

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1134 of 1989

New Delhi, this the 4th day of May, 1994.

HON'BLE MR. B.N.DHOUNDIYAL, MEMBER (A)
HON'BLE MS LAKSHMI SWAMI NATHAN, MEMBER (J)

1. General Secretary,
Karamchari Sangh Rajkumari Amrit Kaur
College of Nursing,
New Delhi-49.
2. Smt. Sumitra Goela,
Laboratory Assistant,
Rajkumari Amrit Kaur College
of Nursing, New Delhi-49.

... Applicants.
(through Mr C. Harishankar, Advocate)

vs.

1. Union of India: Though
Secretary,
Ministry of Health & Family Welfare,
Govt. of India,
Nirman Bhawan, New Delhi.
2. The Principal,
Rajkumari Amrit Kaur College, (Nursing)
Andrew Ganj,
New Delhi-49.

. Respondents.

(through Mr N. S. Mehta, Sr. Standing Counsel)

O R D E R (ORAL)
(delivered by Hon'ble Mr B.N.Dhoundiyal, Member (A))

The admitted facts of the case are that Rajkumari Amrit College of Nursing is a subordinate office of the Directorate General of Health Services, Ministry of Health and Family Welfare. Karamchari Sangh is a Staff Association of Group 'C' and 'D', which is duly recognised. A section of employees led by Shri Kirat Ram, General Secretary, Karamchari Sangh and others indulged in a strike on 2.5.1989 without any prior notice. Their pay and allowances for that day were withheld vide impugned order dated 29.5.1989. This O.A. has been filed in a representative capacity

:-2:-

by the Association and the prayer is that the order dated 29.5.1989 may be quashed and the respondents be restrained from taking any action on the basis of the impugned order.

2. Heard the learned counsel for the parties. The learned counsel for the applicant has argued that inspite of some mention having been made in the O.A., there was no strike on that day and actually the employees were prevented from entering the premises. However, it is clear from para 4 of the O.A. that the employees of the College had participated in a token strike on 2.5.1989 on the call of the Karamchari Sangh. It is also mentioned that since the pay and allowances for one day of token strike were withheld under proviso(1) of F.R.17, vide impugned order dated 29.5.1989, there was hardly any time left to make a representation. From these averments it is clear that a strike was in fact called on 2.5.1989. The learned counsel for the applicant has argued that even if the workers had gone on strike, they were entitled to wages in terms of the judgment of the Supreme Court in case of Management of Churakulam Tea Estate(P) Ltd. vs. Workmen and another, AIR 1969, SC 998. In that case factory workers had gone on strike and the Tribunal had awarded wages for that period. Reconciliation proceedings had failed and a Conference was called by the Labour Ministry but there was a boycott by the representatives of the Management. It was held that 27 workmen alone went on strike on November 30, 1961 and the entire body of workmen presented themselves for work on December 1, 1961, but they were declined work by the Management on the ground of lay off. The Award of the Industrial Tribunal was upheld. He has also drawn our attention to a subsequent

judgment of the Supreme Court dated July 16, 1991, wherein a reference was made to the earlier judgment in Churakulam Tea Estate's case(supra) and also in Bank of India vs. T.S.Kelawala and others, (1990)4 S.C.C.744. In view of the conflicting judgments, the issue was referred to a larger Bench for decision. The Supreme Court in Kelewala's case (supra), the ^{3w} Supreme Court has held that even in the absence of provision therefor in contract of employment, Standing Orders or service rules, management is entitled to deduct the wages taking guidance from Payment of Wages Act or Shops and Establishment Act even if they do not apply. As this issue is to be considered by the Supreme Court, we refrain from making any observations.

3. In this case, the respondents have issued order under proviso (1) to F.R.17, which provides that an officer, who is absent from duty without any authority, shall not be entitled to any pay and allowances during the period of such absence. ^{3w} The learned counsel for the applicant has ~~argued~~ ^{argued} that in this case procedure envisaged in O.M.dated 1.11.1971 should have been followed. The competent authority has to satisfy itself that actions of the individual concerned were entirely due to reasons beyond his control, e.g. due to failure of transport or disturbances or picketing or imposition of curfew etc. It is his contention that in this case no notice was served on the applicant before passing the impugned order. The learned counsel for the respondents has argued that a representation was submitted by the applicants, which was duly considered and rejected on 7.8.1989 and hence this requirement has already been met.

4. We find force in the submissions of the learned counsel for the respondent that no such relief has been claimed in the application though this has been

mentioned in the grounds. It is correct that where the rules clearly specify withholding of wages for the period of absence, ordinarily no notice would be necessary, but in this case, strike was involved and some individuals may have been prevented from entering the premises on that day. While deciding the representations submitted by the employees, the authority have to look into the individual cases, so that no injustice is done in case of willing workers who could not attend the office due to extraneous reasons.

4. The application is, therefore, disposed of with the direction to the respondents to consider any such cases provided representations are made by individual employees citing specific instances to them.
5. There will be no order as to costs.

Lakshmi Swaminathan

(Mrs Lakshmi Swaminathan)

/sds/

Member (J)

B.N.Dhoundiyal

(B.N.Dhoundiyal)

Member (A)