

Nourrice v European Hotel Resort

(2013) SLR 233

Karunakaran ACJ

20 May 2013

Civ App 18/2012

Counsel M Vidot for the appellant

A Amesbury for the respondent

KARUNAKARAN ACJ

[1] This is an appeal from a decision of the Employment Tribunal hereinafter called “the Tribunal” dated 28 May 2012. The appellant herein is a former employee of the respondent, European Hotel Resort of Mahé, Seychelles.

[2] The respondent was duly represented by counsel Mrs Amesbury. However, despite repeated adjournments granted at her request, she defaulted appearance. Hence, the Court granted leave for the appellant to proceed with an ex parte hearing in this matter. Be that as it may, the appellant was at all material times in the employment of the respondent European Hotel Resort. On 3 November 2011 the appellant had her employment terminated, by the respondent. Being aggrieved by the said termination, the appellant lodged a grievance with the Ministry of Employment pursuant to the Employment Act 1995, hereinafter called the “Act”.

[3] Mediation between the parties was not successful. Therefore, the appellant proceeded to register a case with the Employment

Nourrice v European Hotel Resort

Tribunal. After hearing both parties the Tribunal, by a judgment dated 28 May 2012, declared that the said termination was unlawful and the appellant was entitled to such awards as provided by law. Before the Tribunal the appellant had claimed the following benefits which sums should be calculated and paid until the time of lawful termination:

- i) One month's salary in leave of notice;
- ii) Annual leave (up to date of lawful termination);
- iii) Compensation for length of service (up to the date of lawful termination); and
- iv) Salary from 3rd November 2011 to the date of lawful termination.

[4] The Tribunal in its judgment awarded (i), (ii) and (iii) above but awards in respect of (iv) above were calculated only up to 12 November 2011, which is the date of termination by the respondent. Hence the appellant has now come before this Court on appeal seeking an order that the salary should be paid until the lawful termination pronounced by the Tribunal. The gist of the grounds as per the memorandum of appeal is that the calculation was in contravention of ss 46(1) and 61(2)(a)(iii) of the Act. The awards should have been calculated up to the date of lawful termination, which the appellant submitted, should be the date of the judgment by the Tribunal.

[5] However, the Tribunal did not make any award in respect of claim under (iv) mentioned hereinbefore. I quite agree with the submissions of Mr Vidot, counsel for the appellant in this respect. In my considered view the date of the judgment by the Tribunal is the actual date of lawful termination. Therefore, I find that the appellant

Nourrice v European Hotel Resort

is entitled to a salary up to that date, namely up to 28 May 2012. Hence, I hold the respondent European Hotel Resort liable to pay salary and other terminal benefits to the appellant up to 28 May 2012.

[6] Moreover I note, in the case of *Cap Lazare v Ministry of Employment and Social Affairs* CS 18/2008 and *Sams Catering (Pty) Ltd v Ministry of Employment* CS 312/2006, the Court has reiterated that the calculation of salary should be made until the lawful termination pronounced by the Tribunal. In fact, in the case of *Sams Catering (Pty) Ltd*, Perera CJ, as he then was, agreed that if it is ruled that termination was unjustified then the position is that there has been no termination. Therefore, the termination will be construed as per s 61(2)(a)(iii) of the Act.

[7] In the case of *Cap Lazare v Ministry of Employment and Social Affairs*, this Court presided over by myself held that the Minister was right in holding that compensation should be paid up to the date of lawful termination pronounced by the Tribunal and not up to the time that the employer terminated the employment.

[8] In the present case it is obvious that the termination was declared unjustified only on 28 May 2012 and the Tribunal lawfully terminated the employment on that day. Therefore, the date of lawful termination cannot be 3 November 2011, the date the appellant's employment was terminated by the employer, as on that date there was no lawful termination. For all legal intents and purposes, lawful termination was only on 28 May 2012 when the Tribunal delivered its judgment.

[9] For these reasons, I hold that the appellant is legally entitled to the following terminal benefits over and above what had already been awarded by the Tribunal. They are:

Nourrice v European Hotel Resort

- i) Annual leave from 3 November 2011 to 28 May 2012;
- ii) Compensation from the 3 November 2011 to 28 May 2012;
and
- iii) Salary from 3 November 2011 to 28 May 2012.

[10] In the circumstances, I order the respondent to pay the above benefits to the appellant for the period specified in (i), (ii) and (iii) supra. The appeal is allowed accordingly. I make no order as to cost.