

MPBalekar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 18498 OF 2024

Noor Hospital	... Petitioner
V/s.	
Mehjabeen Altaf Shiraonkar	... Respondent

Mr. Shailesh S. Pathak for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : APRIL 17, 2026

P.C.:

1. Rule. Rule is made returnable forthwith.
2. The petitioner has brought challenge to the judgment and order dated 16 August 2024, whereby direction is issued for payment of sum of Rs. 88,603/- together with interest at the rate of 8% per annum from the date of application till realization. On careful reading of record and submissions, it becomes clear that real dispute between parties is not much on facts, but mainly on the correct rate at which subsistence allowance is to be paid during suspension period. The respondent is claiming that for the period beyond 180 days of suspension, he is entitled to full wages at the rate of 100%, whereas the petitioner is contending that only 75% wages are payable for such remaining period. The Labour Court, while passing impugned order, appears to have accepted the stand of the respondent and has granted subsistence allowance at 100% for the period of 181 days till termination on 27 May 2021. This

finding is stated to be based on Maharashtra Industrial (Standing Orders) Rules, 1959. However, the petitioner has strongly relied upon binding precedent of this Court in *Chowgule Industries Private Limited Vs. Krishna Shrikant Kumbhar and others* (Writ Petition No. 4117 of 2019, decided on 9 January 2020), wherein according to petitioner, it is clearly held that such claim of 100% is not permissible. Therefore, the correctness of Labour Court reasoning is required to be tested in light of settled legal position.

3. It is seen that the Co-ordinate Bench of this Court, while deciding the case relied upon by the petitioner, has itself followed earlier Division Bench judgment in the case of *May and Baker Ltd. Vs. Kishore Jaikrishandas Ichaporia reported in 1991 (63) FLR 319*. In the said judgment, the Court has interpreted the words “Other Law” appearing in sub-section (3) of Section 10A of the Industrial Employment (Standing Orders) Act, 1946. The Court has taken a clear view that the said expression cannot be stretched to include Model Standing Orders or Certified Standing Orders. This interpretation is not casual but is based on statutory scheme, because Standing Orders though having statutory flavour, are still conditions of service framed under delegated legislation and cannot be equated with independent enactment. Because of this interpretation, the contention of employee in that case that he should get 100% subsistence allowance after 180 days by relying on Clause 25(5-a) of Model Standing Orders came to be rejected. When such clear position is already settled by Division Bench and followed by Co-ordinate Bench, it was not open for the Labour Court to take a contrary view by again placing reliance on the very

same Model Standing Orders. The Labour Court has not shown any distinguishing feature or any later binding precedent taking different view. Therefore, the conclusion reached by Labour Court granting 100% wages for subsistence allowance appears to be contrary to judicial discipline and hence cannot be allowed to stand in law.

4. The petitioner has also placed on record the account statement to demonstrate actual payment made to the respondent. From the said material, it is reflected that an amount of Rs. 55,802/- has already been credited in the account of the respondent, which according to petitioner represents 75% of subsistence allowance for the relevant period of 181 days. This factual aspect assumes importance because it shows that the petitioner has not withheld payment altogether, but has made payment as per its understanding of applicable legal position. There is no material shown by respondent to dispute the correctness of this calculation or to show that the amount paid is less even on 75% basis. In such situation, once it is held that entitlement beyond 180 days cannot be at the rate of 100% in view of binding precedent, the payment already made by petitioner satisfies the legal requirement. Therefore, the further direction issued by Labour Court for payment of additional amount based on 100% rate becomes unsustainable both on facts and in law.

5. In that view of the matter, Rule is made absolute in terms of prayer clause (a).

6. The writ petition stands disposed of in above terms.

(AMIT BORKAR, J.)