

RAM LAKHAN ETC. ETC.  
v  
PRESIDING OFFICER AND ORS.

NOVEMBER 17, 1999

[S. SAGHIR AHMAD, D.P. MOHAPATRA AND R.P. SETHI, JJ.]

*Industrial Disputes Act, 1947:*

*S.33(1)—Employees under suspension—Claim for Subsistence Allowance—Industrial dispute pending before Industrial Tribunal—Employer’s application for permission to dismiss the employees on completion of inquiry—Held, Management can, pending disposal of the application, place the employee under suspension, but it has to pay Subsistence Allowance to the employee—No conflict between Hotel Imperial’s case\* and Fakirbhai’s case\*\*—Subsistence Allowance shall be paid to the employees for the whole period of suspension as provided under the Standing Orders or under the Rules—If there is no such provision, they would be entitled to be paid full salary even during the period of suspension.*

*\*The Management, Hotel Imperial, New Delhi & Ors. v. Hotel Workers’ Union, AIR (1959) SC 1342,*

*\*\*Fakirbhai Fulabhai Solanki v. Presiding Officer & Anr., [1986] 3 SCC 131 = (1986) 2 SCR 1059 = AIR (1986) SC 1168, explained and reiterated.*

*T Cajee v. U. Jormanik Siem, [1961] 1 SCR 750 = AIR (1961) SC 276; R.P. Kapur v. Union of India, [1964] 5 SCR 431 = AIR 1964 SC 787; Balvantray Ratilal Patel v. State of Maharashtra, [1968] 2 SCR 577 = AIR (1968) SC 800; State of Madhya Pradesh v. State of Maharashtra & Ors., AIR (1977) SC 1466 = [1977] 2 SCR 555 = [1977] 2 SCC 288; State of Maharashtra v. Chanderbhan, [1983] 3 SCR 337 = [1983] 3 SCC 387 = AIR, (1983) SC 803; O.P. Gupta v. Union of India & Ors., [1987] 4 SCC 328 and Khem Chand v. Union of India, [1963] Supp. 1 SCR 229 = AIR, (1963) SC 687.*

*V.P. Gindroniya v. State of Madhya Pradesh & Anr., AIR (1970) SC 1494; The Vice-Chancellor, Jammu University & Anr. v. Dushinant Kumar*

A *Rampal*, AIR (1977) SC 1146 and *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.*, [1999] 2 SCC 456 = [1999] 3 SCC 679, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6566 of 1999.

WITH

B C.A. Nos. 6567/1999 and 6568/1999.

From the Judgment and Order dated 17.10.94 of the Delhi High Court in C.W.P. No. 4279 of 1994.

C Rajinder Sachar, Mahesh Srivastava, V.D. Khanna, Ms. Nirmala Gupta and I.M. Nanavati for M/s. I.M. Nanavati Associates for the Appellants.

Harvinder Singh, Deepak Sabharwal and B.R. Sabharwal for the Respondents.

The following Order of the Court was delivered:

D S. SAGHIR AHMAD, J. Leave granted in all the Special Leave Petitions.

The appellants were the employees of the Swatantra Bharat Mill against whom charge-sheets were issued in the year 1986 and they were subsequently suspended.

E Since an industrial dispute was already pending before the Industrial Tribunal vide Delhi Administration Notification No. F-24(798)/94-Lab dated 1.4.86, an application was filed by the management under Section 33(1) of the Industrial Disputes Act, 1947 for permission to dismiss the employees on completion of enquiry. This application was opposed by the appellants who  
F filed objections and claimed that they were entitled to be paid Subsistence Allowance during the pendency of the disciplinary proceedings for the period of suspension. On this, the Tribunal framed the following preliminary issue:-

“At what rate, if any, the Management is to pay the subsistence allowance to the workman”

G The Presiding officer, Industrial Tribunal, Tis Hazari, Delhi, relying upon the decision of this Court in *The Management, Hotel Imperial, New Delhi & Ors. v. Hotel Workers Union*, AIR [1959] SC 1342, dismissed the objections of the appellants and held that they were not entitled to any Subsistence Allowance. The appellants thereafter filed Writ Petitions in the High Court of  
H Delhi which were dismissed by the impugned judgment reading as under:-

“In view of the decision of the larger Bench of the Supreme Court in the case of *The Management, Hotel Imperial, New Delhi & Ors. v. Hotel Workers’ Union* reported as AIR (1959) SC 1342, we are not inclined to interfere in this petition.

Dismissed.”

It appears that the decision of this Court in *Fakirbhai Fulabhai Solanki v. Presiding officer & Anr.*, [1986] 3 SCC 131 = [1986] 2 SCR 1059 = AIR (1986) SC 1168, was cited before the High Court, but it did not follow the decision and preferred to follow the Judgment in *Hotel Imperial’s* case (supra).

This Court, while entertaining these appeals had passed the following order on 2.1.1996 :-

“In view of the fact that the judgment in *Hotel Imperial’s* case was rendered by a three Judge Bench, we consider it appropriate that these petitions be listed before a three Judge Bench. Appropriate order from the Hon’ble the Chief Justice may be obtained in this behalf.

In the event the special leave petitions cannot be listed within the next two weeks, the application for interim stay may be put up before the three Judge Bench within that period.”

It is in these circumstances that the matter has come up before us.

In *Hotel Imperial’s* case (supra), this Court had laid down as under:

“We have, therefore to see whether it would be reasonable for an Industrial Tribunal where it is dealing with a case to which Section 33 of the Act applies, to imply a term in the contract giving power to the master to suspend a servant when the master has come to the conclusion after necessary enquiry that the servant has committed misconduct and ought to be dismissed, but cannot do so because of Section 33. It is urged on behalf of the respondents that there is nothing in the language of Section 33 to warrant the conclusion that when an employer has to apply under it for permission he can suspend the workmen concerned. This argument however, begs the question because if there were any such provision in Section 33, it would be an express provision in the statute authorising such suspension and no further question of an implied term would arise. What we have to

A see is whether in the absence of an express provision to that effect in Section 33, it will be reasonable for an Industrial Tribunal in these extraordinary circumstances arising out of the effect of Section 33 to imply a term in the contract giving power to the employer to suspend the contract of employment, thus relieving himself of the obligation to pay wages and relieving the servant of the corresponding obligation to render service. We are of the opinion that in the peculiar circumstances which have arisen on account of the enactment of Section 33, it is but just and fair that Industrial Tribunals should imply such a term in the contract of employment.....

C We are, therefore, of opinion that the ordinary law of master and servant as to suspension can be and should be held to have been modified in view of the fundamental change introduced by Section 33 in that law and a term should be implied by Industrial Tribunals in the contract of employment *that if the master has held a proper enquiry and come to the conclusion that the servant should be dismissed and in consequence suspends him pending the permission required under Section 33 he has the power to order such suspension, thus suspending the contract of employment temporarily, so that there is no obligation on him to pay wages and no obligation on the servant to work.* In dealing with this point the basic and decisive consideration introduced by Section 33 must be borne in mind. The undisputed common law right of the master to dismiss his servant for proper cause has been subjected by Section 33 to a ban; and that in fairness must mean that, pending the removal of the said statutory ban, the master can after holding a proper enquiry temporarily terminate the relationship of master and servant by suspending his employee pending proceedings under Section 33. It follows therefore that if the tribunal grants permission, the suspended contract would come to an end and there will be no further obligation to pay any wages after the date of suspension. If, on the other hand, the permission is refused, the suspension would be wrong and the workmen would be entitled to all his wages from the date of suspension.”

G (Emphasis supplied)

This Court in *Hotel Imperial's* case (supra) was thus concerned with the preliminary question whether the Management during the pendency of its application under Section 33(1) of the Industrial Disputes Act can legally H suspend the employees after holding a proper departmental enquiry. The

question whether an employee would be entitled to Subsistence Allowance during the period of suspension was not directly involved in that case, in which it was held that if the master had held a proper enquiry and come to the conclusion that the servant was to be dismissed and in consequence thereof suspends him pending the permission required under Section 33, he could legally do so with the result that the contract of employment would stand suspended temporarily so that "there would be no obligation on him to pay wages and no obligation on the servant to work". This observation reflects the well-recognised rule that when an employee is suspended, he does not get full wages and he is also not put on duty. He gets only reduced salary (subsistence Allowance), prescribed by the Rules.

The view expressed in *Hotel Imperial's* case (supra) was reiterated in *T. Cajee v. U. Jormanik Siem*, [1961] 1 SCR 750 = AIR (1961) SC 276. To the same effect is the decision of this Court in *R.P. Kapur v. Union of India*, [1964] 5 SCR 431 = AIR 1964 SC 787. Thereafter, the Court rendered its decision in *Balvantray Ratilal Patel v. State of Maharashtra*, [1968] 2 SCR 577 = AIR 1968 SC 800, in which it was laid down that an employer can suspend an employee pending an enquiry into his misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such suspension. It was further observed that the power to suspend, in the sense of a right to forbid an employees to work, is not an implied term in an ordinary contract between master and servant and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. The Court further observed that the absence of such a power either as an express term in the contract or in the rules framed under some statute would mean that an employer would have no power to suspend an employee and if he does so, in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension. The Court also came to the conclusion that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld.

The whole case law was reviewed by this Court in *V.P. Gindroniya v. State of Madhya Pradesh & Anr.*, AIR 1970 SC 1494, in which the decisions in *Hotel Imperial's* case as also in the case of *Balvantray Ratilal*, both referred to above, were considered. *Gindroniya's* decision (supra) was followed

A in *The Vice-Chancellor, Jammu University & Anr. v. Dushinant Kumar Rampal*, AIR (1977) SC 1146 and it was laid down as under:

B 'It will, therefore, be seen that where there is power conferred on the employer either by an express term in the contract or by the rules governing the terms and conditions of service to suspend an employee the order of suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the employee is not bound to render service and the employer is not bound to pay. In such a case the employee would not be entitled to receive any payment at all from the employer unless the contract of employment or the rules governing the terms and conditions of service provide for payment of some subsistence allowance.'

C In *State of Madhya Pradesh v. State of Maharashtra & Ors.*, AIR (1977) SC 1466 = [1977] 2 SCR 555 = [1977] 2 SCC 288, it was laid down that an order of suspension does not put an end to the Govt. service. It was further observed that suspension merely suspends the claim of salary as the employee is paid suspension allowance during the period of suspension. For this purpose, reliance was placed upon an earlier decision of this Court in *Khem Chand v. Union of India*, [1963] Supp. 1 SCR 229 = AIR 1963 SC 687.

E The Right to Life, guaranteed to a person under Article 21 of the Constitution, was read into the Service Rules relating to payment of Subsistence Allowance and it was for this reason that this Court in *State of Maharashtra v. Chanderbhan*, [1983] 3 SCR 337 = [1983] 3 SCC 387 = AIR (1983) SC 803, struck down a Service Rule which provided for payment of a nominal amount of Rupee one as Subsistence Allowance to an employee placed under suspension.

F In *Fakirbhai Fulabhai Solanki v. Presiding Officer & Anr.*, [1986] 3 SCC 131 = [1986] 2 SCR 1059 = AIR (1986) SC 1168, the decision of this Court in *Hotel Imperial's* case (supra) was considered and it was laid down as under:

G "6. The learned counsel for the management however relied upon the decision of this Court in *Management of Hotel Imperial, New Delhi v. Hotel Workers' Union*. In that case this Court was mainly concerned with the right of the management to suspend a workman where the management had taken a decision to dismiss him but could not immediately give effect to such decision owing to the restriction

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imposed by Section 33 (1) of the Act which required the management to obtain the permission of the Tribunal when a reference was pending adjudication before it.....”

It was further observed as under:-

“7. In the above decision it was laid down that the management should be deemed to possess the power to suspend an employee in respect of whom a decision had been taken to dismiss him but an application for permission had to be filed until the application for permission was decided. The court in giving the above decision also relied on an earlier decision of the court in *Ranipur Colliery v. Bhuban Singh*, AIR (1959) SC 833. In that case it was pointed out that but for the ban on the employer by Section 33(1) the employer would have been entitled to dismiss the employee immediately after the completion of his enquiry on coming to the conclusion that the employee was guilty of misconduct but section 33 stepped in and stopped the employer from dismissing the employee immediately on the conclusion of his enquiry and compelled him to seek permission of the Tribunal. *It was therefore, held that it was reasonable that the employer having done all that he could do to bring the contract of service to an end should not be expected to continue paying the employee thereafter. It was pointed out that in such a case the employer would be justified in suspending the employee without pay as the time taken by the Tribunal to accord permission under Section 33 of the Act was beyond the control of the employer.* Lastly, it was observed that this would not cause any hardship to the employee for if the Tribunal granted permission the employee would not get anything from the date of his suspension without pay while if the permission was refused he would be entitled to his back wages from such date.”

(Emphasis supplied)

It was also observed as under:

“8. But in neither of the above two decisions the court considered the question from the angle from which we have approached the problem. In neither of them the court had the occasion to consider whether the denial of payment of subsistence allowance during the pendency of the proceedings under Section 33(3) of the Act would amount to violation of principles of natural justice. They approached the question from the angle of the common law right of a master to

- A keep a workman under suspension either during the pendency of a domestic enquiry into an act of misconduct alleged to have been committed by a workman or during the pendency of an applications under section 33 of the Act. Those were perhaps halcyon days when such application were being disposed of quickly. If the court had realised that such applications would take nearly six years as it has happened in this case their view would have been different. An unscrupulous management may by all possible means delay the proceedings so that the workman may be driven to accept its terms instead of defending himself in the proceedings under Section 33 (3) of the Act. To expect an ordinary workman to wait for such a long time in these days is to expect something which is very unusual to happen.
- B Denial of payment of at least a small amount by way of subsistence allowance would amount to gross unfairness.”

This Court thus explained the decision in *Hotel Imperial's* case (supra) and held that the principal question involved in that case related to the right of the employer to suspend an employee under the general law of master and servant and not whether he would be entitled to Suspension Allowance.

In another decision, namely in *O.P. Gupta v. Union of India & Ors.*, [1987] 4 SCC 328, it was held as under :

- E “An order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in *Khem Chand v. Union of India* is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance -- generally called subsistence allowance -- which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. *The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'subsist' as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is "to remain alive as on food: to continue to exist." "Subsistence" means - means of supporting life, especially a minimum livelihood.*”

(Emphasis supplied)

- H In *Capt. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.*, JT (1999) 2

SC 456 = (1999) 3 SCC 679, it was observed as under:

“To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including Govt. of India and the State Governments. (See: for example, Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules. Even under the General Clauses Act, this right is conceded to the employer by Section 16 which, *inter alia*, provides that power to appoint includes power to suspend or dismiss.”

Applying the principles laid down in the decisions referred to above to the facts of this case, it has to be conceded that if the Management has held a departmental enquiry against an employee, it has the right to place that employee under suspension, if on the basis of the findings recorded at the departmental enquiry, the Management is, *prima facie*, of the opinion that the employee, on account of the charges having been proved was liable to be dismissed from service, but the final order of dismissal could not be passed on account of a Reference raised under the Industrial Disputes Act, 1947, which was already pending before the Tribunal. In such a situation, if the Management makes an application under Section 33 (1) of the Industrial Disputes Act for permission of the Tribunal to dismiss such employee from service the management can, pending disposal of his application under Section 33(1), place that employee under suspension. Once the employee is placed under suspension, the Management cannot take any work from the suspended employee nor can the employee claim full salary from the Management. But the Management has to pay the Subsistence Allowance to the employee so that he may sustain himself till the application under Section 33(1) is finally disposed of.

Read in the light of the above discussion, there will not be found any conflict of opinion between the decisions rendered by this Court in *Hotel Imperial's case* (supra) and in *Fakirbhai's case* (supra). While right to place an employee under suspension pending disposal of the application under Section 33(1) is to be conceded to the Management on the basis of the decision in *Hotel Imperial's case* (supra), the right of the employee to receive Subsistence Allowance during the period of such suspension has to be conceded to the employee on the basis of the decision in *Fakirbhai's case* (supra) and other decisions of this Court referred to above wherein the

A employee has been held to be entitled to Subsistence Allowance during the period of suspension.

B We are conscious of the observation made by this Court in *Hotel Imperial* case (supra) that the Management has no control over the disposal of application under Section 33(1) filed before the Industrial Tribunal and, therefore, if it has placed the employer under suspension, it will not be under any obligation to pay salary to the suspended employee for the period over which the application under Section 33(1) remains pending with the Tribunal. The Court further observed that if the application under Section 33(1) is allowed, the employee would be dismissed from service but if the application is rejected, the employee would be paid all the arrears of salary.

C Just as the employer has no control over the disposal of the application under Section 33(1) of the Industrial Disputes Act, so also the employee has no control over the disposal of that application. Whether the employee would be retained in service or removed would be dependent upon the fate of the application. While the Management can afford to wait for the disposal of that application, it would be impossible for an employee who survives only on his salary to wait for the disposal of that application for an indefinite period. It would not be possible for him to sustain himself. It is in this light that the right to receive reduced salary (Subsistence Allowance) for the period of suspension has to be read along with the right of the management to place the employee under suspension pending disposal of the application under Section 33(1) of the Industrial Disputes Act. Thus, the right of Management to suspend and the right of the employee to receive Subsistence Allowance are intertwined and both must survive together.

F For the reasons stated above, the appeals are allowed, the impugned judgments passed by the Delhi High Court as also the judgment passed by the Industrial Tribunal are set aside with the direction that the Subsistence Allowance shall be paid to the appellants for the whole of the period of suspension at such rates as is provided under the Standing Orders or the Service Rules and if there is no such provision, they would be entitled to be paid full salary even during the period of suspension. The arrears of Subsistence Allowance shall be paid to the appellants within three months from the date on which the certified copy of this Order is produced before the concerned Officer.

H R.P.

Appeals allowed.