

1970
Jan. 22

[VASSILIADES, P., TRIANTAFYLIDIS, JOSEPHIDES, JJ.]

TAKIS
CHRISTO-
DOULIDES
v.
CHEMIST
SHOP
OF LARNACA
WORKERS
CO. LTD.

TAKIS CHRISTODOULIDES,
Appellant-Plaintiff,
v.
CHEMIST SHOP OF LARNACA WORKERS CO. LTD.,
Respondents-Defendants.

(Civil Appeal No. 4813).

Master and Servant—Summary dismissal—Law and principles applicable—Employee wilfully disobeying lawful and reasonable order of employer—The latter justified in dismissing him summarily—Principles governing such cases laid down in the case KEM (Taxi) Ltd. v. Tryphonos (1969) 1 C.L.R. 52—Need not be reiterated now.

Master and Servant—Alleged wrongful dismissal not proved—Employee's right under the contract of service—Not affected by certain changes devised by the employers—Basic nature of appellant's—employee's position not substantially changed—Appellant, therefore, not justified in assenting breach of contract on the part of the respondents—employers.

Cases referred to :

KEM (Taxi) Ltd. v. Tryphonos (1969) 1 C.L.R. 52 principles laid down followed.

The facts of the case sufficiently appear in the judgment of the Court.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Larnaca (Georghiou, P.D.C. and A. Demetriou, D.J.) dated the 8th April, 1969 (Action No. 209/68) dismissing his action for damages for wrongful dismissal.

G. Tornaritis, for the appellant.

A. Lemis, for the respondent.

VASSILIADES, P.: The judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J.: In this case the plaintiff-appellant claimed damages for wrongful dismissal and there was also a counterclaim on the part of the defendants-respondents for a sum of money in respect of a deficit, etc., but that was not in issue before us today.

The case was tried by the Full Court of Larnaca consisting of the President and a District Judge. As there was disagreement between the two members of the Court, the plaintiff's (appellant's) claim was dismissed. There was judicial agreement on the counterclaim and judgment was entered against the plaintiff (appellant) in the sum of £65.185 mils.

The learned President of the Court held that the plaintiff was wrongfully dismissed and proceeded to assess the amount of damages ; while the learned District Judge was of the view that the plaintiff was not wrongfully dismissed and that the defendants (employers) rightly dismissed him for the reasons given by the Judge.

Briefly, the facts were as follows : The plaintiff, who is a licensed chemist, was employed by the defendant company at Larnaca where they ran a pharmacy. He was appointed to take up duty, which he did, as from the 1st December, 1966, under a contract (*exhibit 1*). The material clause, with which we are concerned in this case, is clause 1 (a), which reads as follows :—

(1) «Ἡ Ἑταιρεία προσλαμβάνει τὸν ὑπάλληλον ὡς προσοντοῦχον Φαρμακοποιὸν εἰς τὴν ὑπηρεσίαν της καὶ ὁ ὑπάλληλος ἀναλαμβάνει ὑπηρεσίαν τὴν 1ην Δεκεμβρίου, 1966, παρὰ τῆ Ἑταιρείας, ὑπὸ τοῦς ἀκολουθούς ὅρους :—

(a) Ὁ ὑπάλληλος θὰ εἶναι ὑπεύθυνος Φαρμακοποιός, τοῦ Φαρμακείου τῆς Ἑταιρείας, θὰ φροντίζει διὰ τὴν κανονικὴν λειτουργίαν τοῦ Φαρμακείου, θὰ φροντίζει διὰ νὰ ὑπάρχουν τὰ διάφορα εἶδη Φαρμάκων εἰς τὸ Φαρμακεῖον θὰ φροντίζει νὰ κρατοῦνται τὰ σχετικὰ βιβλία τὰ προνοοῦντα ὑπὸ τοῦ Νόμου διὰ τὴν καταγραφὴν τῶν φαρμάκων καθὼς καὶ τοὺς ταμειακοὺς λογαριασμούς.»

Reference should be made to the provision in that clause that he was employed as a "qualified chemist". His salary would be £79.600 mils, including all benefits, as laid down in the contract, which would be of a duration of four years.

Apparently the business was run at a loss after the plaintiff took up duty and, after a meeting held in January, 1968, at which the plaintiff was also present, it was decided by defendant company to terminate the services of another

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servant in the pharmacy (Andreas Socratous), who was assisting the plaintiff, and they further decided to appoint one Christakis Alexiou, with effect from the 1st February, 1968, as “book-keeper, cashier, responsible for purchases, and general financial administrator of the pharmacy”. Notice was given to the plaintiff, by a letter dated the 4th February, 1968, whereby he was also notified that no order or any other transaction would bind the defendant company unless this was done through the general financial administrator so appointed.

The plaintiff, by his letter dated the 12th February, 1968, referred to his obligations and rights under the contract and, especially, under clause 1 (a), and went on to say “I am sorry to observe that, in a responsible post like that of a responsible chemist, it is not possible for any other person to be ‘responsible’ (ὀπεύθουος) and general financial administrator, except myself, as provided under the contract”. The defendant company replied by their letter dated 23rd February, 1968, stating that they were not taking away from the plaintiff any right, as envisaged in their contract, by the appointment of Alexiou as financial administrator, and they informed the plaintiff that Alexiou would be taking up duty with effect from the 1st March, 1968, for the better carrying out of the business of the defendant company. They further informed the plaintiff that they had fixed the 1st and 2nd March, 1968, as the dates of stock taking and delivery of the cash position to Alexiou. Plaintiff replied by his letter dated 27th February, 1968, insisting on his original position and stating that in no way he would accept Alexiou to “mix up” in his (plaintiff’s) duties as laid down in the contract, and that he had all the responsibility under the law as a chemist in the defendants’ pharmacy.

Finally, we come to the crucial date, the 12th March, 1968, when a fresh letter was handed to the plaintiff by members of the board of directors of the defendant company and their advocate Mr. Lemis, in which they reiterated the duties of the newly appointed financial administrator (Alexiou) as follows :—

“(a) book-keeper, (b) cashier, (c) to be responsible for the purchase, and/or for the provision, of medicines, subject to your (the plaintiff’s) indications ; and (d) as financial administrator of the pharmacy”.

The plaintiff’s attention was also drawn to his repeated breaches of duty in refusing the stock-taking requested earlier, and he was finally warned that if he failed to comply

with the defendants' request, then his services would be terminated due to his fault or misconduct. There and then the contents of this letter were read or explained to the plaintiff by advocate Lemis. As the plaintiff refused again to accept the implementation of the proposed arrangement, the members of the board of directors of the defendant company present (Melissos, Minas and Chimonides) held a meeting there and then, and they decided to dismiss the plaintiff from his post. He was immediately informed of this decision by a letter of the same date (the 12th March, 1968), to the effect that his services were terminated due to his fault or misconduct.

Following that, there were other developments with which we are not concerned in this appeal, but the net result was that the plaintiff brought the present action claiming damages for wrongful dismissal.

The learned President of the Court, as already stated, found as a fact that the plaintiff was justified in having taken the stand that he took and that he could not be dismissed summarily in the way he had been dismissed. He was of the view that, by virtue of clause 1 (a) of the contract, the plaintiff, who was a licensed chemist, would be in charge of the defendants' pharmacy and have the sole responsibility and management of it, that the appointment of Alexiou, a young man who was not a licensed chemist, derogated from and reduced the plaintiff's position and responsibility as the chemist in charge of the defendants' shop, so much so that it had placed him in a subservient position to that of Alexiou and that it had reduced him to a mere figurehead.

On the other hand, the learned District Judge found that the appointment of the new employee could not have interfered with the plaintiff's rights under the contract. According to the Judge, "He (the plaintiff) would still sign the orders for medical supplies, but what was needed for the pharmacy was what others had to decide, persons responsible for the company's policy. It would be indeed a queer situation if the owners of the company were not to be allowed to have a say as to what was to be bought for the pharmacy or how the company should be run, or who would keep the books. I cannot see the plaintiff's point of view that this would have reduced him to a mere figurehead".

As to the law applicable, it is well settled that wilful disobedience to the lawful and reasonable order of the

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master justifies summary dismissal. The principles governing such cases are stated in a recent decision of this court and we need not reiterate them here : See *KEM (Taxi) Ltd. v. Tryphonos* (1969) 1 C.L.R. 52.

We find ourselves in agreement with the view taken by the District Judge in the present case, to the effect that the plaintiff wilfully disobeyed the lawful and reasonable order of his employers (the defendant company) who were accordingly justified in dismissing him summarily. Our reasons for that conclusion are, firstly, because clause 1 (a) mainly laid down duties and responsibilities rather than rights ; and, secondly, assuming that the plaintiff did have certain rights under clause 1 (a), and one of such rights was that he would be the responsible chemist, we are of the view that, by the appointment of Alexiou as the financial administrator, the basic nature of the position of the plaintiff was not substantially changed. Certain duties were taken away from him but the fact remained that he would still be the chemist in charge of the pharmacy, so far as the chemist's work was concerned, and Alexiou would be mainly in charge of the financial administration of the business.

For these reasons we are of the view that the plaintiff's claim fails and the appeal is accordingly dismissed with costs.

Appeal dismissed with costs.