

Procedure to have a Domestic Enquiry – II **(Suspension & payment of Subsistence allowance)**

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We have seen the definition of Misconduct and various types of it, with few Judicial references in the previous Blog (Blog series 10). Further to it we have seen the procedure to be followed, in case of prima-facie confirmation of a misconduct by an employee in the last Blog (Blog series 12).

In this Blog, we shall see the process of Suspending an employee, upon prima-facie confirmation of misconduct, pending domestic enquiry.

Domestic enquiry is performed for any misconduct other than alleged Sexual Harassment.

Suspension of an employee can happen in the following ways (a normal industry practice):

1. Suspension, immediately up confirmation of prima-facie misconduct and issuance of charge-sheet
2. Suspension of an employee after charge sheet is issued and a reply is received from the delinquent employee

Suspension is required only when there is a requirement, as necessitated for a fair enquiry by the Officer. Where the Reporting Manager/Enquiry Officer feels that the presence of the delinquent employee inside the work premises / workplace, may influence the witness/enquiry.

A workman in India is entitled for payment of subsistence allowance under Section 10A of Industrial Employment (Standing Orders) Act, 1946, where he/she is suspended by the employer. It reads,

Section 10A. Payment of subsistence allowance: Where any workman is suspended by the employer pending investigation or inquiry into complaints or charge of misconduct against him, the employer shall pay to such workman subsistence allowance-

- a) *at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and*

b) at the rate of seventy-five per cent of the 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.

A suspension is defined as, “an interim decision of an employer as a result of which an employee is debarred temporarily from attending his office and performing his functions in the establishment where he is employed, such restriction being imposed on the employee on the ground either that a disciplinary proceeding has already been, or is shortly to be, instituted against him or that a criminal proceeding in respect of an offence alleged to have been committed by him is under investigation or trial”.

Where the Central Act provides for such relief, few States in India has enacted specific Act/Rules for governance and compliance of payment of subsistence allowance. The States are – Tamilnadu, Karnataka, Kerala and West Bengal. Where few other States includes this in the Shop and Establishment Act, others follow the Central Act.

But this needs to be cautiously used and only for genuine and justifiable reason. There should be material to justify suspension.

In *K.Srendran vs. Govt. of Kerala and others*, the Hon’ble Kerala High Court observed that ***“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 sham 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.”***

Besides, the Hon’ble Supreme Court, in *UCO Bank & Ors.Appellants vs. Rajendra Shankar Shukla* observed that ***“An employee is entitled to subsistence allowance during an inquiry pending against him or her but if that employee is starved of finances by zero payment, it would be unreasonable to expect the employee to meaningfully participate in a departmental inquiry”.***

Hence, it is mandatory for an employer to pay subsistence allowance, of an amount equal to 50% of wages upto 90 days and 75% between 90 to 180 days. Provided further that where the period of suspension exceeds one hundred and eighty days, the employee shall be entitled to receive, after the said period of one hundred and eighty days a subsistence

allowance equal to ninety per cent of the wages which the employee was drawing immediately before his suspension (in few States it is 100% of wages). The provision of paying wages of 90% or 100% as subsistence allowance for a workman, who was charge-sheeted, after 180 days, was aimed in reducing the time of domestic enquiry.

Such employee would not be entitled to subsistence allowance if he/she accepts employment during the period of suspension in any establishment other than the establishment where he had been working immediately before his suspension.

The employee is entitled for full wages for the suspended period if he/she is exonerated of the charge which caused his/her suspension, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the same period. If the enquiry was concluded with a punishment, the employee shall not, in any event be liable to refund or forfeit any part of the subsistence allowance admissible to him/her.

Further process, in conducting Domestic Enquiry, will be discussed in the ensuing blogs.

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