

(1959) 03 MAD CK 0008
In the Madras High Court

Buckingham and Carnatic Company, Ltd.	APPELLANT
Vs	
Venkatiah and Another	RESPONDENT

Date of Decision : 19-03-1959

Acts Referred:

Citation : (1959) 2 LLJ 92

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—Venkatiah, respondent 1, was an employee of the Buckingham and Carnatic Company, Ltd. He was granted six days leave with effect from 10 January 1957. Allowing for the holidays that followed he should have joined duty on 19 January 1957. But he did not do so. Nor did he apply for extension of leave as required by the standing orders of the company. Standing Order 8(ii) of the company provides that any employee who absents himself for eight consecutive working days without leave shall be deemed to have left the company's service without notice thereby terminating his contract of service. The standing order, however, provides that if the employee gives an explanation to the satisfaction of the management, his absence shall be converted into leave without pay or dearness allowance. If it is also proved to the satisfaction of the management that the absence was due to sickness, then the employee is entitled to have his absence converted into medical leave for such period as the employee is eligible. On 11 March 1957 Venkatiah wrote to the company that after reaching his village he was laid up with fever and dysentery and that he was under the treatment of the Civil Assistant Surgeon of the Government Hospital, Kanigiri. He also stated

that after returning from his village he reported to the medical officer of the Employees' State Insurance, Perambur. who referred him to the

medical officer of the company. He therefore prayed that he might be given leave in accordance with the medical certificate he enclosed. It is

necessary here to mention that in the claim filed by the labour union before the labour court it was stated that Venkatiah ""underwent treatment in

the Government Hospital, Kanigiri,"" from 15 January to 7 March 1959. However, the medical certificate which Venkatiah produced does not say

that he was in hospital. All that it says is that he was suffering from malaria and dysentery and that he was under the treatment of Dr. Narasimha

Rao, Civil Assistant Surgeon, Kanigiri. On receipt of the application of Venkatiah the company directed him to appear before its senior medical

officer. That officer reported on 22 March 1957 in these terms:

I have examined this worker and am unable to confirm that he was ill for a period of nearly two months.

In consequence the company declined to accept the explanation of Venkatiah and refused to condone his absence without leave. On 2 May 1957

Venkatiah wrote to the Regional Director, Employees' State Insurance Corporation, Mylapore, asking him "" help me and reinstate me into my

service of Buckingham and Carnatic Mills."" This letter was forwarded to the company on 17 May 1957 with a request for comments. On 24 May

1957 the company wrote to the Regional Director in the course of which they said:

He was examined by our senior medical officer on 22 March 1957 and the latter was unable to confirm that he was ill for a period of nearly two

months as obviously a person who was continuously ill for two months suffering from malaria and dysentery would have shown some signs of the

after-effects of this illness when he re ported at the mills. The explanation offered by Venkatiah was therefore not accepted and he was not

reinstated in the company's service.

The company further stated that the alternative evidence for sickness produced by Venkatiah had not upto then been accepted by the corporation

and that ""until the alternative evidence of sickness produced by this person is accepted by the Employees' State Insurance Corporation, we regret

we cannot consider the question of reinstating Venkatiah.

2. On 5 June 1957, the Regional Director wrote to the company mentioning that the alternative evidence produced by Venkatiah had been

accepted by the Corporation and asking the company to reconsider Venkatiah's case for reinstatement. The company sent a long reply on 12 June

1957, which ended as follows:

Before we take a final decision in this matter we shall be grateful if you would let us know the extraordinary circumstances under which the

alternative evidence of sickness produced by the abovementioned insured person was accepted by you, despite the failure of the insured person to

comply with your instructions regarding alternative evidence of sickness.

In answer to this the Regional Director wrote on 22 September 1967 as follows:

As regards the circumstances under which the alternative evidence of sickness produced by the abovementioned insured person was accepted, I

have to observe that it is at the discretion of the corporation either to accept or reject any alternative evidence of incapacity produced by an

insured person and the Corporation cannot disclose the grounds on which it was accepted.

On 5 September 1957 the company finally replied in these terms:

According to the company's standing orders which lay down the conditions of service of all our employees, any employee who is deemed to have

left the company's service due to absence for eight consecutive working days cannot be reinstated unless he gives an explanation to the satisfaction

of the management. In this particular instance the employee has been deemed to have left the company's service due to absence for eight

consecutive working days and as the management is not satisfied with the explanation given by the employee for his absence, we regret we cannot

reinstate him.

Meantime, that is to say, on 5 June 1957, Venkatiah was sanctioned payment of sickness benefit for the period covered by the certificate which he

produced from Dr. Narasimha Rao, Civil Assistant Surgeon, Kanigiri,

3. As the company refused to take back Venkatiah, an industrial dispute was raised and on 26 March 1958 the Government referred the following

questions for adjudication to the labour court:

1. Whether the discharge of Venkatiah, C.M. Spinning No. 699, is justified and to

what relief he is entitled.

2. Compensation of relief, if any awarded, in terms of money if it can be so computed.

On 24 July 1958, the labour court passed an order directing the reinstatement of Venkatiah. The present petition has been filed for the issue of an appropriate writ to quash this order of the labour court.

3. It is not disputed that the leave of Venkatiah expired on 19 January 1967. He did not rejoin duty on that date. Nor did he apply for extension of

leave. In fact till March 1957 the company heard nothing at all from him. This is therefore a case to which standing Order 8(ii) of the company

directly applied. That rule provides that if an employee is absent for eight consecutive working days without leave it shall be deemed that he left the

company's service without motive thereby terminating his contract of service. If he was ill and proved that fact to the satisfaction of the

management, he was entitled to have his absence converted into medical leave for such period as he was eligible. The point to note here is that it is

the management that has to be satisfied that Venkatiah was really ill-not the Employees' State Insurance Corporation or other outside authorities.

The management was not bound to accept the medical certificate which Venkatiah produced. In the present case they sent Venkatiah to their chief

medical officer who reported that he could not confirm that Venkatiah had been ill for two months. Obviously if he had been ill with malaria and

dysentery from 15 January 1957 till 7 March 1957, his condition must have been obvious to the medical officer who examined him on 22 March

1957. The company was entitled to say that it did not believe the explanation of Venkatiah and was not prepared to act on the certificate he

produced. It was argued that the evidence which Venkatiah produced was accepted by the Employees' State Insurance Corporation but, as I said

before, the company was not bound to accept the views of the Corporation. I notice that the company asked for elucidation of the circumstances

under which the alternative evidence of sickness produced by Venkatiah was accepted but the information was refused. The company was merely

told that it was in the discretion of the Corporation either to accept or reject the alternative evidence produced. The company was also told in clear

terms that the Corporation could not disclose the grounds on which the

alternative evidence was accepted. In that position the company was entitled to prefer the opinion of its own medical officer.

4. The labour court which ultimately found for Venkatiah observed:

There is absolutely no ground to hold that the chief medical officer did not properly examine Venkattah and that the examination was highly superficial and flimsy. It is nowhere laid down what all a medical officer should do before giving his opinion. It is easy to attack the opinion of a responsible medical officer and I am not inclined to accept the correctness of the criticism in the absence of any strong evidence to prove that the officer was prejudiced against this worker and was motivated with the idea of victimization. I am not prepared to accept the interested oral evidence of Venkatiah.

It seems to me that on this finding the labour court should have rejected the claim made on behalf of Venkatiah.

5. But it was contended that even so the action of the company in refusing to reinstate Venkatiah constitutes a contravention of Section 72 of the

Employees' State Insurance Act of 1958. That section runs:

1. No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of pregnancy or confinement, rendering the employee unfit for work.

2. No notice of dismissal or discharge or reduction given to an employee during the period specified in Sub-section (1) shall be valid or operative.

It is observed that the labour court had difficulty in bringing the case directly within the terms of the section. So it observed:

As Section 73 is intended to confer benefit upon the workers I think it cannot be strictly construed and the section must be interpreted somewhat liberally.

I do not think that this is a correct way of interpreting a statute. The normal way

of construing an enactment is to take the words as they are written

in the Act and to try to find out what they mean-subject of course to the well-established canons of interpretation. Questions of sympathy, bias,

predilection, prejudice or liberality are, every one of them, out of place. If we read the words of Section 73 as they stand it will be found that what

the section does is this. It prohibits an employer from dismissing, discharging, or punishing an employee during any one of the following periods :

(1) During the period the employee is in receipt of sickness benefit or maternity benefit, I would point out that what the section says is that an

employee shall not be punished during the period he is in receipt of sickness or maternity benefit and not that he should not be punished during the

period in respect of which he is in receipt of sickness or maternity benefit.

(2) During the period he is in receipt of disablement benefit.

(3) During the period he is under medical treatment for sickness.

(4) During the period he is absent from work as a result of illness duly certified in accordance with the regulations to have arisen in certain

circumstances.

The first remark to make here is that the company passed no order discharging Venkatiah. His discharge was automatically brought about in

accordance with the terms of the standing orders by his own absence from duty. Venkatiah was not discharged during the period he was in receipt

of sickness benefit; he was not discharged during the period he was in receipt of disablement benefit; he was not discharged when he was absent

from work as a result of illness in respect of which the certificate referred to in the section had been produced. But it was argued that he was

discharged when he was under medical treatment for sickness and that therefore Section 73 applied. Whether he was actually ill or not we do not

know. He produced a certificate from Dr. Narasimha Rao. But that certificate the company declined to accept. No evidence was produced before

the labour court to show that during the period in question Venkatiah was actually ill. Nor does it appear that this point was taken before the

labour court. So the allegation of fact on which this argument was based remains unproved,

6. I have already mentioned that Section 73 would apply only where and employer does some positive act dismissing, discharging, reducing or

otherwise punishing an employee. Mr. Dolia, the learned Counsel for Venkatiah, however, argued that the section would apply even to cases like

the present where there is an automatic termination of the service of an employee in accordance with the standing orders of the management. The

first answer to that is that it is difficult to reconcile this view with the positive words of the section which begins :

No employer shall dismiss, discharge, . . . , etc.

These words require that the employer should have done some portion and before this section can appear. There is an even stronger argument

against the contention of Mr. Dolia on this point. Section 85(d) provides that if any person in contravention of Section 73 or any regulation

dismisses, discharge, reduces or otherwise punishes an employee he may be sentenced to imprisonment which may extend to three months or with

fine which may extend to Rs. 500 or with both. If we take the view that an automatic termination of the services of an employee in accordance with

the standing orders on the subject attracts the operation of Section 73, then we would get this strange result. An employee may absent himself

without leave for more than eight consecutive working days. He may have been really ill during the period. But if he does not apply for leave, the

standing orders would take effect and his services would be terminated. Since according to Mr. Dolia this amounts to a discharge u/s 73, the

employer can be sent to jail u/s 85(d) . A construction that produces such a result cannot obviously be accepted.

7. Mr. Dolia next argued that it was within the competence of the labour court to decide whether the action of the management in declining to

accept the evidence produced by Venkatiah was proper. Assuming that as a legal proposition this is correct-I am not saying that it is the fact still

remains that the labour court has not said that the action of the management declining to accept the certificate produced by Venkatiah was

improper. On the other hand its observations in Para. 12 which I have extracted above indicate that it accepted the bona fides of the medical

officer of the company.

8. It seems to me to be clear that the labour court made the order it did more on grounds of sympathy for Venkatiah than the merits of the case. It

does not seem to have had any doubts that Section 73 is inapplicable to the

present case. As I said before, the employee clearly overstayed his leave. The explanation he produced, namely, that he was ill, was not accepted by the management. In view of the report of their own medical officer, the company was entitled to take the view it did. There was no scope for interference by the labour court, and in my opinion the labour court was not justified in interfering in this matter.

9. In the result this writ petition is allowed and the order complained of quashed. There will be no order as to costs.