

IN THE SUPREME COURT OF SEYCHELLES

1. Wilfred Libanotis
2. Wellington Nourrice
3. Marcel Marengo
4. Peter Chetty
5. Felix Jean

Plaintiffs

Vs

Seychelles Breweries Limited
Represented herein by its
Managing director Mr. Nicolas Pothin of
Le Rocher, Mahé

Defendant

Civil Side No: 68 of 2001

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Mr. J. Renaud for the Plaintiffs

Mr. B. Georges for the Defendants

D. KARUNAKARAN, J.

JUDGMENT

This is a suit for declaration. The plaintiffs in this action seek a declaration that they are, and continue to be in the employment with the defendant, which is a company engaged, inter alia, in the business of the production of beer and soft drinks. The defendant resists the action contesting its maintainability in law and thus, seeks a dismissal of the suit.

The undisputed facts of the case are these:

At all material times, all the plaintiffs, five in number were employees of the defendant-company. On or about 29th of August, 1999 the plaintiffs were dismissed by the defendant from their employment. The aggrieved plaintiffs initiated the grievance procedure against their dismissal under the provisions of the Employment Act, 1995, hereinafter called the "Act" alleging that it was unjustified. The Competent Officer at the Ministry of Social Affairs and Manpower accordingly, inquired into the grievance. Having heard the parties, the Competent Officer, on 14th March 2000, determined that the termination of the plaintiffs' contract of employment by the defendant was not justified. However, the Officer, allowed the termination pursuant to Section 61 (2) (a) (iii) of the Act, and directed the defendant to pay all legal benefits and compensation to the plaintiffs in accordance with the provisions of the Act. The defendant, being dissatisfied with the determination of the Competent Officer appealed against it to the Minister in terms of Section 65 of the Act. On appeal, the Minister in his Ruling upheld the determination of the Competent Officer and directed the defendant to pay the plaintiffs the following sums:-

- One month's notice SR 2, 960 - 00
- 257 days compensation
For length of service SR 35, 1110 - 16
- SR 38, 070 - 16
- Less 5% Social Security SR 1, 903 - 51

- To be paid

SR 36, 166 - 65

The defendant being dissatisfied with the Ruling of the Minister intended to come to Court for a Judicial Review of the said Ruling. However, according to the defendant, since the Ministry refused to furnish the necessary documents, it was not able to file the petition in time for Judicial Review. As a result, the defendant did not pay the legal benefits and compensation to the plaintiffs as per the determination of the Minister. Following non-payment, criminal law was set in motion against the defendant. It was charged before the Magistrate's Court with the offence of failing without reasonable excuse, to comply with the decision of the Minister, contrary to Section 76(1) (f) of the Employment Act, 1995. Stemming from these background facts and circumstances, the plaintiffs have now come before this Court with the present suit seeking the declaration first above mentioned.

On the other side, Mr. B. Georges, Learned Counsel for the defendant submitted that the instant suit is not maintainable in law for reasons in essence as follows:

- Upon conclusion of the grievance procedure, the Competent Officer although found that the termination was not justified, still he allowed the termination subject to the payment of the compensation payable to the plaintiffs under the Act. Thus, the competent officer in his determination effectively, ruled out the reinstatement of the plaintiffs in their employment. Indeed, he has made this determination in accordance with Section 61 (2) (a) (iii) of the Act, which determination has also been subsequently upheld by the Minister on appeal. Hence, the plaintiffs cannot now come before this Court for a remedy of such a declaration that is

tantamount to an order of reinstatement of the plaintiffs in their employment. If such a declaration is made by the Court, then the lawful determination of the Competent Officer made in accordance with the provisions of the Act would be defeated or annulled. Moreover, the Competent Officer has already ordered the payment of compensation to the plaintiffs. Therefore, the question of reinstatement cannot possibly arise in this matter. Obviously, under no circumstances, the payment of compensation can coexist along with reinstatement of the plaintiffs in employment in any case for that matter. Hence, according to Mr. Georges the instant suit for a declaration is not tenable in law and liable to be dismissed.

- Besides, since the issue in the instant suit relates to an employment dispute involving the termination of employment and restatement, the matter falls within the purview of the Employment Act and the Ministry of Employment. Hence, this Court has no jurisdiction to order reinstatement of the plaintiffs in employment, in the guise of making a declaration that the plaintiffs are, and continue to be in the employment with the defendant. In support of his contention in this respect, Mr. Georges cited a number of precedents, wherein the Court has repeatedly held that it has no jurisdiction to grant any remedy to a worker, whose grievance over termination of employment has already been dealt with by the competent authority under the provisions of the Act. Hence, Mr. Georges submitted that this Court has no jurisdiction to entertain the instant matter, and so urged the Court to dismiss the action.

On the contrary, Mr. J. Renaud, learned counsel for the plaintiff submitted that since the Minister has already given his view that the

termination was not justified, this Court has jurisdiction to make a declaration that the plaintiffs are in employment. According to counsel, the purpose of this suit is simply to ask the Court for a declaration that as a result of the unjustified dismissal of the employees they still remain in the employment of the defendant. Therefore, it is contended that the instant suit is maintainable in law.

First of all, it is important to examine the relevant provision of law under Section 61 (2) of the Employment Act, which has given rise to the present action before the Court. This Section reads thus:

“Upon conclusion of the grievance procedure initiated under subsection (1), the competent officer may determine as follows -

- (a) In the case of subsection (1) (a) -
 - (i) that termination is justified;
 - (ii) that termination is not justified and that the worker is reinstated in the post or offered other suitable employment and that, where applicable, some disciplinary measure or none be taken in lieu of termination;
 - (iii) that termination is not justified but, as it would be impractical or inconvenient to reinstate the worker in the post or offer the worker other suitable employment, allow the termination subject, in the case of subsection (1) (a) (ii), to the payment in lieu of notice of one month's wages or, where an amount is specified in the worker's contract of employment in the case of a non-Seychellois worker referred to in section 59(c), that amount;

- (b) in the case of subsection (1) (b) -
 - (i) that termination is justified, in which case the worker is entitled to the payment of one month's salary in addition to any benefits or compensation the worker may have earned;
 - (ii) that termination is not justified, in which case the worker is liable to pay the employer a sum equal to one month's salary or, where an amount specified in the contract of employment in the case of a non-Seychellois worker referred to in section 60(1)(d), that amount and the employer may deduct the sum or the amount from any payments owed by him to the worker in accordance with section 33(2)”

It is evident from the above that upon conclusion of the grievance procedure, the competent officer has three options in determining the issue as to the termination of employment. They are:

- (i) he may find that the termination is justified, in which case he has to order that the worker is entitled to the payment of one month's salary in addition to any benefits or compensation the worker may have earned; or
- (ii) he may find that the termination is not justified and that the worker is reinstated in the post or offered other suitable employment with or without any disciplinary measure being taken; or
- (iii) he may find that termination is not justified but, as it would be impractical or inconvenient to reinstate the worker in the

employment, he may allow the termination and order the payment of notice pay and compensation.

Obviously, the Competent Officer in the instant matter has in his wisdom, opted (iii) above, in his determination. His option in this regard falls well within his statutory power, discretion and jurisdiction conferred on him by Section 61 (2) (a) (iii) of the Act. Hence, I quite agree with the submission of Mr. Georges that the competent officer in his determination has effectively, ruled out the reinstatement of the plaintiffs in their employment. Undoubtedly, the competent Officer has made this determination in accordance with Section 61 (2) (a) (iii) of the Act, which determination has also been subsequently upheld by the Minister on appeal. Hence, I hold as rightly submitted by Mr. Georges, that the plaintiffs cannot now come before this Court seeking a declaration that would in effect, amount to an order of reinstatement of the plaintiffs in their employment. Consequently, I find that the instant suit for the declaration is not tenable in law and liable to be dismissed.

On the question of jurisdiction, it is trite, nevertheless I wish to repeat that the jurisdiction to entertain all matters relating to contracts of employment for service in Seychelles including matters incidental and ancillary thereto in respect every claim as to its breach, termination and damages is vested in the authority, which the Act has created and empowered specially for the purpose of the hearing and determination of those matters. The jurisdiction of the Court in those matters has been ousted by Section 4(3) of the Employment Act, 1995 as amended by Act No. 8 of 1999, which reads thus:

“Where provision is made under this Act for the hearing and determination of any matter in relation to a contract of employment to which this Act applies, any

remedy or relief granted under the Act in respect of that matter shall, subject to the supervisory jurisdiction of the supreme Court be binding on the parties to the hearing on determination”

It is also pertinent to quote the following excerpts from the judgment of the Court of Appeal in Antoine Rosette v. Union Lighterage Company-SCA- Civil Appeal No: 16 of 1994, wherein Ayoola JA (as he then was) held:-

“I do not think that the Act envisaged a situation in which the worker and employer would go through the grievance procedure to finality only for the worker to commence and drag the employer through fresh proceedings based on the same cause of action in another forum”

As I see it, the cause of action in the grievance procedure before the Competent Officer and the one in the present proceedings before the Court are one and the same. Both matters relate to contracts of employment and its termination. In the circumstances, I find this court has no jurisdiction to entertain the instant suit as it obviously falls within the purview of the Employment Act.

For these reasons, I uphold the submission of Mr. Georges and find that the instant suit for a declaration is not maintainable in law. Accordingly, I dismiss it with costs.

Consequent upon the dismissal of this action, I direct the defendant to pay the plaintiffs all their legal benefits with interest, in compliance with the Ruling of the Minister made on 31st October 2000, in this matter.

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D. Karunakaran

Judge

Dated this 22nd day of November 2005