



Cúirt Uachtarach na hÉireann Supreme Court of Ireland

Sharda Sobhy v. The Chief Appeals Officer, Minister for Employment Affairs and Social Protection, Ireland and the Attorney General

On appeal from: [2021] IEHC 93

The Supreme Court today decided that a person who does not have a work permit or permission to be in the State, is not entitled to have statutory contributions made in the course of such employment considered as qualifying for the purposes of the Social Welfare Consolidation Act 2005

Composition of Court

O'Donnell C.J., MacMenamin, Dunne, O'Malley, Baker JJ.

Background to the Appeal

Ms. Sharda Sobhy studied and worked in Ireland lawfully until 2012. After this point, she continued to work here, but without a work permit or permission to be in the State. She later regularised her residency, but this appeal concerns the period when she worked and was present in the State unlawfully, a period where she paid PAYE tax, and she and her employer made PRSI contributions.

Ms. Sobhy applied for maternity benefit from the Department of Employment Affairs and Social Protection on foot of her PRSI payments which, if the contributions made during the period she worked without a permit were included, would have been sufficient contributions under the Act. Ms. Sobhy's application for maternity benefit was refused by the deciding officer, whose decision was upheld on appeal by the Chief Appeals Officer.

Heslin J. in the High Court determined the legal question arising in the light of the decision of this Court in *Quinn v. IBRC* [2016] 1 I.R. 1. The trial judge remitted the matter back to the Chief Appeals Officer for further consideration in the light of his judgment.

Judgment

The Supreme Court allowed the appeal, with all of the judges agreeing with the judgment of Baker J. The Court determined that an employment contract that is unlawful because a person does not have a work permit or permission to be in the State, cannot be regarded as "contract of service" for the purposes of qualifying for maternity benefit under the Social Welfare Consolidation Act 2005.

Reasons for the Judgment

The central question was whether Ms. Sobhy had a "contract of service" within the meaning of the Act. Baker J. considered the case law and determined that the authorities supported the proposition that if a contract is illegal, it cannot be considered a "contract of service".

Baker J. determined that the statutory framework operated to render Ms. Sobhy's contract illegal as s. 2 of the Employment Permits Act 2003 prohibits a person from working in the State without a work permit as well as the employment of such person by an employer, and because her presence in the State under s. 5 of the Immigration Act 2004 was illegal for all purposes. The Act of 2003

creates criminal sanctions arising from such contract. The limited exceptions such as those set out in s. 2B of the Employment Permits Act 2003 (as inserted by the Employment Permits Amendment Act 2014) and other statutory exemptions relieve against the possible harshness of the consequences of illegality, but no legislative exemption exists to permit the payment of social welfare benefit to a person employed without a work permit. The relieving measures do not have the effect of making an otherwise illegal contract legal but provide a limited recourse in certain kinds of claims.

Baker J. determined that the nature of the relationship between Ms. Sobhy and the State was not contractual in nature. For that reason, the enforceability of an illegal contract which was considered in *Quinn v. IBRC* could not be said to effect Ms. Sobhy's statutory entitlements.

Although *obiter*, Baker J. did consider *Quinn v. IBRC* in greater detail as it arguably expressed views concerning claims connected to an illegal contract. Baker J. considered that even taking the broad approach identified in *Quinn v. IBRC*, the statutory regime created by the Acts of 2003 and 2004 contain, and seek to further, the public policy of the regulation of immigration and employment of undocumented persons in the State. That statutory purpose is directed towards the common good and the furtherance of the protection of the borders of the State. Baker J. was satisfied that that purpose would be significantly frustrated by a reading of the Act of 2005 that permitted the payment of maternity benefit on foot of PRSI contributions made by a person employed in the State who did not have the benefit of a work permit. Baker J. was satisfied that public policy does not require the courts to treat persons employed in the State who require a permit, but who work without one, to nonetheless be entitled to the benefit of social welfare payments.

Note

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Case history

13 July 2021

Oral submissions made before the Court

[\[2021\] IESCDET 55](#)

Supreme Court Determination granting leave

[\[2021\] IEHC 93](#)

Judgment of the High Court