

# Subsiste Employee



It applies to industri  
Maharashtra).

The Act contains model standing orders which prescribe certain modes of behaviour as misconducts. Those modes of behaviour are not based on any moral consideration but they are for discipline in establishment, good inter personnel relationship and smooth functioning of the production activities.

If workman commits any misconduct, there are various punishments which can be awarded if misconduct is proved. However, before punishment is awarded it is mandatory to issue charge sheet to the workman and give him an opportunity to offer satisfactory explanation to the charges of misconduct. If the explanation is not found satisfactory, then it is necessary to conduct the domestic enquiry to

Learn Contract Drafting Skills

## Join Contract Drafting Course

Certified by LCI and LAW Firms



INDEPENDENCE DAY DISCOUNT

**ENROL NOW - HURRY!**



Call: 011-411-70713



so submit your article by sending to  
lawyersclubindia.com

### Picks

- own of the online divorce
- miting the 72 years old Article 370
- Cannot Be Forced To Add
- Against Whom He Does Not
- to Fight: Supreme Court
- in Suit: Principles & Practices
- ration agreement in a void
- it need not be Void
- ency of child witness

- The Law of winding up under IBC
  - Human rights and intellectual property rights
  - Companies (Amendment) Act, 2019 - CSR Provisions become more stringent
  - Medico autopsy in Anaphylactic deaths
- [view more »](#)

- Browse by Category
- Recent Comments
- Popular Articles

substantiate the fact that misconduct was committed by workman. This procedure is the part of natural justice.

Considering the gravity of misconduct and past conduct of the workman the maximum punishment which can be awarded to the workman would be termination by way of dismissal.

There is also provision for suspending the workman pending and during the course of enquiry. This suspension is not in the nature of punishment but only to ensure that the workman does not tamper with the evidence or threaten the other employees, who are likely to be witnesses in the enquiry.

It must be noticed that this power to suspend the workman pending enquiry is unbridled power and therefore it should be used very cautiously and only for justifiable reason. It is also further required to be seen that although suspension pending enquiry is not a punishment still it does cast social stigma

This view finds support in judgment of Hon. Kerala High Court in K. Srendran vs. Govt of Kerala and others

"The power to suspend an employee should be exercised with caution and care as an order of suspension pending enquiry may put the employee into shame and humiliation. Of course, if the continuance of the employee in the same place affects the disciplinary proceedings, the employer can suspend the employee. Whether an employee should be suspended pending enquiry will depend upon various circumstances. Suspension pending enquiry though cannot be considered as a punishment, it cannot be disputed that it causes real hardship to an employee. The stigma attached cannot be ignored."

Since during suspension pending enquiry the workman is paid only subsistence allowance, his living standard is brought down considerably without having any established justifiable ground for suspension or any preliminary prima facie finding that the workman was guilty of any misconduct.



#### Similar Forum Post

- [Pf withdrawal re-instate service](#)
- [Reduction in pension and forfeiture of gratuity](#)
- [Promotion in central govt job](#)
- [Service Bond](#)
- [Gratuity Act](#)
- [Labour law for it private ltd. co.](#)
- [Compulsory off as weekly off- right or wrong ?](#)

[More »](#)

#### Subscribe to Articles Feed

Enter your email address

Submit

It is common knowledge that large number of establishments in any industrial region pay to the workman minimum wages or near about as are prescribed from time to time under Minimum wages Act 1948. Therefore if the workman of such establishment is suspended pending enquiry his wages go much below the minimum wages during suspension pending enquiry period and this denial of minimum wages to him amounts to denial of right to life as stipulated in Article 21 of Constitution of India.

The Supreme Court in **v. Union of Peoples Union for Democratic Rights India** held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violative of Article 21 of the Constitution.

In view of this mandate, law is required to be amended so that in no case subsistence allowance pending enquiry is less than minimum wages as prescribed from time to time

It is further necessary that for using this arbitrary power some guidelines are prescribed in the Act, on the basis of which it could be decided if there is prima facie proof of misconduct and whether the alleged misconduct necessitates suspending the workman pending enquiry. If the misconducts prescribed under the model standing orders are seen, it would be apparent that suspension pending enquiry is neither necessary nor justified in cases where only documentary evidence is needed to substantiate the charges. In such cases the related documents can be kept in safe custody by the management and there is no possibility of the workman tempering with the evidence. Only in cases of riotous and disorderly behavior perhaps it may be necessary to suspend the workman, because he may spoil the atmosphere in the establishment and threaten probable witnesses. It is not clear that how such unfettered right to suspend the workman pending enquiry can be styled as fair & equitable since at that stage there may not be even prima facie proof . Many times this power is

## Browse by Category

Business Law

Civil Law

Constitutional Law

Criminal Law

Family Law

Labour & Service Law

Legal Documents

Intellectual Property Rights

Property Law

Taxation

Students

Others



misused by the employer as a weapon in his armory especially during the course of collective bargaining of service conditions.

The Government of Maharashtra vide amendment 1977 (w.e.f. 2.1.1978) prescribed certain graded rates of subsistence allowance and they are stipulated in section 25(5-A) of Model Standing Orders. For first 90 days of suspension pending enquiry the subsistence allowance was to be 50% of wages, for further 90 days it was to be 75% of wages and there after 100 till the end of enquiry. By the said amendment if the enquiry prolongs beyond 180 days the workman is entitled to full wages till the enquiry was completed. It must be emphasized that this provision was not for giving more money to the workman, but it was aimed at reducing the time which the domestic enquiry unnecessarily takes. Thus there was some relief to workman and at least after 180 days of suspension workman would get his normal wages pending completion of enquiry.

Many Industrial establishments were not adhering to this amendment on the plea that they had the Certified Standing Order which prescribed different rates of subsistence allowance and in some cases it was as low as 50% of wages during the course of enquiry.

So as to curtail and meet the challenges by the employer having certified standing orders, Section 10-A was introduced in Industrial employment (standing order) Act, 1946 by Act 18 of 1982 w.e.f. 17.5.1982. By this addition it became compulsory for the employer to pay 75% wages as subsistence allowance after expiry of 90 days of the suspension and this was to continue till the end of the enquiry, irrespective whether Model or certified standing orders were applicable

So as to safeguard the interest of the workman non-obstante clause was added in section 10-A(3) of Industrial employment (standing order) Act, 1946 prescribing that if the subsistence allowance under any other law in any states was more beneficial than the provision of the such other law would be applicable. From this provision it would be apparent that the intention of legislature was to safeguard subsistence allowance which was more beneficial to workman under

any other law. It is beyond comprehension that the intention of legislature was to deny the workman subsistence allowance prescribed by Model Standing Order which was more beneficial to him than as prescribed under Sec.10A of Industrial employment (standing order) Act, 1946.

However this object was defeated by wording of section 10-A by prescribing that beneficial subsistence allowance under any other law would not be disturbed. Now this provision was literally interpreted by the courts. In case of Bombay High Court in case of **B' May And Bakar Ltd. vs Shri Kishore Jaikrishandas** wherein it was held:-

'The Model Standing Order, as also Certified Standing Orders, are law no doubt, but they are law made under the provisions of the Act. They are not provisions "under any other law". In our view, therefore, the provisions of Section 10-A supervene in relation to the payment of subsistence allowance over the provisions of the Model Standing Orders.' This judgment was later approved by Apex court.

Thus it was established that the provision of 100% subsistence allowance which was in Model Standing Order was not in any other law and therefore maximum subsistence allowance which could be paid beyond 90 days of suspension would be only 75% maximum till end of enquiry. Thus addition of 1977 vide Sec. 23 (5-A) to Model Standing Order was made ineffective.

Actually it was possible to give purposive interpretation rather than literal interpretation to Sec. 10(A-3) of industrial employment (standing order) Act, 1946 the clause and ignore the word 'other' appearing before law.

**Purposive interpretation by taking recourse to mischief rule is recognized way of interpretation as held by Hon. Supreme Court in 'Indian Performing Rights Society ... vs Sanjay Dalia & Anr' wherein it was held**

'When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words 'of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)' is the rule laid down in Heydon's case (76 ER 637) which has 'now attained the status of a classic [Kanailal Sur v. Paramnidhi Sadhukhan AIR 1957 SC 907]. The rule which is also known as 'purposive construction' or 'mischief rule' [Anderton v. Ryan 1985 2 ALL ER 355], enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy '

In that way amendment of 1977 vide Sec. 23 (5-A) could have been saved. In the alternative it was possible for appropriate government to bring new statute on the subject of subsistence allowance. The states of Karnataka, Tamil Nadu, and West Bengal etc. have enacted statutes on the subject naming them as Payment of Subsistence Allowance Act. So as to save the 1977 amendments to model standing vide Sec. 23 (5-A) the Maharashtra Govt. could have enacted the law on same lines, which can still be done.

In addition there are many changes which are required to be made by way of amendments to give justice to workmen and prevent managements from misusing the provisions.

So as to advance the cause of justice, it is necessary to curtail this arbitrary power by prescribing the conditions which are to be satisfied, before suspension pending enquiry is resorted to. It is further necessary to provide legal remedy to workman, who is aggrieved by the suspension pending enquiry and which in the opinion of the workman is vindictive and unjustifiable. At present no such remedy is available to individual workman either in Industrial Dispute Act 1947 or in M.R.T.U. and P.U.L.P. Act 1971. It is also necessary to provide that maximum

period of suspension pending enquiry does not exceed three months and beyond that period the workman would be entitled to full wages.

In many cases during or after enquiry, it is found that there is not enough material to establish the charges against the workmen and the workman is either warned or suspended as punishment and matter is closed. No reimbursement of the wages is made which were illegally deducted under the guise of subsistence allowance pending enquiry. The workman as an individual has no legal remedy against such arbitrary and illegal deduction. It is necessary to make it obligatory to reimburse the difference in salary and subsistence allowance if sufficient proof is not found in domestic enquiry to justify termination of service and the workman is merely warned or suspended by way of punishment. Simultaneously there should be legal remedy available to individual workman to challenge such warnings and suspensions before appropriate legal forum. This is possible by making suitable amendments in Industrial Disputes Act 1947 and M.R.T.U. and P.U.L.P. act 1971

*The author can also be reached at jagadish347@yahoo.co.in*



jagadish paranjape  
on 07 December 2017



Published in Labour & Service Law  
Views : 1215

Other Articles by - jagadish paranjape

[Report Abuse](#)

[← Previous](#)

[Next →](#)

## Recent Comments

Total: 2

[Login](#) to post comment



Ashok 10 January 2018

Dear sir I am ASHOK from Bangalore I am working in a MNC organisations a Regional Business Manager and on 8th January my NSM informed me to give resignation without inform me before because of no sales. Today also NSM called about resignation told you won't get salary after resignation also. Please suggest me what to do.



Ashok 10 January 2018

Dear sir I am ASHOK from Bangalore I am working in a MNC past 6 months, In this month 8th January my NSM informed you sent resignation to the because of less sales. I told that I need time but they refused. Today NSM called me and said that you won't get salary of DECEMBER also after resignation also. Please suggest me what to do. Regards ASHOK KUMAR N

## Related Articles

- Sec 498A of the Indian Penal Code a weapon in the hands of vamps
- Is the Criminal (Amendment) Act, 2013 - The Right Weapon to fight against Rape?
- Right to Service Act, 2011 - A weapon to eliminate the corruption

[More »](#)

## Other Latest Articles

- An Arbitration agreement in a void contract need not be Void
- The Law of winding up under IBC
- Here are the top 7 concerns that people have around their post-retirement life
- Dismantling the 72 years old Article 370
- Analysis of the Significant Beneficial Owner rules

- Jurisdiction of Debt Recovery Tribunal and jurisdiction of Civil Court: juxtaposition
- The intellectual property rights and the human right to health
- DIR-3 KYC: Mandatory compliance for DIN holders
- Fundamental Right To Privacy Not Absolute And Must Bow Down To Compelling Public Interest: SC
- Medico autopsy in Anaphylactic deaths

[More »](#)

**MENU**

- |                           |                                  |                               |                           |                                |
|---------------------------|----------------------------------|-------------------------------|---------------------------|--------------------------------|
| <a href="#">Jobs</a>      | <a href="#">Bookmarks</a>        | <a href="#">Notifications</a> | <a href="#">Forms</a>     | <a href="#">RSS</a>            |
| <a href="#">Coaching</a>  | <a href="#">Legal Dictionary</a> | <a href="#">Poll</a>          | <a href="#">Scorecard</a> | <a href="#">Rewards</a>        |
| <a href="#">Events</a>    | <a href="#">Files</a>            | <a href="#">Video</a>         | <a href="#">Today's</a>   | <a href="#">Lawyers Search</a> |
| <a href="#">Bare Acts</a> | <a href="#">Judiciary</a>        | <a href="#">Top Members</a>   | <a href="#">Birthdays</a> |                                |

- [About](#)
- [We are Hiring](#)
- [Advertise](#)
- [Terms of Use](#)

- [Disclaimer](#)
- [Privacy Policy](#)
- [Contact Us](#)

Our Network Sites



[Send Me Newsletter](#)



