

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.13946 OF 2024**

The Commissioner/Administrator
Kolhapur Municipal Corporation,
Kolhapur.

..Petitioner

Versus

Shri. Pintu Balu Bhalkar,
Age: 43 years, Occu: Service,
R/o. Lakshatirtha Vasahat,
Kolhapur.

..Respondent

...

Mr. Sagar A. Mane, Advocate for Petitioner.
Mr. Rushikesh G. Patil, Advocate for Respondent.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 09th SEPTEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.

2. The petitioner-Corporation takes exception to order dated 26.02.2024 passed by Member, Industrial Court, Kolhapur in Complaint (ULP) No.138/2018, by which petitioner-Corporation is directed to pay balance of subsistence allowance to respondent-employee as per provisions of Model Standing Orders provided in Industrial Employment (Standing Orders) Act, 1946 (for the sake of brevity hereinafter referred as 'the Act of 1946') after deducting quantum of amount already paid to him.

3. Mr. Sagar Mane, learned Advocate appearing for petitioner submits that respondent has been appointed on establishment of petitioner-Corporation on compassionate basis. He was unauthorizely absent from his duties during period from 01.01.2005 to 25.06.2008. Therefore, respondent was placed under suspension for the purpose of conducting enquiry as to grave misconduct of unauthorized absentee. The suspension order includes specific condition that respondent shall mark his attendance everyday with City Engineer during the period of suspension. However, he failed to comply aforesaid condition. The respondent was paid subsistence allowance in accordance with Rules. Initially he was paid subsistence allowance @ 50%. Thereafter, he was paid subsistence allowance @ 75% for period from January 2010 to January 2014. He would submit that as per Circular dated 16.06.2006 issued by State of Maharashtra, in case of breach of conditions of suspension order, Competent Authority is entitled to reduce subsistence allowance to minimum rate. Since respondent-employee breached condition of attendance, subsistence allowance was reduced to 50%. Mr. Mane would further submit that on 24.02.2009, respondent was served with charge-sheet. The Departmental Enquiry was held in which respondent held guilty of his misconduct. Hence, show cause notice was served upon him, which is challenged by him in Complaint (ULP) No.28/2018 before Industrial Court, who granted *status quo* in favour of respondent-employee.

4. On 14.08.2018, respondent-employee filed Complaint (ULP) No.138/2018 alleging unfair labour practices under Items 9 and 10 of Schedule-IV of MRTU and PULP Act, 1971 and demanded for subsistence allowance @ 100% in terms of Model Standing Orders. The learned Industrial Court allowed complaint and directed petitioner-Corporation to pay balance subsistence allowance in terms of Model Standing Orders.

5. He would submit that sub-rule (1) of Rule 68 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, Competent Authority is empowered to reduce amount of subsistence allowance, if condition of suspension is found to be violated. Hence, he urges to quash and set aside impugned order.

6. Mr. Rushikesh Patil, learned Advocate appearing for respondent-employee supports impugned order and submits that Act of 1946 is special Act dealing with conditions of service of workman in an industrial establishment. The petitioner is not exempted from provisions of Act of 1946. The Model Standing Orders, which are beneficial to workman would apply in matter of payment of subsistence allowance. There is no rule requiring suspended employee to mark his attendance. Section 10(A) of the Act provides that on suspension workman is entitled for subsistence allowance and in case of delay in completion of enquiry which is not attributable to workman,

subsistence allowance @ 75% has to be awarded. Further, Model Standing Orders provides that in case of delay in enquiry, delinquent employee is entitled for subsistence allowance @ 50% for first three months, thereafter @ 75% upto six months and thereafter @ 100%. In support of his contentions he relies upon observations of this Court in cases of *State of Maharashtra and Ors. Vs. Ramesh Annaji Chorghade* (*Writ Petition No.28/2011* decided on *11.12.2019* at Nagpur), *M/s. Hindustan Level Employees Union Vs. M/s Hindustan Unilever Limited* (*Writ Petition No.8562/2015* decided on *03.1.2024* at Mumbai) and observations of Supreme Court of India in case of *Anwarun Nisha Khatoon Vs. State of Bihar and Others*¹.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that learned Industrial Court relying upon observations of this Court in case of *State of Maharashtra and Ors. Vs. Ramesh Annaji Chorghade* (supra) concluded that Model Standing Orders would be applicable in facts of case and petitioner has failed to bring to notice of Court any rules or provision in support of condition imposed upon employee to mark his attendance. As such, condition imposed in suspension order itself is without authority; moreover, reduction of subsistence allowance on that account is illegal. In case of *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr.*², Supreme Court observed that suspended

¹ AIR 2002 SC 2959.

² (1999) 3 SCC 679.

employee is entitled for subsistence allowance as relationship of employer employee subsists. The petitioner-Corporation is not denying entitlement of respondent-employee to receive subsistence allowance. However, they are coming with case that they have reduced percentage of subsistence allowance for the reason or breach of condition under suspension order. From pleading and material on record it is not brought to notice of this Court that respondent-employee flouted condition of attendance or at any point of time he was served with notice of such breach.

8. Even it is assumed that there was default on part of respondent-employee to comply with condition of suspension order, reference can be given to observations made by this Court in case of ***M/s. Hindustan Level Employees Union*** (supra), particularly in paragraph no.13, which states as under:

“Any condition put by employer and more specifically a condition directly relating to entitlement of subsistence allowance has to be within parameters and four corners of Section 10(A) of the said Act. The provision of clause 4(e) of Schedule-I of Model Standing Orders (Central) require employee to satisfy that he was not in employment during suspension period to claim subsistence allowance. This provision cannot be stretched to the extent of employer requiring satisfaction of a pre-condition of marking attendance at the gate of factory everyday during period of suspension. The condition stipulated by respondent-Company is illegal condition and deserves to be dismissed. It is an unfair, unjust and malafide condition which is contrary to the provisions of Section 10(A) of said Act”.

9. In light of aforesaid observations, contentions of petitioner that condition of suspension order is violated by respondent-employee and, therefore, subsistence allowance is reduced, cannot be countenanced. Once it is found that imposition of such condition was beyond statutory scheme under Industrial Disputes Act and Model Standing Orders, imposition of condition itself would be invalid. Eventually, reduction of subsistence allowance on the ground of breach of such condition, cannot be countenanced. In that view of the matter, no case is made out to cause interference in impugned order in exercise of Writ jurisdiction under Article 227 of Constitution of India. In result, Writ Petition stands dismissed.

10. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE