

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.996 OF 2016

Mahatma Gandhi Memorial Hospital

And Another

... Petitioners

Versus

Shri Sachin Vasant Desai

... Respondent

.....

Mr. P.M. Palshikar for the Petitioners.

Mr. Ravindra V. Sankpal for the Respondent.

.....

CORAM : S.C.GUPTE, J.

DATE : 26 APRIL 2016.

P.C. :

. . Heard Learned Counsel for the parties.

2 Rule.

3 The Respondent waives service.

4 By consent of both sides, the Petition is taken up for final hearing.

5 The only question in this Writ Petition concerns subsistence allowance payable to a complainant/employee pending the departmental inquiry and suspension thereof. Section 10-A of the Industrial Employment (Standing Orders) Act 1946, provides for payment of such subsistence allowance. This Section provides that where any workman is suspended by the employer pending investigation or inquiry into

complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance. The employer shall pay such allowance at the rate of fifty per cent of wages which the workman was entitled of immediately proceeding the date of such suspension, for the first ninety days of suspension and thereafter at the rate of seventy five per cent of such wages for the remaining period of suspension, if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman. Sub-section (3) of Section 10-A provides that notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.

6 The Supreme Court in case of **B.D. Shetty & Others Vs. CEAT Ltd**¹ has considered whether Standing Orders appearing in Schedule-I appended to the Bombay Industrial Employment (Standing Orders) Rules, 1959, which are more beneficial, the employees being entitled thereunder for 100% subsistence allowance equivalent to their wages, dearness allowance and other compensatory allowance in case inquiry is not completed within a period of 180 days, can be said to come within the meaning of “other law” covered under Section 10-A(3). The Court relying on a Division Bench judgment of this Court in **May & Baker Ltd. Vs. Kishore Jaikishandas Icchaporia**² held that the words “provisions of such other law” necessarily refer to law other than one covered by the very Act and Rules made thereunder. The Court on that basis, held that

¹ 2002 I CLR 69

² (1991 II CLR 176)

Standing Orders in Schedule-I of the Bombay Industrial Employment (Standing Orders) Rules, 1959, do not override the provisions of Sections 10-A (1) and (2).

7 The judgment in May & Baker Ltd. settles the controversy in the present petition. The provision on which reliance is placed by the Respondent in the present case, namely, Standing Orders under Schedule-I of the Bombay Industrial Employment (Standing Orders) Rules, 1959, do not take precedence over Section 10-A of the Industrial Employment (Standing Orders) Act, 1946.

8 In that view of the matter, the original order in Complaint (ULP) No.265 of 2013 dated 17 August 2015 and the order dated 20 November 2015 passed in revision, which hold the particular Standard Orders as “other law” or “provisions of such other law” within the meaning of Section 10-A(3), cannot be sustained. The orders are directly contrary to the law laid down by the Supreme Court in case of **B.D. Shetty** (supra). Rule is, accordingly, made absolute. No order as to the costs.

(S.C.GUPTE, J.)