

(1976) 03 MAD CK 0085
In the Madras High Court

Management of Spencer and Co. Ltd.

APPELLANT

Vs

Additional Labour Court and Another

RESPONDENT

Date of Decision : 09-03-1976

Acts Referred:

Citation : (1980) 2 LLJ 469

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Judgement

S. Mohan, J.—This writ petition is directed against the award made by the Additional Labour Court, Madras in I.D. No. 123 of 1972, dated 1st July, 1972. The short facts are as follows. The second respondent, workman (R. Kannan) was on leave from 22nd October, 1970, to 19th of November, 1970. Normally, therefore, he should have resumed duty on the 20th November, 1970. On 24-11-1970, he made an application for leave saying that he went to Gujarat to attend on his sickly wife and there he had taken ill. However, he did not produce medical certificate which he promised to do on resumption of duty. A similar letter was written on the 17th December, 1970. Here again, it was not accompanied by medical certificate. On the 18th December, 1970, the writ petitioner wrote to the second respondent calling upon him to produce the medical certificate in support of his alleged sickness. But, nothing emanated. Therefore, on 29th of December, 1970, resorting to company's staff Regulation 16, the writ petitioner-company wrote to the second respondent stating that inasmuch as he was on leave for more than 8 consecutive working days, he is deemed to have left the company's services and that his salary would be settled by the wages department. On 23rd January, 1971, the second respondent wrote a long explanation for his absence and along with that letter, he forwarded two medical certificates, one from Dr. Nagar Wadia, M.B.B.S., Surat, and the other from Dr. Thirugnanasambandam, M.B.B.S., Government Kilpauk Medical College Hospital, Madras-10. By a letter dated 30th January, 1971, the writ petitioner-company stated that the second respondent himself had terminated the contract of service under Regulation 16 by absenting himself without leave for more than

8 consecutive working days and it regretted that it could not reemploy the second respondent in its organisation. Thereupon, the matter came up for adjudication before the Labour Court and the Labour Court found that this is a case in which having regard to the qualification prescribed in Regulation 16 of the Company's Staff Regulation, the explanation ought to have been accepted and it could not be held to be a case of automatic termination of service. Aggrieved by the award of the Labour Court, the present writ petition has been preferred.

2. It is the contention of the learned Counsel for the writ petitioner that the award of the Labour Court is not only illegal, but also incorrect, because it had directed reinstatement of workman who had chosen to absent himself without leave and without producing medical certificate in spite of he being repeatedly called upon to do so, and in matters of discipline it is the management which has the ultimate control and, therefore, it is incorrect on the part of the Labour Court to hold that the explanation given by the workman ought to have been accepted. This argument, though attractive, on a deeper scrutiny loses its force, if reference is made to Regulation 16 of Company's Staff Regulation which reads as follows:

16. 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. If he gives an explanation to the satisfaction of the Secretary, the absence shall be converted into leave without pay or dearness allowance.

Any employee leaving the Company's service in this manner shall have no claim for re-employment by the company.

But if the absence is proved to the satisfaction of the secretary to be one due to sickness, then such absence shall be converted into sick leave for such period as the employee is eligible.

3. The contention of the writ petitioner is confined only to the first half of the Regulation 16, namely--

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.

If the Regulation has stood there, there would have been no difficulty in accepting the argument of the writ petitioner. But, unfortunately for the writ petitioner there are other qualifications about offering an explanation and the Secretary being satisfied or not being satisfied. There is nothing to indicate in the letter of 30th of January, 1971, that the explanation was ever considered and the Secretary was dissatisfied. The reason why I am saying this is that the time when the letter was written by the company on 30th January, 1971, there were two medical certificates Exts. W. 3 and W. 4 one by the Doctor from Surat and the other from the Doctor from Kilpauk Medical College Hospital, Madras.

Certainly if the company wanted to have recourse to Regulation 16, it ought to have complied with the other qualifications prescribed thereunder fully in order to get the protection under that Regulation. But, the company did not do so. I am unable to agree with the submission of the learned Counsel for the writ petitioner that by implication the letter dated 30th January, 1971 would reveal his explanation has not been accepted. Where the management seeks to terminate the service of a workman by resorting to a Regulation, it cannot close its eyes to the other qualifications prescribed therein and restrict itself only to the first half, which I mentioned above, since it is bread and butter of the workman. In this view, I do not think it is necessary for me to go into the question whether the finding of the Labour Court that the explanation ought to have been accepted by the management is correct or not.

4. Accordingly, the writ petition will stand dismissed. However, I make no order as to costs.

5. It is needless for me to state that if there are other Regulation by which the management could exercise its rights independently it could do so about which I say nothing in the writ petition since it is not the subject-matter before me.