

Venkatiah Vs. Management of the Buckingham and Carnatic Co. Ltd., Madras and anr.

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Court : Chennai

Decided On : Jan-15-1962

Reported in : AIR1962Mad478; [1963(6)FLR139]; (1963)ILLJ16Mad

Judge : S. Ramachandra Iyer, C.J. and ;Ramakrishna, J.

Acts : Employees State Insurance Act, 1948 - Sections 73; [Constitution of India](#) - Article 226

Appeal No. : Writ Appeal No. 82 of 1959

Appellant : Venkatiah

Respondent : Management of the Buckingham and Carnatic Co. Ltd., Madras and anr.

Judgement :

S. Ramachandra Iyer, C.J.

(1) This is an appeal from the judgment of Balakrishna Aiyar, J., making absolute the rule nisi and quashing the award of the Labour Court, Madras, in I. P. No. 27 of 1958. The appellant Venkatiah was employed in the Buckingham and Carnatic Mills Co., Ltd., the respondent. Service under the company is regulated by certain standing orders. Standing Order 8 sub-clause (2) 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; if however he gives an explanation to the satisfaction of the management that his absence was due to sickness, then such absence shall be converted into medical leave for such period as the employee is eligible; even otherwise, if he gives an explanation to the satisfaction of the management, the absence shall be converted into leave without pay or dearness allowance.

(2) Venkatiah was granted leave by the management for a few days on 10-1-1957. He was to have joined duty on 19-1-1957. He did not do so till 11-3-1957 when he appeared before the Labour Officer of the mills and applied for treating his previous absence as one on medical leaves. He enclosed with his letter of request, a medical certificate issued by the Civil Assistant Surgeon, Government Hospital, Kanigiri a place very near his village to which he had gone immediately he was granted leave. This certificate confirmed Venkatiah's version that he was suffering from fever and dysentery for a period of nearly two months, i. e., from 15-1-1957 to 8-3-1957. The employee is one to whom the provisions of the Employees State Insurance Act would apply. Immediately on his arrival at Madras in March, 1957, he reported himself to the medical officer of the Employees State Insurance Corporation at Perambur. That officer advised him to report himself to the medical officer of the company. He appeared before the senior medical officer attached to the mills on 22-3-1957 who made the following report to the management:

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

Before continuing the narrative it will be pertinent to make an observation about the certificate which at best can only be described as vague. It is not clear what the medical officer meant by saying that he was unable to confirm that he (worker) was ill. Was it his opinion that he was not able to find at the time when the worker presented, himself before him for medical examination about his antecedent illness and say that the statement: of the worker that he was actually ill during the relevant time was true, or was it merely his opinion that it was not possible to say

at the time when he examined the worker whether he was ill or not. It is not rare that certain persons particularly those belonging to the working class recover from their illness very quickly and any clinical examination undertaken, as in the present case, two weeks after recovery from illness, might not reveal any signs of their having been ill previously. It is not even possible to state with certainty from the terms of the certificate whether it was the doctor's opinion that the worker was not ill at all or that he was not ill for two months as claimed by the worker.

(3) To resume the narrative, the management appears to have taken the certificate to mean that the worker was not at all suffering from any illness during the period claimed by him. It is stated in the counter affidavit filed before the Labour Court on behalf of the management that a letter was sent by them to the worker concerned on the same day rejecting his explanation. That letter has, however, not been produced. Nor is there any evidence about service of the same. The employee states in his letter dated 2-5-1957, to the Regional Director, Employees State Insurance Corporation, Madras, that he was told orally by the manager of the Mills by about 10th of May, 1957, that he was dismissed. Whatever that may be the employee applied for sickness certificate under the Employees State Insurance Scheme. He also moved the Regional Director to intercede on his behalf for his reinstatement in the Mills. On 17-5-1957 the Regional Director forwarded a copy of the appellant's letter to the management and requested for their comments thereon. We are not told under what authority the Regional Director of the Employees State Insurance Corporation could call on the management to justify their action. Probably it was done purely out of humanitarian considerations. The management replied to this letter setting out the circumstances under which they had to treat Venkatiah as having been discharged from service. They referred to the opinion of the medical officer of the mills and observed that a person who was continuously ill for two months suffering from Malaria and dysentery would have shown some signs of the after-effects of the illness at the time when he reported himself at the mills and that the explanation offered by the employee was not therefore accepted. The management however appears to have been willing to reconsider the case of the worker. This is clear from the last paragraph of their letter dated 24-5-1957 to the Regional Director, Employees' State Insurance Corporation, which states

'The alternative evidence (referring to the-certificate of the Civil Assistant Surgeon at Kanigiri) of sickness produced by this worker has not been accepted by the Employees State Insurance Corporation and it seems to us that this has not been done as he has not complied with the rules relating to the acceptance of alternative evidence for sickness. Until 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.'

(4) The Employees State Insurance Corporation subsequently accepted the alternative evidence submitted by the worker and granted him cash benefits under the Employees State Insurance Act for the period from 15-1-1957 to 8-3-1957. The Regional Director of Employees State Insurance Corporation by his letter dated 5-6-1957 intimated this fact and suggested to the management to reconsider the case of Venkatiah for reinstatement. The management however felt that on the broad principles laid down previously by the Director of Employees State Insurance Corporation, evidence of sickness otherwise than in the manner indicated in the instructions given to them could not be accepted except under some extraordinary circumstances, and they requested the Regional Director to let them know the extraordinary circumstances under which the alternative evidence of sickness produced by the worker was accepted so as to enable them to take a final decision in the matter. The Regional Director declined to disclose-the grounds on which he accepted the alternative evidence for the purpose of granting sickness benefit to the worker. This reply appears to have piqued she, management, who immediately sent a communication to the effect that the evidence of illness tendered, (namely the certificate of the Assistant Surgeon) was to be to the satisfaction of the management and not of the Employees State Insurance Corporation and that there being no such satisfaction to the former the worker could not be reinstated. It is unfortunate that the fate of the worker had to be decided not on the merits of the-case but on the basis of the letters that passed between the Regional Director of the Employment State Insurance Corporation and the management of the mills. It is evident from the correspondence dealt with above that the management was not entirely satisfied with the report of their medical officer, they were willing to consider at one time, the alternative evidence which in this case consisted of a medical certificate from a responsible

Government Civil Assistant Surgeon of gazetted rank. Admittedly there was no consideration by the management on the merits of the case as to-whether the Civil Assistant Surgeon's certificate could be accepted or not.

(5) On the refusal of the management to reinstate the worker, an industrial dispute followed which was referred for adjudication by the Government to the Labour Court at Madras. Substantially two grounds of objections to the termination of the service of the worker were taken before the Labour Court on his behalf: (1) the opinion of the company's medical officer should not be accepted and (2) that the termination of his service was invalid being contrary to the provisions of section 73 of the Employees State Insurance Act.

(6) The Labour Court negatived the worker's case on the first point, but it held that as the termination of his service took place during the period for which the employee received sickness benefit it was invalid. The Labour Court, therefore, directed the management to reinstate the worker (appellant) within two weeks of its award.

(7) The management thereupon applied to this Court under Article 226 of the Constitution to quash the order of the Labour Court. Balakrishna Aiyar, J., who construed the company's medical officer's certificate (and that was also the view taken by the Labour Court) as amounting to an opinion that the worker was not ill in the manner claimed by him, held that the management was entitled to enforce the conditions of service as set out in Standing Order 8 sub-clause (2) and that the service of Venkatiah was properly terminated. The learned Judge also held that section 73 of the Employees State Insurance Act of 1948, would only apply to a case where there had been a positive act on the part of the management terminating the services of the employees, and not to a case where the employment comes to an end by reason of the provisions of the Standing Orders without any further act on the part of the management; that it could not also be said that the worker was discharged during the period when he was in receipt of sickness benefit as he was not discharged when he was absent from work on account of sickness, but on a later date. On those findings the learned Judge quashed the order of the Labour Court directing reinstatement of the worker.

Hence this appeal.

(8) We are unable with great respect to share the view of the learned Judge that the certificate issued by the company's medical officer on 22-3-1957 disproved the sickness of the appellant. As we have pointed out at the beginning, the certificate is vague and is capable of more than one meaning. There is nothing on record to indicate that independent of the certificate, the management considered the application of the worker and found his case to be false. It is no doubt stated in the management's letter to Regional Director of Employment State Insurance Corporation that if really the worker had been ill for a period of two months it would have been discoverable at the time when the mills' medical officer examined him. We cannot accept that as an infallible rule. It may be that in many cases long illness might leave its effects, even after recovery. But this depends upon the nature of the illness; it is possible to conceive in the instant case that by the end of two months the worker gradually and completely got cured and was restored to normal health at the end of the period. Much would depend upon the capacity of the patient to recover. A superficial examination might not reveal that the worker was ill. Whether the worker was ill or not is a question of fact which has got to be considered by the management on the basis of such evidence as might be produced before them and cannot obviously be a matter of conjecture or presumption. The circumstance that the management themselves are prepared to reconsider the case on the basis of the evidence afforded by the certificate of the Civil Assistant Surgeon, Kanigiri, if the Employees State Insurance Corporation authorities would accept that certificate and give reasons therefor, shows that they did not treat their medical officer's certificate as conclusive. It follows from this that in effect the management has not considered the explanation offered by the appellant for his absence in the way in which it should have done. Under Standing Order 8(2), it is obligatory on the part of the management to consider the explanation of the worker. If they found that he was ill he should be given medical leave to the extent to which he was entitled. Even if he was not so ill as to entitle him to leave on medical certificate, the management could even consider whether his absence was otherwise justified in the circumstances of the case and if satisfied could convert his absence into leave without pay. Beyond suggesting the Employees State Insurance authorities were not entitled to accept the alternative

evidence of illness if regard is to be had to the instructions given to them, the manage. merit did not consider the validity of the worker's application except on the basis of the opinion of their medical officer. This alone would justify or support the award directing reinstatement.

Even apart from that consideration we are of opinion that the termination of the services of the worker is contrary to section 73 of the Employees State Insurance Act. That section provides that no employer shall dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness or maternity benefit. The employee in the instant case obtained sickness benefit for the period from 15-1-1957 to 8-3-1957. We are unable to agree with the learned counsel for the respondent that the termination of service should be taken to be after the aforesaid period And as such not covered by the section. Under the standing orders, the worker is deemed to be discharged from service even during the period of his absence when once his explanation has not been accepted. Let us assume that the explanation was not validly accepted in this case. As the appellant had leave till 19-1-1957 his service should be deemed to have been terminated from that date. Sickness benefit was given to the worker from a date four days earlier than that i. e., from 19-1-1957. Discharge from service should therefore be held to have taken place from the time when he began to receive sickness benefit.

(9) Mr. Rajah Aiyar for the management then contends that as the order of dismissal was passed on 23-3-1957, that is, is days after the expiry of the period of benefit, the terms of section 73 of the Act could not be said to be satisfied, there being no order of discharge passed at any time between 15-1-1957 and 8-3-1957. We are, however, unable to agree with this contention. Although the order might have been passed on 23-3-1957 the discharge became operative from 19-1-1957 after which date the employee would not be entitled to salary or other allowances.

(10) It was next contended on behalf of the respondent, that as under the standing orders of the company, the discharge from service is automatic the provisions of section 73 which contemplate a positive act on the part of the employer would not apply. There is no scope for this argument as it is the respondent's case that there

was such an order on 23-3-1957. The appellant also stated in his letter to the Employment State Insurance Corporation, that the manager of the company told him that he was dismissed sometime about the 10th of May, 1957. We cannot, therefore accept the contention that there is no positive act of dismissal in the present case. Even assuming that the discharge of the worker in the instant case was automatic by virtue of the operation of standing Order 8 sub-clause (2) we are of opinion that section 73 will be attracted having regard to the circumstances. Under that Standing order it is obligatory on the management to consider the explanation of the worker and if they are satisfied that his absence was excusable it will be open to them to treat it as one of leave. When there is such a rule it will not be competent for the management to omit to consider the explanation offered by the worker and then state that there is an automatic termination of the service in every case where there is absence without leave. The question of absence without leave will arise only if the management had rejected the explanation of the worker in regard to his absence from duty. Where the management does not pass a valid order on the explanation submitted by the absentee worker with regard to his absence but refuses to allow the worker to resume his duty, it tantamounts to a dismissal, and not an automatic termination of his services. The learned Judge has referred to the provisions of section 85(d) of the Employees State Insurance Act to show that what was contemplated by Sec. 73 could only be a positive Act of dismissal on the part of the management. It is unnecessary to consider in the present case whether different meanings should be given to the provisions of sections 73 and 85(d) of the Act, having regard to the context and scope of the respective sections. Assuming that section 73 does envisage an act on the part of the management dismissing or discharging the worker, we are of the opinion that in the instant case the conduct of the management in not validly considering the explanation offered by the worker supported as it was by a medical certificate amounts to an act which would come within the terms of the section. We are not, however, to be understood as stating that the management is bound to accept any medical certificate that might be produced by the worker, in support of his case that he was too ill to attend to his work. It is always for the management to consider whether the certificate produced by the worker from a medical officer other than the company's medical officer should be accepted or not. But as stated

earlier, the present case in a peculiar one. The company's doctor did not say definitely whether the worker was really ill or not. The management does not seem to have rejected the Civil Assistant Surgeon's certificate as untrustworthy. Under such circumstances it could not be held that the company had discharged their obligations under their Standing Orders or considering the explanation of the worker in regard to his absence. Such a failure of duty on the part of the management particularly having regard to the terms of standing Order 8 sub-clause (2) which oblige them to convert absence of a worker as one on leave in case they were satisfied with the explanation of the worker showed that there was an act on their part which brought about discharge or dismissal of the worker. We are of the view that in the circumstances of the case it should be held that the action of the management amounted to a contravention of the provisions of section 73 of the Employees State Insurance Act and as such is invalid. The judgment of Balakrishna Aiyar, J., directing issue of writ of certiorari is set aside and the appeal will stand allowed. The appellant will be entitled to his costs.

(11) Appeal allowed.