

The Gujarat Ginning & Manufacturing Company, Limited - Appellants

v.

V. Govindan Nair - Respondent

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 18TH MARCH, 1940

Present at the Hearing :

LORD ATKIN

LORD THANKERTON

LORD PORTER

SIR LANCELOT SANDERSON

[Delivered by LORD PORTER]

In this appeal the respondent, who was the plaintiff in the action, claims damages for wrongful dismissal. The trial Judge on the 6th April, 1936, passed a decree in favour of the appellants (defendants), but on the 21st September, 1936, this decree was reversed by the High Court sitting as a Court of Appeal.

The respondent was employed by the appellants under a contract in writing dated the 13th April, 1931, in the following terms:—

“ Date, Bombay, the 13th April, 1931.

“ To

“ Messrs. Jamnabhai Mansukbhai.

“ Agents, The Gujrat Ginning and Mfg. Co., Ltd.,

“ Ahmedabad.

“ Dear Sirs,

“ This is to inform you that I have agreed to serve your company as the Dyeing, Bleaching and Finishing Master in full charge of the company's Bleaching, Dyeing and Finishing Department from the date of my joining the appointment and to be the sole head of the department and I shall work as such under your directions.

“ 1. This agreement is for a period of three years and to be determined thereafter by either of us.

“ 2. My salary is fixed at Rs.1,200 per month payable on the last day of each month.

“ 3. In addition to the above-mentioned salary you agree to pay me the sum of Rs.60 per month for house allowance and likewise provide me with sufficient furniture or alternatively pay me an amount of Rs.1,000 (one thousand) to enable me to purchase the furniture which remains your property subject to reasonable wear and tear.

“ 4. I shall devote myself personally to the work of my department in the Company during the usual working hours for heads

of department in your mill and shall not connect myself directly or indirectly with the business of any other firm or company manufacturing piece goods or doing bleaching, dyeing and finishing work but I am at liberty to advise any firm or company doing the above work outside Gujrat.

" 5. In the event of the Company terminating my employment before the expiry of this agreement, the Company shall pay me the salary for the remaining period of the agreement as and when it usually becomes payable and I agree that I shall not connect myself with any firm or company doing business at Gujrat.

" 6. I shall be entitled to leave on full pay for a period up to three months in all during the period of this agreement on account of illness.

" Yours faithfully,

" V. G. NAIR.

13.4.31."

" Jamnabhai Mansukhbhai.

In addition to the duties prescribed by this contract the respondent appears to have undertaken the supervision of the laboratory and calendering department. He began his work on the 11th June, 1931, and continued until he was summarily dismissed on the 28th July, 1932.

The grounds on which the appellants justified their action and the respondent's contentions appear in a letter of that date and two letters following it, the material portions of which are set out below:—

" The Gujarat Ginning and Manufacturing Co., Ltd.,

" Ahmedabad. 28th July, 1932.

" No. 1832.

" To

" V. G. Nair, Esq.,

" Dyeing and Bleaching Master.

" The Gujarat Ginning and Manufacturing Co., Ltd.,

" Ahmedabad.

" Dear Sir,

" We have extremely regret to have to inform you that you have failed to keep proper records enabling the Company to know the vital statistics about your department such as working costs, etc., and further due to gross negligence on your part the work of the department under you has resulted in great losses and they are still incurred, for which you are taking no measures.

" In the circumstances, we have to inform you that the Company is constrained to treat your conduct as breach of agreement by you and you are requested to hand over charge to Mr. Vadilal Mansukhram.

" A statement of the losses to the Company due to your conduct will be sent to you in due course.

" Regarding furniture, you will please arrange to return the same by the 1st proximo, failing which rent will be charged.

" Yours faithfully,

" R. V. GURJAR,

Secretary."

" Madhar Bang Road,

" Ahmedabad. 28th July, 1932.

" Jivanlal V. Desai,

" Bar-at-Law.

" To

" Messrs. The Gujarat Ginning and Mfg. Co., Ltd.

" Dear Sirs,

"

" My client is quite ready and willing to perform his part of the contract for the full period of the agreement and to give you

a chance he calls upon you to recall at once the letter sent to him over your Secretary's signature and allow him peacefully to perform his duties and pay him his salary for June which is now much overdue and arrange to pay him regularly under the terms of the agreement.

" If the letter under reply is not instantly withdrawn, my client will treat your conduct as amounting to wrongfully dismissing him and will take necessary steps to recover damages from you for his wrongful dismissal as provided for in the agreement between you and him dated 13th April, 1931.

" As the matter is very urgent a personal delivery of this letter is made on you and another copy is being sent by post.

"

" Yours faithfully,
" J. V. DESAI."

" The Gujarat Ginning and Manufacturing Co., Ltd.,
" Ahmedabad. 29th July, 1932.

" No. 1857.

" V. G. Nair, Esq.,
" Dyeing and Bleaching Master,
" Gujarat Ginning and Manufacturing Co., Ltd.,
" Ahmedabad.

" Dear Sir,

" In addition to the breach of agreement on your part by your failure to keep records of vital statistics and gross negligence, you have further deliberately refused to obey the orders of the Company through its Secretary by not handing over charge and by continuing to persist in your conduct of coming to the mills to make show of attending to work. With the relation that you bear with the Company, it is necessary that you should not persist in that conduct and I have therefore to request you not to enter the mill premises any more and leave them after receipt hereof.

" Yours faithfully,
" R. V. GURJAR,
" Secretary."

The respondent thereupon took proceedings by plaint dated the 8th September, 1932, for damages for wrongful termination of the contract set out above. In answer the appellants justified their action by asserting that the respondent was habitually neglectful of his duties, and this assertion they supported by alleging that during the plaintiff's tenure of office the production of his department decreased and the percentage of damage increased in comparison with that existing in his predecessor's time. They also alleged that the respondent failed to keep proper records which would show the cost of the manufacture of the goods in his department. This particular plea originally stated that the records did not show such costs "at a glance" but it was admitted at the trial that it was impossible to keep records from which an immediate knowledge of the cost of production in that department could be obtained.

Feeling no doubt that grave misconduct must be proved in order to justify such drastic action on their part the appellants also alleged that repeated warning had been given the respondent, that he failed to remedy the matters complained of and that he was habitually neglectful. Founding their case on these allegations the appellants also by counter-claim asked for damages against the respondent for losses said to have been caused by his negligence.

In compliance with an order of the Court dated the 16th April, the appellants on the 1st May, 1934, furnished particulars of the habitual negligence they alleged. They were as follows:—

“(a) The plaintiff failed to keep proper records which would show the costs of production of the departments in his charge;

“(b) The plaintiff failed to keep records of the materials used in his departments posted up to date;

“(c) The plaintiff did not pay any heed to the various notes and letters addressed to him by the salesman of the defendants from time to time regarding the damage caused in various ways to the cloth while passing through his departments and did not give a satisfactory reply to or explanation for any of them;

“(d) The plaintiff failed to take steps to increase the production in his departments although his attention was frequently drawn to the decrease of production in his departments;

“(e) The plaintiff failed to keep keen and adequate supervision over the workmen employed in his departments, with the result that the production decreased and the percentage of damage to cloth went on increasing.”

The case was tried before Mr. Justice Barlee, beginning on the 10th March, 1936. The real issue contested was whether the plaintiff was habitually neglectful of his duties in the respects alleged in paragraphs (d) and (e) above, and the onus of proof was admittedly upon the appellants to justify their action.

Some evidence of bad bleaching and dyeing and of damage for which the respondent was said to be responsible was given and some rather vague evidence of oral complaints of such damage was called. There was also evidence of written complaints beginning in February, 1932, and continuing up to July of that year, and of the respondent's written replies in answer defending himself and explaining the cause. No written evidence of complaints of decreased production before the letters of dismissal was forthcoming and apparently no such oral evidence was given except in so far as it can be said that complaints of bad bleaching and bad dyeing led to fresh treatment of the material and so necessarily caused delay.

The main case of the appellants, however, rested upon a comparison of the results obtained by the respondent's predecessor one Hiralal and those obtained by the respondent himself. These were set out in tabular form and purported to show a falling off in production of 2,000 yards per day, and a tripled output of damaged goods.

Ultimately three serious complaints were levelled against the respondent, (1) the failure to keep proper books and to keep them duly entered up, (2) a substantial decrease in production and a failure to improve it though warned, (3) a considerable increase in damaged goods coupled with complaints continuing for at least five or six months and no consequential improvement.

The complaint as regards the books may be put aside. The learned Judge found fault in the case of one book only—as to its form he held there was no ground for blame, but it had not been written up for some months, though

there was nothing to show that the material for writing it up was not duly kept. Indeed, such material must have been in existence since the book was written up after the respondent was called upon to do so. It is true that some nine days was taken over the task, but neither of the Courts in India regarded the matter as justifying dismissal, though Barlee J. regards it as serious. Their Lordships would have been more impressed with the gravity of the charge if it had been shown that access to the contents of the book had been required either frequently or quickly. In fact no request for its production appears to have been made until just before the respondent's dismissal. In the absence of such evidence they agree with the Appellate Court in regarding the fault as of a venial character, though no doubt it must be taken into consideration in determining whether the appellants were justified in the course they took.

So far as the other matters are concerned there is no doubt that habitual negligence of a serious character would justify the dismissal of an employee or indeed as was the case in *Boston Deep Sea Fishing and Ice Co. v. Ansell* (1888), 39 Ch. Div. 339, misconduct on one occasion only if sufficiently gross. But summary dismissal is a drastic step, and if it is to be excused, the acts or neglects of the servant of which complaint is made must be of a serious nature and such as to show that he is not carrying out his part of the bargain in a matter going to the root of the contract.

In the present case there is no act of dishonesty or disobedience, and the most that can be suggested is that there was incompetency in supervision resulting in slow and faulty work. It was on this part of the case that the learned Judge based his decision. Their Lordships are prepared to accept the view that continued failure to accomplish a reasonable quantity of work, more particularly if accompanied by sufficient evidence of repeated bad workmanship, might entitle the appellants to dismiss the respondent. They are far from saying that there was evidence in the present case of either inadequate production or excessive damage. Nor indeed did Barlee J. base his judgment on any such independent finding. He fastened rather upon the difference between the outturn of Hiralal and that of the respondent and held that inasmuch as the respondent fell substantially short of his predecessor, in both matters the dismissal was justified.

The learned Judge's finding as to production is expressed in the words:—

“ Defendant has proved a decrease in production in the bleaching department of 2,000 yards per day or about 10 per cent., a very serious matter, and the plaintiff has failed to explain it.”

As to damage he says:—

“ He ” (the respondent) “ claims that the percentage of damage in his time was not very high. This statement is not very useful. I can only judge him by the standard set by Hiralal, and so judged he must fail, as the percentage was much higher than it had been.”

His general conclusion is summed up in the paragraph:—

“ My conclusion on the evidence is that plaintiff’s management of the bleaching department was not so efficient as Hiralal’s. The agent of the Company found that there was a serious decrease in production accompanied by an increase in damage. He called for an explanation on the 5th July but none was supplied. He found, too, that there was lax supervision in the department office. He was, therefore, justified in determining the contract.”

In their Lordships’ view such a conclusion is not supported by the premises.

Beaumont C.J. in the Appellate Court pointed out, as their Lordships think, rightly:—

“ All he [the respondent] has to do is to bring reasonable skill and diligence to bear on his work, and I doubt very much whether it would be possible in a case of this sort ever to prove negligence or incompetence merely by comparing the plaintiff’s work with that of his predecessor.”

Some attempt was made no doubt in the Court of first instance to show that the conditions in the time of the respondent and his predecessor were identical, or at least almost identical. If identical conditions, identical work and the presence of the same workmen working in the same way had been proved to the satisfaction of the learned Judge, some foundation for an argument on behalf of the appellants might have been established, though their Lordships are not prepared to accept it as necessarily being sufficient. But no such finding is made in the judgment. Rather it seems to have been considered to be enough that the respondent did not explain his failure to reach figures as successful as those of Hiralal. The onus was placed on him instead of on the appellants. Two sentences from his judgment will illustrate Barlee J.’s view:—

“ I find it altogether impossible to find out what effect (if any) the changes in the classes of goods in the plaintiff’s time had in the rate of production.”

“ What he has to explain then is why the percentage ‘ (of damage)’ increased to so great an extent during his period of service.”

But a similar outlook is to be observed throughout the judgment, and in their Lordships’ opinion the conclusion reached is founded upon this mistaken view.

Faced with the difficulty of supporting a judgment where the onus of proof is put upon the wrong party, the appellants sought to argue that as the respondent did not himself complain of the conditions under which the goods were produced, his failure to do as well as Hiralal and so wide a difference between their results necessarily involved serious and continued negligence on the respondent’s part. They pointed out that he had said in evidence:—

“ Whenever I saw lower production I used to make inquiries.

I never felt any general dissatisfaction. I was usually satisfied,”

and again:—

“ the old machinery did not reduce or retard production,”

and:—

“ From my point of view the criterion is yardage.”

They admitted indeed that according to his evidence he had dealt with different and finer goods than those dealt with by Hiralal and that the yardage per lb. in his time was

greater. But that assertion they alleged was disproved by a table which showed only a very slight increase in yardage per lb. The inevitable conclusion was said to be that in fact the type of cloth dealt with was to all intent similar.

In their Lordships' view a much more searching analysis of the facts and circumstances of the production in the two periods, viz., that during which Hiralal was in charge and that during which the respondent was engaged, would be necessary before any satisfactory conclusion could be drawn.

The type of cloth as well as its fineness may have made a difference, the machinery may have—indeed probably would have—deteriorated, and admittedly the respondent had made a report in February, 1932, pointing out the existence of many defects in it. Moreover, as Beaumont C.J. points out, the comparison was between the last year of Hiralal's time and the first year whilst the respondent was in charge, and indeed there are some indications in the table produced of an improvement under the respondent both in production and quality in the course of the 15 months during which he served. Such possibilities of difference are illustrative only and not exhaustive, but they show the danger of forming a judgment on comparative results.

As to the alleged increase in damaged goods the respondent's contention was that the standard set was too high and that many of the faults attributed to him were actually due to carelessness in weaving.

Here again is a reason for distinguishing between the two sets of results, yet the learned Judge appears to have placed the onus upon the respondent of showing the existence of differences instead of looking to the appellants to show that conditions were identical. To draw a trustworthy inference it would be necessary to determine upon satisfactory evidence whether or not the standard of weaving was as high in the later period as in the former.

Moreover, quite apart from the question whether there was a diversity of conditions as between the two periods the respondent's duties were not the same as Hiralal's—he had undertaken the supervision of both calendering and the laboratory, duties from which his predecessor was free.

Their Lordships cannot think that a defence against a claim for wrongful dismissal can be proved in such a way. No complaints by the manager until just before the time of dismissal are suggested. Indeed the manager himself was never called. If the plaintiff did not complain of his conditions none save salesmen and those in subordinate positions complained of him.

Having regard to their opinion that the grounds on which the learned Judge thought the dismissal was justified could not be supported, their Lordships have not thought it necessary to examine the evidence meticulously. They agree with the criticisms and conclusion of the High Court in appeal and will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council

THE GUJARAT GINNING &
MANUFACTURING COMPANY, LIMITED

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V. GOVINDAN NAIR

DELIVERED BY LORD PORTER

Printed by His Majesty's Stationery Office Press,
POCOCK STREET, S.E. 1.

1940