

Anglo-french Mills Vs. Goulam Cader

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Court : Chennai

Decided On : Aug-04-1965

Reported in : (1966)IILLJ700Mad

Judge : M. Anantanarayanan and; P. Ramakrishnan, JJ.

Appellant : Anglo-french Mills

Respondent : Goulam Cader

Judgement :

P. Ramakrishnan, J.

1. This special appeal is filed before this Court, in exercise of its power of cassation, from the judgment of the Court of Tribunal de Premiere Instance, Pondicherry, which, in turn, confirmed the judgment of the labour court, Pondicherry.

2. Before the labour court, one Goulam Cader applied for damages against the director of the Anglo-French Mills, Pondicherry, for terminating his employment as a worker in the weaving section of the mills without proper reasons. The management of the mills relied on the circumstance that the medical officers of the mills on examining the worker in question found that he was suffering from pulmonary tuberculosis (open case), that he had a bout of haemorrhage ten days previously, that the disease was curable only after prolonged treatment and

complete hospitalization, and that it would be contagious if he was allowed to continue on duty. Thereupon, the mill-management, relying upon Rule 12 of the standing orders, gave the employee fourteen days' notice, and terminated his employment after giving him the usual benefits of provident fund, etc. The labour court held that it was improper for the management to have terminated the service of the worker on the ground of his suffering from tuberculosis, because, under Article 47(c) of the French Labour Code issued under law, dated 15 December 1952, there is a provision for suspending the contract of employment during the absence of the worker in case of illness duly certified by an approved medical practitioner, for a period not exceeding six months, and this period can be extended until such time as the worker is replaced. In the judgment of the labour court, the termination of the worker's employment ostensibly under Rule 12 of the standing orders really amounted to a violation of this provision of the Labour Code which was enacted for the benefit of the workers, and consequently, the termination of the contract of employment was unlawful. Thereupon, the worker was held to be entitled to damages which was awarded in a sum of Rs. 700 as against a much larger sum which he had claimed. Under the French Labour Code, an appeal lies to the Tribunal de Premiere Instance, against the decision of the labour court and the management appealed to that tribunal. It confirmed the decision of the labour court and held that the order of the management terminating the worker's employment constituted a 'rupture abusive du contract,' i.e., termination of employment in breach of the conditions of the contract, and it also confirmed the quantum of damages. In cases of individual disputes as in this case, there is a further remedy to the aggrieved party by way of resort to the Court of cassation, and the Court of cassation can exercise its usual powers for dealing with such matters. Under the Pondicherry (Administration) Act, 1962, this Court has been conferred the necessary power to deal with it as a Court of cassation. That is how the case has come before us for hearing in this special appeal.

3. Learned Counsel, appearing for the management, urged that the order in question terminating the worker's employment fell properly within the scope of Rule 12 of the standing orders which have been framed in accordance with the recommendation of the Chakravarthi award for dealing with the disputes between the management and the employees in the textile mills. In the former French

territories. That rule says that the employment of any regular daily-rates employee may, for good and sufficient reasons, be terminated by fourteen days' notice or by payment of fourteen days' wages in lieu of notice. The standing order do not say what are good and sufficient reasons. The adequacy of the good and sufficient reason for the termination of employment may have to be considered in the light of each particular case, when the matter is raised as an issue before the labour court toy the aggrieved party. In the present case, the management apparently relied upon the report of the medical officers that the worker was suffering from tuberculosis for the past ten years and that prolonged treatment would be necessary for a cure. But it is against such a context that the French Labour Code has enacted a provision in Article 47 (c) which gives the worker an opportunity to avail himself of a six months' period for getting himself cured of the disease. During that time, that article provides for suspension of the contract. Article 48 of the code provides for the payment to the worker during the aforesaid period of an amount of compensation equal to his remuneration limited to the period of the normal term of notice. From the language of both Articles 47 (c) and 48 of the French Labour Code, it will appear that, before the management proceeds to terminate the employment of a worker on the ground of his suffering from an illness like tuberculosis, which prevents his attending to his duties in the ordinary manner, the worker should be given an opportunity to avail himself of the provision under Article 47 (c) which, as mentioned already, has been enacted for his benefit. If any other, view is taken of the matter and the management is permitted to resort to Rule 12 of the standing orders for terminating the services of the worker after fourteen days' notice, it will Barely work hardship, In cases where the worker may fall seriously ill, but where with proper expert medical treatment, he could be expected to get well after a certain period of time and be fit to resume his employment. There are graver diseases like leprosy and tuberculosis, which are our able with proper medical care over a period of time. It will be wholly unfair for the management to record to the provisions under rile 12 of the standing orders, the moment it is found that a worker is suffering from a disease like tuberculosis or leprosy, which may require prolonged treatment but which can still be expected to be cured. There is no suggestion in this case that tuberculosis from which the worker was suffering could not be cured provided proper medical attention was

given. Even the medical report was only to the effect that prolonged treatment was necessary before cure could be expected. The management did not take the trouble to ascertain how long the treatment would be necessary and whether a cure could be obtained after six months of treatment. It is certainly possible to visualize expert treatment which might effect such a cure, and it is for this purpose that the worker has been given the necessary protection under Article 47 (c) of the Labour Code. In view of the above circumstances, we are of the opinion that the order of termination of the worker's employment under Rule 12 of the standing orders without giving him an opportunity to avail himself of the benefit of Article 47 (c) of the French Labour Code was clearly irregular and beyond the competence of the management in this case. The orders of the Courts below do not call for interference.

4. The special appeal is dismissed. But there will be no order as to costs.

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