

SUPREME COURT OF INDIA

Ram Lakhan

Vs.

Presiding Officer

(D. P. Mohapatra, R. P. Sethi and K. G. Balakrishnan, JJ.)

11.12.2000

ORDER

1. These applications have been filed by the respondent No. 2 M/s. Swatantra Bharat Mills for recalling the order dated 17-11-1999 in which the civil appeal Nos. 6566-68/99 were allowed and for rehearing of the cases on merits.
2. In the applications it was stated, inter alia, that on 17-11-1999 the advocate-on-record for respondent No. 2, Shri B. R. Subharwal left the Court premises on account of ill-health requesting Mr. Harvinder Singh, Advocate to inform the Court if the matter reached for hearing but before the case was called Shri Harvinder Singh, Advocate also left the Court premises on receiving a call from his house that his son needed immediate medical attention. In these circumstances, contended the applicant, absence of its lawyers when the appeal was heard, was in the circumstances and for reasons beyond its control.
3. Considering the averments made in the application particularly the ground of illness of the advocate-on-record and illness of the son of the other advocate whom he had requested to make a mention before the Court when the case was called, we decided to give an opportunity to the counsel for the applicant to place the case on merits making it clear that if he fails to place any contention which, if accepted, would tilt the balance in favour of the applicant the application for recall of the order dated 17-11-1999 will be dismissed. We have heard learned counsel for both the

parties on merits of the case.

4. The controversy raised in the appeal relates to the claim of the workmen-appellants for payment of subsistence allowance during the period of suspension from service during the pendency of the disciplinary proceedings against them. When the management filed the application under Section 33(1) of the Industrial Disputes Act (for short 'the Act') before the Tribunal seeking permission to dismiss the workmen from service they filed objections and claimed that they were entitled to receive subsistence allowance for the period of suspension during the pendency of the proceeding. The Tribunal having rejected the claim, the workmen filed special leave petitions which gave rise to the appeals disposed of by the order dated 17-11-1999.

5. Initially, when the SLPs were listed this Court while entertaining the same passed the order dated 2-1-1996, directing that since the judgment in case of *Management of Hotel Imperial New Delhi v. Hotel Workers' Union* (AIR 1959 SC 1342) was rendered by a three Judge bench it would be appropriate that the petitions be listed before a bench of three Judges. Thereafter the SLPs were listed and disposed of by the order dated 17-11-1999. In the said order this Court accepted the claim of the workmen for subsistence allowance and allowed the appeals.

6. Shri G.L. Sanghi, learned senior counsel for the applicant strenuously urged that during the period when the application filed by the management under Section 33(1) of the Act seeking permission of the Tribunal to dismiss the workmen concerned the relationship of master and servant does not subsist, and therefore, the management is not liable to pay any amount as subsistence allowance to the workmen and the workman are not entitled to receive any such amount during the period. He placed reliance on the decision in *Hotel Imperial case* (AIR 1959 SC 1342) (supra) and some other cases in support of his contention.

7. On a reading of the order dated 17-11-1999 it is clear that this very question has been considered and after a detailed discussion on the points referring to a number of reported cases starting from *Hotel Imperial case* (AIR 1959 SC 1342) (supra) to the case of *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.*, (1999) 3 SCC 679 : (1999 AIR SCW 1098 : AIR 1999 SC 1416 : 1999 Lab IC 1565), this Court came to the conclusion that during the period of pendency of the management's application for permission to dismiss the workmen before the Tribunal the relationship of master and servant between the parties subsists and it does not cease. This Court further held that while it is open to the employer (management) to receive work from the employees (workmen) or not and the option not to receive any work may be exercised by the former by placing the employees under suspension it has to pay the wages to the workmen at the usual rate or subsistence allowance at reduced rate if there is a provision in the service rules or regulations or standing order applicable to the workmen concerned. This Court also distinguished the decision in *Hotel Imperial case* (supra) holding that the question which was considered in that case was whether during pendency of its application under Section 33(1) of the Act the management can legally suspend the employee, and the question whether an employee is entitled to subsistence allowance during the period of

suspension, was not directly involved in the case.

8. We have carefully considered the contentions raised by Shri Sanghi. We are not satisfied that the order dated 17-11-1999 needs any reconsideration. Therefore the applications are dismissed. No costs.

Application dismissed.