Pang Chen Suan v Commissioner for Labour
[2007] SGHC 138

Case Number : OS 2183/2006

Decision Date : 30 August 2007

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Ramasamy Chettiar (ACIES Law Corporation) for the applicant; Jeffrey Chan Wah Teck and Kevin Lim (Attorney-General's Chambers) for the respondent

Parties : Pang Chen Suan — Commissioner for Labour

Administrative Law – Remedies – Certiorari and mandamus – Employee applying to reinstate claim for workmen's compensation – Commissioner for Labour finding no reasonable cause for late submission – Colleague in same accident awarded compensation – Whether leave for judicial review should be granted – Whether Commissioner for Labour's decision irrational or unreasonable

Employment Law – Commissioner for labour – Whether decision of Commissioner for Labour refusing to reinstate workmen's compensation claim irrational or unreasonable

Employment Law – Definition of "reasonable cause" for late submission of compensation claim – Section 11(4) Workmen's Compensation Act (Cap 354, 1998 Rev Ed)

30 August 2007

Tan Lee Meng J:

1 The applicant, Mr Pang Chen Suan ("Pang"), sought leave to apply for the following orders:

(a) That the Plaintiff be granted leave to apply for an Order of Certiorari to quash the decision of the Learned Commissioner for Labour made on the 7th day of September 2006 with respect to the aforesaid Labour Case No 0401525D wherein the Learned Commissioner for Labour decided that the Plaintiff was barred from claiming his Workmen Compensation and refusing to assess the compensation of the Plaintiff under the Workmen Compensation['s]Act (Cap 354).

(b) That the Plaintiff be granted leave to apply for an Order of Mandamus directing the Learned Commissioner to reinstate the aforesaid case and to assess the Plaintiff's claim under the Workmen Compensation['s] Act (Cap 354).

2 I dismissed the application for leave for judicial review and now set out the reasons for my decision.

Background

3 Pang, now 41 years old, was formerly employed as a supervisor by D-Sign Advertising ("D-Sign"), which was in the business of making signboards. On 13 January 2004, an explosion occurred in D-Sign's factory at the Toa Payoh Industrial Park while one of D-Sign's employees was carrying out hot works with a gas cylinder ("the accident"). Pang's employer and three other persons died in the accident. Several other persons, including Pang, were injured.

4 Pang applied for compensation under the Workmen's Compensation Act (Cap 354, 1998 Rev Ed) ("the Act"). However, he withdrew his claim for compensation under the Act on 17 August 2004 in

order to pursue a claim for damages against his former employer under the common law. On 27 December 2004, Pang commenced a common law action against D-Sign. The validity of the writ was once extended.

5 At the Coroner's Inquiry into the death of the persons as a result of the accident in D-Sign's factory, the State Coroner recorded a verdict of misadventure and went on to say that the inquiry showed how important it was for oxygen tank manufacturers to comply with blow down procedures when installing oxygen into gas tanks to rectify any contamination. Apparently, other remarks by the State Coroner also made it an uphill task for Pang to succeed in his common law action against D-Sign. Furthermore, D-Sign's insurers, NTUC Income Insurers, denied liability for the consequences of the accident on the ground that the policy did not cover the carrying out of hot works in D-Sign's factory. In view of these developments, Pang allowed his writ against D-Sign to lapse on 20 January 2006.

6 Four months later on 30 April 2006, Pang applied to the Commissioner for Labour ("COL") to "reinstate" his claim for workmen's compensation. As more than one year and three months had passed by since the accident occurred, Pang had a hurdle to cross before his claim could be reconsidered by the COL because s 11(1) of the Act provides as follows:

> **11.** (1) Except as provided in this section, proceedings for the recovery of compensation for an injury under this Act shall not be maintainable unless –
>
> ….
>
> (b) a claim for compensation with respect to that accident has been made *within one year from the happening of the accident* causing the injury, or, in the case of death, within one year from the date of the death.
>
> [emphasis added]

7 Where a claim has been made more than a year after the accident that caused the injury in respect of which a claim for workmen's compensation is made, s 11(4) of the Act provides as follows:

> The failure to make a claim within the period specified in subsection (1) shall not be a bar to the maintenance of proceedings if it is found that the failure was occasioned by mistake, absence from Singapore *or other reasonable cause*.
>
> [emphasis added]

8 On 3 May 2006, the COL informed Pang that he was precluded from making a claim so late in the day unless he was able to show that he had "reasonable cause" for the late submission.

9 On 10 July 2006, Pang's counsel, Mr Ramasamy Chettiar, wrote to the COL to explain that Pang had sought to have his claim for workmen's compensation "reinstated" because he had abandoned his common law claim against his former employer, who did not have insurance cover with respect to the accident.

10 On 7 September 2006, the COL informed Pang that the reasons furnished by him could not be accepted as a "reasonable cause" for the late submission of his claim ("the decision").

11 On 22 November 2006, Pang commenced the present proceedings against the COL for a

quashing order and an order for mandamus.

Whether leave should be given

12 In *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR 644 ("*Lai Swee Lin Linda*"), L P Thean JA, who delivered the judgment of the Court of Appeal, explained at [23] that the requirement of leave to apply for orders such as the ones being sought by Pang is intended to be a means of filtering out groundless or hopeless cases at an early stage so as to prevent a wasteful use of judicial time and to protect public bodies from harassment, whether intentional or otherwise. The test for granting leave for judicial review was considered by the Court of Appeal in *Chan Hiang Leng Colin & Ors v Minister for Information and the Arts* [1996] 1 SLR 609 ("*Chan Hiang Leng Colin*"). In that case, Karthigesu JA, who delivered the judgment of the court, held at [25] that what is required "is not a prima facie case, but a prima facie case of reasonable suspicion" and if the latter can be shown, it cannot be said that the application must necessarily fail, for there would then appear to be an "arguable case". In *Lai Swee Lin Linda*, L P Thean JA said at [22] that leave "would be granted if there appears to be a point which might, on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed".

13 It is trite law that for a quashing order to be issued to set aside a decision of a public authority, that decision must either be illegal, procedurally improper or irrational. At the outset, it must be noted that Pang did not assert that the COL's decision could be impugned for illegality or procedural impropriety. As such, the only possible ground for impugning the COL's decision was that it was irrational. When referring to this ground for judicial review in *Council of Civil Service Unions and Others v Minister for Civil Service* [1985] AC 374, Lord Diplock explained as follows at 410:

> By "irrationality", I mean what can by now be succinctly referred to as "Wednesbury unreasonableness"…. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

14 The *Wednesbury* test for irrationality was endorsed by the Court of Appeal in *Chan Hiang Leng Colin* ([12] *supra*) at 619. More recently, in *Chee Siok Chin & Ors v Minister for Home Affairs & Anor* [2006] 1 SLR 582 ("*Chee Siok Chin*"), V K Rajah J, as he then was, reiterated at [94] that the basis of quashing a decision on the ground of *Wednesbury* unreasonableness is that the decision is so outrageously defiant of "logic" and "propriety" that it can be plainly seen that no reasonable person would or could come to that decision.

15 Pang's counsel, Mr Chettiar, merely submitted that the COL's decision was wrong. A court hearing an application for leave for judicial review of the COL's decision is not an appeal court that has the task of determining whether it agrees with that decision. If the ground for judicial review is irrationality, the court is only concerned with whether there is a *prima facie* case of reasonable suspicion that the COL's decision is unreasonable in the *Wednesbury* sense. In this regard, it may be noted that in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, Lord Diplock pointed out at 1064 that the "very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred". Lord Diplock's view was endorsed in *Chee Siok Chin* ([14] *supra*) by V K Rajah J, as he then was, who added at [95] that the essence of reasonableness is that decision makers can in good faith arrive at quite different decisions based on the same facts.

16 Apart from there being no evidence of a *prima facie* case of a reasonable suspicion that the

COL's decision was unreasonable in the *Wednesbury* sense, it may also be noted that far from defying logic and propriety, the COL's decision was consistent with a long line of authorities on the meaning of "reasonable cause" in the context of a statutory time limit for the presentation of a workman's claim for compensation for injury suffered in an industrial accident. The statutory time limit is imposed to protect the employer from stale claiMs and to put him on guard that a claim is about to be made against him. In *Prophet v Roberts* [1918] 11 BWCC 301, at 308, Lord Swinfen rejected the suggestion that the time bar is a mere technicality and added that it is a "substantial and material protection to the employer". This view was also taken in *Lingley v Thomas Firth & Sons Ltd* [1921] 1 KB 655 ("*Lingley*") by Scrutton LJ, who added at 671 that in considering what a "reasonable cause" for a delayed claim is, one must consider both the employee's and employer's interest and the employee must take into account the fact that the absence of his claim creates difficulty for his employer.

17 As for what is a "reasonable cause" for a delayed claim, more than half a century ago, Professor LA Sheridan wrote as follows in *Late National Insurance Claims: Cause for Delay* (1956) 19 MLR 341, at p 343:

> The actual decisions on what amounts to good cause or reasonable cause for delay can be arranged under certain convenient headings:
>
> *Deliberate election not to claim*
>
> On principle, when a person knows he could claim and decides not to, there is not good cause for delay in claiming if he changes his mind. This has been laid down in cases of sickness benefit and was the doctrine with regard to reasonable cause of the workmen's compensation cases.

18 Among the string of cases cited by Professor Sheridan in support of his view is *Lingley* ([16] *supra*). In that case, the applicant, a munition worker, was injured on 21 August 1917 when a shell fell upon her toe. She was treated in the firm's ambulance room. She continued to work until December 1918, when the factory closed down. While working, she was in constant pain and had to sit down. In February 1920, her toe had to be amputated. She then made a claim for compensation. When her former employer objected to the claim on the ground that it was made out of time, she stated that she had not made a claim before as she did not regard the injury as serious. It was held by the English Court of Appeal that there was no "reasonable cause" for her not to have made her claim within the time limit permitted for such a claim.

19 As it was not established that there was a *prima facie* case of a reasonable suspicion that the decision of the COL regarding Pang's lack of a reasonable cause for the delayed submission of his claim for workmen's compensation is irrational or unreasonable in the *Wednesbury* sense, he did not satisfy the test for leave to apply for judicial review of the COL's decision. In view of this, his application for leave to apply for a quashing order and an order of mandamus was dismissed.

The further hearing

20 After the dismissal of the application for leave for judicial review, Pang's counsel, Mr Chettiar, requested for further arguments to be heard.

21 At the hearing of the further arguments, Mr Chettiar alleged that the COL's decision could be impugned because a Ms Tan Ai Lam ("Ms Tan"), Pang's colleague, who was injured in the same accident, was awarded workmen's compensation even though she had withdrawn her application for such compensation in order to pursue a claim against the employer's estate under the common law. However, Ms Tan's position is different from that of Pang. In Ms Tan's case, the Notice of Assessment

with respect to her claim had already been finalised by the time she sought to withdraw her claim for workmen's compensation. Section 24(3) of the Act provides that in the absence of an objection from the employer or the person claiming compensation, the assessment of compensation by the COL shall be deemed to have been agreed upon by the employer and the person claiming compensation. The consequences of the issuance of a Notice of Assessment in Ms Tan's case was highlighted to the COL by none other than Mr Chettiar himself in a letter dated 27 February 2006, the contents of which are as follows:

> We note that the [Notice of Assessment with respect to Ms Tan's claim under the Workmen's Compensation Act] was issued on 3.6.04 but there is no objection notification by our client to you. *It would therefore appear that after two weeks the assessment became an Order under s 25(2) of the Act.* In the circumstances please direct NTUC Income Insurance to pay the assessment sum of $7,350, her medical expenses and loss of earnings to our client forthwith.
>
> [emphasis added]

22 In stark contrast, in the present case, Pang withdrew his claim for workmen's compensation before a Notice of Assessment was issued. The difference between the two cases ought to have been clear to Mr Chettiar.

23 In the final analysis, whatever may be the differences between Pang's case and that of Ms Tan, the issue before the court is whether or not Pang has established that there is a *prima facie* case of a reasonable suspicion that the COL's decision that Pang had not shown that he had "reasonable cause" for submitting a claim more than one year after the accident is a decision that is illegal, procedurally improper or irrational in the *Wednesbury* sense. It was not suggested that the COL had advised Ms Tan or anyone else that a person in a position such as Pang's had "reasonable cause" for making a claim for workmen's compensation more than a year after an industrial accident. As Mr Chettiar's arguments at the further hearing of the case did not establish that there was a *prima facie* case of a reasonable suspicion that the decision of the COL regarding Pang's lack of a reasonable cause for the delayed submission of his claim for workmen's compensation was irrational or unreasonable in the *Wednesbury* sense, I had no doubt that the application for leave for judicial review should be dismissed.