

IN THE SEYCHELLES COURT OF APPEAL

SEYCHELLES PUBLIC
TRANSPORT CORPORATION

APPELLANT

versus

BARNEY ELIZABETH

RESPONDENT

Civil Appeal No: 34 of 1998

[Before: Ayoola, P., Pillay & De Silva, J.J.A]

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Mr. K. Shah for the Appellant
Mr. F. Simeon for the Respondent

JUDGMENT OF THE COURT
(Delivered by De Silva, J.A)



The plaintiff (respondent in the appeal) was until 11th February 1994 a mechanical engineer working under the defendant, Seychelles Public Transport Corporation, who is the appellant before this Court. On 11th February 1994 the appellant terminated the contract of employment with the respondent on the ground of failure “to perform his duties as per job description.” Moreover it is important to note that in the certificate of employment (Exhibit P1) the appellant characterised the conduct of the respondent as “unreliable.” On 28th March 1994 the termination of the respondent’s contract of employment was reviewed by the Ministry of Employment and Social Affairs and the Competent Officer of the Ministry ruled (Exhibit P2) –

- (a) that the termination of the respondent’s contract of employment was not justified;

- (b) that the respondent is entitled to one month's salary in lieu of notice;
- (c) that his certificate of employment be amended accordingly.

The appellant appealed against this decision to the Minister of Employment and Social Affairs in terms of the Employment Act 1990. The Minister's ruling which was conveyed by letter dated 24th October 1994 (exhibit P3) was in the following terms:-

“The termination of Mr. Elizabeth's employment was not justified. He is therefore to be paid the following – one month's notice.”

It was only as late as 6th October 1995 (exhibit P5) that the Certificate of Employment was amended by the appellant by stating that the respondent's conduct was “fair” and the reason for termination of employment was “On grounds other than misconduct.”

The facts set out above are not in dispute between the appellant and the respondent. The case for the respondent, as pleaded in the plaint, is that the appellant's failure to amend the Certificate of Employment notwithstanding the ruling given in exhibits P2 and P3 resulted in gave loss and damage to him. He claimed a total sum of Rs.275000 as moral damages which are particularised in paragraph 8 of the plaint.

The Learned Judge of the Supreme Court carefully evaluated the evidence, both oral and documentary, and reached the finding that the appellant's failure to amend the Certificate of Employment until the 6th

of October 1995, despite the ruling of the Minister given on 24th October 1994 (exhibit P3), constituted a “faute” against the respondent.

The Learned Counsel for the appellant contended that on a plain reading of exhibit P3 there is nothing to indicate that the Minister ruled that the respondent’s Certificate of Employment must be amended. In our view, however, the ruling of the Minister has to be understood and considered in its proper context. As stated by the Learned Judge in the course of his judgment:-

“There is a mandatory statutory requirement that the employer shall issue a Certificate of Employment.”

What was objectionable in the Certificate of Employment issued to the respondent was that his conduct was characterized as “unreliable”, and this would have inevitably weighed heavily against him in his efforts to obtain employment in the future. The Competent Officer of the Ministry (exhibit P2) not only ruled that the termination of the contract of employment was not justified but also specifically directed the amendment of the Certificate of Employment. On appeal the Minister reiterated that the termination of the respondent’s employment was not justified.

It is our view that it is a necessary implication of the ruling of the Minister that the Certificate of Employment has to be amended. As observed by the Learned Judge –

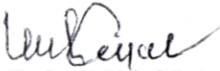
“How could a worker whose termination has been found to be unjustified still carry with him a certificate where he has been branded as being


‘unreliable’. That branding was done by the employer on its own assessment that the termination was justified. That is no longer the case.” (emphasis added)

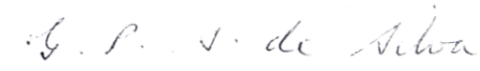
We are therefore unable to accept the contention of Learned Counsel for the appellant.

The Learned Judge awarded a sum of Rs50,000/- as moral damages. The Learned Judge accepted the evidence of the respondent that he suffered “much inconvenience, pain of mind, loss of prospects to work ...” On the evidence which found favour with the Learned Judge it is not reasonable to contend that the damages awarded are excessive.

The judgment of the Supreme Court is accordingly affirmed and the appeal is dismissed with costs.


E.O. AYoola
PRESIDENT


A. G. PILLAY
JUSTICE OF APPEAL


G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 19th day of April 1999.