

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.48 OF 2020

M/s. Hindustan Construction Company Ltd. and
Ors.

.. Petitioners

Versus

Mr. Kishore Govind Magar

.. Respondent

.....

- Mr. P.M. Palshikar a/w Prashant Pasvaskar, Advocates for Petitioner.
- Mr.Sumedh Modak, appointed Advocate through legal aid for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 29, 2025

P. C.:

1. Heard Mr.Palshikar, learned Advocate for Petitioner and Mr.Modak, learned appointed Advocate through legal aid for Respondent.

2. The entire case turns upon last drawn payslip of Respondent appended as Exhibit - B at page No.89 of the Petition wherein *prima facie* it is seen that Respondent has received overtime wage nomenclated as ext. Amt. Hrs. 93 translated to Rs.7,149.00/- in his last drawn salary. Mr. Palshikar would submit that gross salary taken for computation in the present case therefore cannot be Rs.20,767/- since the amount of overtime received by Respondent – employee is required to be deducted for the purpose of computation of statutory benefits.

3. On first principles as also in accordance with law Mr. Pavaskar is right in making his submission. However there is a bigger surprise which awaits the Court. It is seen that the Petitioner has deposited the entire amounts as per the impugned order taking the last drawn pay of the employee to be Rs.20,767/- as his last drawn pay in this Court and under various interim orders the Respondent employee has been permitted to withdraw the entire amount without any security. Thus according to Mr. Palshikar Respondent has benefited with excess amount. He would submit that save and except the issue whether overtime wages are to be included in the last drawn salary for the purpose of calculation of backwages nothing else remains to be determined by this Court.

3.1. He would submit that Respondent has already unjustly enriched himself by withdrawing the entire amount despite strong opposition raised by Petitioner by filing Affidavits in the present Writ Petition.

3.2. He would submit that all statutory deductions have been duly explained by the Petitioner despite which on the plea of the Respondent the entire deposited amount has been allowed to be withdrawn.

4. *Prima facie* on perusal of the last drawn pay receipt appended at page No.89 of the Petition what Mr. Palshikar submits appears to be true. In that view of the matter, Mr. Modak is directed to take appropriate instructions and apprise the Court on the next adjourned date.

5. Stand over to **12th August, 2025 (F.O.B.)**.