1963 (1) LLJ 212.
[15] New India Flour Mills v. Sixth Industrial Tribunal, West Bengal, 1963 (1) LLJ 745.
[16] R.C. Sharma v. Government of Madhya Pradesh, AIR 1973 SC 2279.

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when, the worker is going to another place to work for the company, also the losses that are incurred by the worker that are, the travelling and living are included under this head. Under, the key allowance head, the salary and other remunerations are included by the employer to the employee. In one of the case, the SC held that the bank which is responsible to give the employees of the cash and credit department the key allowances and any change with respect to the same, the change shall be then categorized under Section 9A[17].

Under the current ongoing circumstances, COVID has given each and every industry some unprecedented challenges that no one was expecting when the global economy was on a high roster and India was blooming, but this COVID has struck us but the most affected ones are the worker class who now have nothing to wear, eat and live under, the COVID and the unprecedented conditions have been included under the provision and ambit of Schedule four item no. 11 where it is stated about the cut in the pay-grade of an employee by the employer, the changes can be made in respect to that particular item but the pandemic has made this more relevant now. As this has been categorized as the calamity therefore the worker is having a right to get a 50% allowance which is also inclusive of the salary[18]. The provision of laying off the salary and the coherent inference to the item 11 of the schedule four is validly applicable to industries and factories only.

At first before the categorization of this COVID as a natural calamity it was considered very complex that whether laying off during the period of COVID shall be coming under the purview of Schedule four or not. Workers for the same valid reason can similarly apply to the courts and the tribunal for that matter[19], also another thing that came up was the decrement made in the wages of the employee by the employer, for that the decrease was made legal as the lockdown was the reason and COVID was another one. Also, as mentioned above, the notice should be given to the workmen in the format as specified under the act and also the contents should match as present in fourth schedule, the notice should be given to the workmen in the period before twenty one days. The government actively took the initiative to secure and make the lives of the employee safe beside this lockdown, the workers were guaranteed their paid salary and the continuance of the salary so that they can take care of their families, and the wage standing order speaks of it all[20]. Another one of a kind order

[17] Workmen of Food Corporation v. Food Corporation of India Ltd., (1968) Comp Cas 395.
[18] Saket Shukla and Akshay Sachatey, *India: COVID 19: An Employer's Dilemma*, Mondaq, Article By Phoenix Legal, (27th October, 2020, 6:27PM), https://www.mondaq.com/india/employment-and-workforce-wellbeing/928096/covid-19-an-employer39s-dilemma.
[19] Section 25 of Industrial Disputes Act, 1947- Provision for the Lay –off without the authorized permission.
[20] Government of India, *Wages Standing Order, No. 40-3/2020-DM-I(A)*, Ministry of Home Affairs, (27th October, 2020, 6:31PM), https://www.mha.gov.in/sites/default/files/PR_MHAOrderrestrictingmovement_290

issued by the Ministry of Labor was emphasizing more upon the employers to not end and terminate the employment of the worker amid pandemic hovering, this was mentioned under Advisory of termination[21].

V. ANALYSIS OF THE LANDMARK CASES

The researcher under this part shall be discussing about some landmark based upon the topic upon which the discretion was given by the court of law.

1. Slab System and the Revision of the Scale under the Pay-Grade

Case Name- Workmen v. Indian Hume Pipe Co. Ltd.[22]

Brief Facts- The respondent have been having continuous issues with the staff and the sub-staff working there, there were almost 3000 workers that worked for the company at Wadala, there was a rise in the number of the employees as there were more and more number of opportunities, that were increasing in the company. The disputes began from the year of 1950, where the pay-gade of the employees was not on par as compared to profits the company was making. In this case, the definition of dearness allowance and pay was introduced and was then inserted in the act effectively therein.

Analysis of the Ratio- It was held and the researcher analyzes that, there was a practice to give the workmen of the company a dearness allowance for 17 but the company tried to rejuvenate the same, in which it was held by the court that, there was no good reason to continue this system and there was no active role on the part of the tribunal to stop it also the reasons of the workers were not required to stop this unfair system. The workmen were paid the allowance duly by practicing the system of determination of the slab rates. The company sought substitution of the system prevailing thorough the slab. It was held that the management and the administration of the company didn't produce or made the profit it was destined to make therefore the slabs should have had been revised. The tribunal's decision of thus decreasing the pay scale grade of the workmen was finally termed wrong.

2. Illegal Transfer and Illegal Punishment

Case Name- Workmen v. FCI[23]

Brief Facts- the corporation had a granary in Siliguri and the corporation fired the labourers

32020.pdf.

[21] Kalpana Rajsinghot (Signatory Authority), *Termination Advisory, D.O. No.M-11011/08/2020-Media*, Ministry of Labour and Employment of India, (27th October, 2020, 6:36PM), https://labour.gov.in/sites/default/files/Central_Government_Update.pdf.

[22] Workmen v. Indian Hume Pipe Co. Ltd., AIR 1986 SC 1794.

[23] Workmen v. FCI, AIR 1985 SC 670.

to do the work of loading and unloading the grains from one place to another, the contractor of that particular place was duly given the task to pay the workers, the receipt of the payment was to be propped by Sardar. The per head per pay per view was adopted and the payment of the workers was done. The system of payment through direct mechanism was then adopted, and there was no notice that was furnished to the applicants.

Analysis of the Ratio- The respondents in this particular case, were categorized as the workers and the essentials mentioned under the said section 2s should be fully adhered to. The respondents also duly categorically established the direct mode of payment was adopted. As there was no notice given duly under Section 9A of the act therefore even if there was a change in condition but there was no notice therefore the change doesn't stand a chance. The corporation therefore was held and made liable under Section 31 of the IDA.

3. Strikes and Recognition

Case Name- Glaxo Employees Union Ltd. v. Glaxo India Ltd.[24],

Brief Facts- In this case the applicant company had signed a standing order woth the respondent company and then one day the subjects of the respondent company got up on the bus of the applicant company and man handled different objects and the subjects and thereby violated the consented agreement between the two companies as they violated Cl. 10,11 and 12 and then the applicant filed a case for the same and the cl. 22 which defined misconduct and the subsequent clause that is 23 gave idea about the punishment the labour tribunal dismissed the appeal and the case then went to the HC for the same.

Analysis of the Ratio- The labour court and the High court held that, owning to illegal strikes that were being authorities, as the company has to shut off for a period of time there was no notice that was supplied to the applicants and the workers therein about the changes that were being made at that time. If the strikes and the demonstration are taking place and then the workers of the corporation were not allowed to enter the it doesn't qualify as the changes under Schedule IV.

4. Notice

Case Name- Harmohinder Singh v. Kharga Canteen[25]

Brief Facts- The application under the said case was a person who was and wanted to work for a NPO which was established under the companies act, the person was an old man and then the corporation declared a standing order, which gave an understanding about the

[24] Glaxo Employees Union Ltd. v. Glaxo India Ltd., 1995 Lab IC 2696 Guj.
[25] Harmohinder Singh v. Kharga Canteen, AIR 2001 SC 2681.

termination of the contract of the employee on, i) exceeding the age of 60 years, or ii) ceasing up of the service after 15 years of job, whichever of these said events is first, this standing order was challenged.

Analysis of the Ratio- SC held that the time of the duration of the worker's job depend upon the time prescribed under the standing order, and it is basically up to six months for temporary canteens, as this canteen was not a governmental holding as a result of which, there was no requirement of giving up of the notice to the workers as these were the changes made in the standing order. Now the term present in the section saying the condition of service very clearly depicts the condition of sustainable relation between the employer and employee working therein, it should be noted that termination of the service on the part of employer is no change in the condition to provide the service.

5. Terms and the prescribed conditions postulated for settlement under the section

Case Name- Indian Oxygen Ltd. v. Udday Nath Singh[26]

Brief Facts- In this case, there were Union of the workmen who were working in this company, and then the company held its meeting wherein it was held that the reduction made on the tools or the object should be reduced but was not recorded but was informed to the workmen through the notice under Section 9A of the act, which was held to be arbitrary by the labourers.

Analysis of the Ratio- Supreme Court opined that, if the concession of any sort is allotted to the worker then it should be mentioned specifically in the minutes of that workers committee and then the concept of condition of service and the specific change shall not come into effect. This practice of first informing the employee about the working conditions and the changes that are thereby going to be introduced are for the purpose to bring in consonance a belief of joint unity so that there is more and more productivity generated in the industry as the workers and the employer are sharing a same feeling of belief and unity which leads to increment in profits.

6. Change and the Consent

Case Name- N. Parsruram v. Paper Product Ltd.[27]

Brief Facts- The workers of the association, challenged the changes that were put forth, by the company without taking the consent of the employees which was prima facie very much arbitrary and invalid on the rights of the people.

[26] Indian Oxygen Ltd. v. Udday Nath Singh, 38 FJR 389 (SC).
[27] N. Parsruram v. Paper Product Ltd., 1966 (13) FLR 3 (IT).

Analysis of the Ratio- SC opinionated that, there are certain conditions that should be paid heed to are in the case of not applicability of section 9A, If there is any change made on the part of the employer but is not unilateral in nature. If any change if proposed by the employer with due consent of the workmen. If there is breach of section 9A in accordance to section 33 and fourth schedule then in these cases the workmen can resort to appeal.

VI. CONCLUSION

The main aspect of proposing this section in the act, is to give a fair point of view and aspect to the workmen to represent his thoughts upon the change of service as it is proposed by the employer, also this section plays the role of a guardian angel by giving proper time to the employee working to consider the new terms and if necessary to pose reasonable questions before the employer regarding the same. This practice of first informing the employee about the working conditions and the changes that are thereby going to be introduced are for the purpose to bring in consonance a belief of joint unity so that there is more and more productivity generated in the industry as the workers and the employer are sharing a same feeling of belief and unity which leads to increment in profits. Also, when a particular employer furnishes or gives a notice of this kind to the employee or the workers working therein, then it in the sense creates a feeling of unity and trust among the worker and the employer, which also helps for the smooth and successful administration of the company. So as to make most out of the section 9A of the act, it is condition precedent in order that there should be a coherence between the objects present under section 9A and also the fourth schedule mentioned under the act. The notice that is given to the worker is for the sole purpose to stop the unilateral decisions to be made by the employer. The principle of good conscience, equity are bestowed in this particular section. It should be never considered implied that the transfer of a particular employer can be made by the employer for the company started therein by the employer subsequent, also the employer of the corporation do not have any vested right in him, to do any kind of act as mentioned above. COVID has given each and every industry some unprecedented challenges that no one was expecting when the global economy was on a high roster and India was blooming, but this COVID has struck us but the most affected ones are the worker class who now have nothing to wear, eat and live under, the COVID and the unprecedented conditions have been included under the provision and ambit of Schedule four item no. 11 where it is stated about the cut in the pay-grade of an employee by the employer, the changes can be made in respect to that particular item but the pandemic has made this more relevant now.

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