HETTIARACHCHI INDUSTRIES (PVT) LTD.
v.
DAYA KANTHI

SUPREME COURT
AMERASINGHE, J.
WADUGODAPITIYA, J.
WIJETUNGA, J.
S.C. APPEAL NO. 150/97
FEBRUARY 23, 1998.

Termination of Employment Act 45 of 1981 – Employee on maternity leave – Services terminated for alleged misconduct in wrongfully refusing to work – After letter of termination was despatched business premises burnt down – Frustration of the contract – Is the employee entitled to – damages.

Held:

1. The respondents services had been terminated for alleged misconduct before the fire took place.

2. Although the workplace had been burnt down, the termination on account of the alleged misconduct was reiterated after the date of the fire.

APPEAL from an Order of the High Court.

Chula de Silva, PC with *Miss T. Ratnaike* and *P. Fernando* for appellant.

S. Sinnetamby with *Thenuwara* for respondent.

Cur. adv. vult.

June 10, 1998.

AMERASINGHE, J.

K. D. R. Daya Kanthi (respondent) was employed as a Typist Clerk by Hettiarachchi Industries (Pvt) Ltd. (appellant). The respondent obtained 97 days of approved maternity leave from 7th November, 1998. By a letter dated 8th December, 1998, her services were terminated by the appellant.

The letter of termination stated that from the 7th of November, 1988 the employees of the appellant had "not only wrongfully refused to perform their duties, but also unlawfully prevented the management from running the affairs of the company". It was alleged that "business operations had been brought to a standstill". The letter states: "You have created a situation by your acts of misconduct in preventing us carrying on any business . . . We have no choice but to inform you that due to the aforesaid reasons your employment/apprenticeship with us has ceased/stands terminated".

It was not in dispute that the letter of termination was a letter in a standard form issued to all the appellant's employees. As far as the respondent was concerned, she was on maternity leave during the whole of the period during which the alleged acts of misconduct by the appellant's employees were supposed to have been committed. In fact the respondent had been at the General Hospital, Sri Jayawardenepura, from 7th November to 25th November, 1988.

After the letter of termination had been despatched, some time during the night of the 8th/9th December, 1988, the business premises at which the respondent had been employed, was completely burnt down.

In response to a request from the respondent for employment, the appellant wrote to the respondent on 8th February, 1989, referring to the damage caused by the fire and inviting her to satisfy herself of the truth of the matter. It was stated that in the circumstances there was "no possibility whatsoever of offering work to anybody . . . quite apart from what we have stated in the previous letter dated 8th December, 1987, we have to add that your contract of employment has got frustrated". The employer offered to pay a sum of money calculated on the basis of a half month's salary for each year of service as "full and final" payment of statutory or other dues.

The respondent appealed to the Labour Tribunal for relief. After inquiry, on 22, October, 1992 the Tribunal awarded the respondent a sum of Rs. 77,510 as damages.

The employer then appealed to the High Court praying, *inter alia*, that the order of the Labour Tribunal be set aside. On 2nd August, 1996, the High Court dismissed the appeal with costs.

The employer (appellant) then appealed to the Supreme Court. Leave to appeal was granted on the following matters:

(1) Did the respondent's employment come to an end by frustration/ impossibility of performance due to the destruction of the place of her work? If so does the Labour Tribunal have any jurisdiction to grant any relief?

(2) Where a contract of employment comes to an end by frustration, is there an obligation on the part of the employer to obtain any permission of the Commissioner of Labour under the Termination of Employment Act, No. 45 of 1991.

(3) Does the fact that the employer has not been liquidated result in the non applicability of the doctrine of frustration, where the place of employment is destroyed?

(4) In the circumstances of this case, was the Labour Tribunal and the High Court under a duty to make an order which was just and equitable not only by the workmen, but also by the employer?

Did the respondent's employment come to an end by frustration/ impossibility of performance due to the destruction of the place of work?

Assuming that the destruction of the place of the respondent's work might have brought an end of the contract of employment by the operation of law relating to frustration of contracts, there must have been a contract of employment to be frustrated at the relevant time.

In the matter before us, the respondent's services had been terminated for alleged misconduct before the fire took place. The appellant reiterated the grounds of termination in their letter dated 8th

February, 1989: frustration of the contract is no doubt mentioned, but as an additional reason for not being able to accede to the respondent's request for work. Fire or no fire, as far as the appellant was concerned, it had been decided to terminate the services of all its employees for alleged misconduct. Although her workplace had been burnt down, the termination on account of alleged misconduct was reiterated after the date of the fire. As far as the respondent was concerned, as we have seen, she was not in any way to be blamed for the reasons adduced by the appellant for the termination of the services of the appellant's employees *en masse*.

I am of the view that the learned President of the Labour tribunal and the learned Judge of the High Court were right in holding that the termination of the respondent's services was without justification.

I am in agreement with the view expressed by learned counsel for the appellant that an equitable order should take the employer and employee into account. In the circumstances of this case, I find no reason to hold that the award made by the Labour Tribunal was inequitable. The fact that the workplace was burnt down does not *per se* relieve the employer of his obligations to his employees.

The other questions of law on which leave to appeal was granted do not arise for consideration in view of what I have stated above.

For the reasons set out in my judgment, I dismiss the appeal and affirm the decision of the High Court. The appellant will pay the respondent a sum of Rs.10,000 as costs.

WADUGODAPITIYA, J. – I agree.

WIJETUNGA, J. – I agree.

Appeal dismissed.