Marius A.M.D. v IBL Ltd

2022 IND 55

Cause Number 229/18

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Anne Marie Doreen Marius

Plaintiff

v.

IBL Ltd

Defendant

Ruling

In this plaint, Plaintiff has averred that she had been in the continuous employment of Defendant since 11 July 1994 inasmuch as:

(a) Since 11 July 1994, Plaintiff took up employment at Dynamotors Ltd.

(b) After Robert Le Maire Limited acquired all the shares of Dynamotors Ltd, Plaintiff was informed that as from 1 July 2000, she would be employed by Robert Le Maire Limited on terms and conditions identical to those with her former employer and her years of service would be taken over by Robert Le Maire Limited.

(c) In July 2013, following the acquisition of Robert Le Maire Limited by Ireland Blyth Limited, Plaintiff was informed that there was a change of name from Robert Le Maire Limited to Engitech Limited.

(d) Plaintiff was informed that her original contract of employment namely all the clauses, terms and conditions were being maintained.

(e) As from August 2013, Plaintiff's monthly remuneration was paid by Ireland Blyth Limited.

(f) By letter dated 22 January 2015, she was informed that she was confirmed to the position of Manager-Street Lighting & Bearings at Engitech Limited – an IBL Group Company and that her length of service, that is, from 11 July 1994 had been taken over by Engitech Limited.

(g) Plaintiff's salary was still paid by Ireland Blyth Limited (now Defendant).

(h) She was in receipt of a monthly basic salary of Rs 61,950 and was entitled to bonus, commission, car benefit, all paid by Ireland Blyth Limited (now Defendant). The commission was for sales of products and services from both the Street Lighting and Bearings Departments.

(i) On the 1 July 2016, Ireland Blyth Limited amalgamated with GML Investissement Ltée and there was a change of name into that of Defendant.

Plaintiff has averred that during a meeting held on 16 February 2016, she was informed of the following- (1) the future closure of Engitech Limited, (2) the transfer of the Street Lighting department to the Electrical Division of Manser Saxon Contracting Ltd and (3) the transfer of the Bearing's Department to other subsidiaries of Ireland Blyth Limited.

As alleged, by letter dated 30 May 2016, Plaintiff was placed before *"a fait accompli"* and was informed by the General Manager of Manser Saxon Contracting Ltd of the transfer of the Street Lighting department of Engitech Limited to the Electrical Division of Manser Saxon Contracting Ltd, another subsidiary of Defendant as from 6 June 2016 as a restructuring exercise and that she was offered employment at Manser Saxon Contracting Ltd on same terms and conditions and her years of service would be maintained. She was requested to give her consent by the 3 June 2016.

Plaintiff has further alleged that it was stipulated in the said letter that if Plaintiff did not accept the proposed transfer, the offer of employment with Manser Saxon Contracting Ltd would automatically be withdrawn and furthermore she would be

understood to have resigned from her employment with Engitech Limited and would not be entitled to receive any compensation as a consequence of her resignation.

Plaintiff avers that the terms and conditions of her employment with Defendant were actually unilaterally changed by the Defendant since the Bearing's Department was removed from her responsibility which would lead to her to no longer obtaining commissions for sales for those products.

Plaintiff avers that by letter dated 3 June 2016, she informed Defendant, through Engitech Limited, that the proposal made by Manser Saxon Contracting Ltd was not accepted by her and that she did not agree to the transfer which was decided unilaterally and in breach of the provisions of the Employment Rights Act.

Thus, she has claimed that the alleged acts and doings of Defendant amounted to a serious breach of contract and to "constructive dismissal" and therefore, Defendant was indebted to her in the sum of Rs 9,216,376 a breakdown of which was given.

Defendant, on the other hand, in its plea has averred that Plaintiff was not employed by Defendant but by Engitech Limited, a subsidiary of the Defendant. Ireland Blyth was merely acting as a processing agent for Engitech Limited with the payment of remuneration being contractually outsourced to Ireland Blyth head office for administrative reasons.

Defendant has averred the following.

1. It was another company, namely GML Investissement Ltée which purchased shares in Robert Le Maire Limited and not Ireland Blyth Limited.

2. GML Investissement Ltée purchased additional shares in Robert Le Maire Limited, and did not purchase Robert Le Maire Limited as averred by Plaintiff.

3. At a later stage, GML Investissement Ltée sold the shares purchased by it in Robert Le Maire Limited to Ireland Blyth Ltd, and once again it was not Robert Le Maire Limited which was sold but shares in that company.

4. It is a fact that, subsequently, on 11 June 2013 Robert Le Maire Limited changed its name to Engitech Limited.

There was a reorganisation within the engineering sector of the IBL Group, several departments of Engitech Limited being transferred to other business units of the same group. All employees moving to other companies of the same group kept their years of service and their same terms and conditions of service.

On 28 April 2016, at a time when the proposed changes were merely at discussion stage, Plaintiff approached her General Manager, Mr. Eric Le Breton, and stated that she requested a compensation for her years of service as she would prefer to stop her employment and resign.

Plaintiff did not accept the offer of Manser Saxon Contracting Ltd and instead sent a letter dated 3 June 2016 to Engitech Limited, in which she formally stated that she did not accept the transfer. Again, in that letter, she maintained that she was an employee of Engitech Limited.

On 6 June 2016, Engitech Limited received another letter from Plaintiff in which Plaintiff again refused the proposed transfer. On the same day namely on 6 June 2016, Plaintiff left her keys and said goodbye to all her colleagues. She thereafter stopped attending work and her duties and never came back.

Engitech Limited was fully entitled and justified in proceeding the way it did, and it was Plaintiff who voluntarily chose not to accept the offer which was made to her.

Plaintiff was not put before *"a fait accompli"* as she was given the choice whether to accept or to refuse the offer which was made to her, she voluntarily chose to decline the offer.

Defendant is not indebted to her in any sum claimed or in any sum whatsoever.

In the course of the trial, at the stage of the examination in chief of the Plaintiff, two documents were produced namely a statement of emoluments as per Doc. G from Ireland Blyth Limited and the other document produced namely Doc. H was one from the Ministry of Social Security as regards the National Pensions Scheme, the National Pensions Account where the name Ireland Blyth Limited was to be found and the name of the Plaintiff as employee. Now after the Plaintiff has already deposed in chief, at the stage of cross-examination, learned Counsel for the Defendant sought to challenge the fact that the employer was not Ireland Blyth Limited as per the version of the Plaintiff but Engitech Limited as per the plea of the Defendant.

An objection was taken by learned Counsel for the Plaintiff that pursuant to Article 1341 of our Civil Code when it is a contract of value of more than Rs. 5000, oral evidence to establish the contract cannot be allowed. It has to be by documentary evidence and not by way of cross-examination by oral evidence. The objection was resisted and arguments were heard.

The main thrust of the arguments of learned Counsel for the Plaintiff is that by virtue of Article 1341 of our Civil Code in line with its French counterpart, the Defendant cannot go *"contre un écrit ou outre le contenu de l'ecrit"* and the *"écrit"* in the present case are the 2 documents produced namely Docs. G & H establishing that Ireland Blyth Limited was the employer of the Plaintiff and not Engitech Limited. The Defendant cannot go *"contre un écrit ou outre le contenu de l'ecrit"* meaning against those writings namely Docs. G & H by way of oral evidence by trying to elicit in cross examination that the employer of Plaintiff was Engitech Limited as the contract was for a sum exceeding Rs.5000 viz. as the contract of employment of Plaintiff was for a salary exceeding Rs. 5,000 and furthermore, proof *"contre un écrit ou outre le contenu de l'ecrit"* cannot be done by calling witnesses as the rigours of Article 1341 of the Civil Code apply as per Note 242 of Mega Code Civile 4th Edition at page 1348. There should have been *"un écrit"* or a *"commencement de prevue par écrit"* as per Article 1347 of the Civil Code.

The main thrust of the arguments of learned Counsel for the Defendant is that she agrees on the applicability of the rule but where she differs was the applicability of Article 1341 in the context of an employment contract. The Civil Code is a "*loi d'application générale"* and is subject to special laws. Those 2 documents do not reflect the lien de subordination between an employer and an employee. There were other documents produced wherein the Plaintiff was referred to as an employee of Engitech Limited and not Ireland Blyth Limited as per Docs. AF and AG produced.

I have given due consideration to the arguments of both learned Counsel. Article 1341 of the Code Civil Mauricien reads as follows:

*"**SECTION DEUXIEME***

DE LA PREUVE TESTIMONIALE

1341. *Il doit être passé acte devant notaires ou sous signatures privées de toutes choses excédant la somme ou la valeur de cinq mille roupies, même pour dépots volontaires; et il n'est reçu aucune prevue par témoins contre et outre le*

contenu aux actes, ni sur ce qui serait allégué avoir été dit avant, lors ou depuis les actes, encores qu'il s'agisse d'une somme ou valeur moindre de cinq mille roupies.

Le tout sans préjudice de ce qui est prescrit dans les lois relatives au commerce."

At the outset, it is imperative to note that prior to the year 1975, they were the provisions of our Civil Code that applied to an employment contract. Had the Plaintiff been employed prior to the year 1975 and the alleged constructive dismissal of Plaintiff by Defendant been prior to 1975, the arguments of learned Counsel for the Plaintiff in relation to Article 1341 would have been invoked by way of general application. As per Article 1708 of the Code Civil Mauricien "*Il y a deux sortes de contrat de louage -*

Celui des choses,

Et celui d'ouvrage."

In the same breath, Article 1779 of the Code Civil Mauricien provides the following namely: *"Il y a trois espèces principales de louage d'ouvrage et d'industrie -*

1. *le louage des gens de travail qui s'engagent au service de quelqu'un;*
2. *celui des voituriers, tant par terre que par eau, qui se chargent du transport des personnes ou des marchandises;*
3. *celui des architectes, entrepreneurs d'ouvrages et techniciens par suite d'études, devis ou marchés."*

Indeed, **Dr. D. Fok Kan** in his book **Introduction au Droit du Travail Mauricien 2eme Edition** at page 1 stated the following:

"Le droit du travail concerne seulement les contrats de louage des gens de travail qui selon L'Article 1780 sont régis par le Labour Act. Le droit du travail est ainsi perçu ici comme étant un contrat."

However, since the year 1975, our Civil Code has deferred the regulating of employment contracts to the labour laws enacted by Parliament. Thus, Article 1780 of the Code Civil Mauricien reads as follows:

"Les contrats de louage des gens de travail qui s'engagent au service de quelqu'un seront régis par le Labour Act".

Therefore, before the year 1975, it was the Code Civil Mauricien that would have regulated the employer-employee relationship as highlighted in the Supreme Court case of **Chamroo v Northern Transport** [1969 MR 96], where it was held that the general principles of the Civil Code governing the law of contracts have not been abrogated in the matter of labour contracts and are still applicable unless expressly or impliedly repealed by the various enactments constituting the labour legislation. The following has also been highlighted in **Chamroo**(supra) namely: *"Where such circumstances as are contemplated in the section occur, the matter must be regulated exclusively by the section; but in cases falling outside the ambit of any particular provision of the Labour Law, recourse, must be had to the principles of the Civil Code to settle the matter."*

Plaintiff started employment allegedly with Defendant in the year 1994 and her alleged constructive dismissal by Defendant as alleged employer was in the year 2016.

Now, when specific laws were enacted, our Civil Code no longer applied but the Labour Act in 1975 and which was then repealed by the Employment Rights Act 2008 which is applicable to the present case although now repealed. As rightly pointed out by learned Counsel for the Defendant that the special laws will have precedence over the general law. I find it relevant to quote an extract from the Supreme Court case of **Pabaroo D.T v. Varmah K.D. & Ors.** [2013 SCJ 197] which reads as follows:

> "It is a cardinal principle of statutory interpretation that provisions of a general nature cannot override specific statutory provisions which have been expressly enacted to deal with a particular situation. This is aptly conveyed by the maxim *Generalia Specialibus Non Derogant* which means that, for the purposes of the interpretation of two statutory provisions which may appear to be in conflict, the provisions of the general statute must yield to those of a special one.
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> This principle is succinctly explained in the following passage from **Sullivan and Diedger** on the Construction of Statutes **[4th Edition (Butterworths 2002) at page 273]**:

> *"When two provisions are in conflict and one of them deals specifically with the matter in question while the other is of more general application, the conflict may be avoided by applying the specific provision to the exclusion of the more general one. The specific prevails over the general; it does not matter which was enacted first. This strategy for the resolution of conflict is usually referred to by the latin name generalia specialibus non derogant".*

Hence, the specific provisions of the Employment Rights Act 2008 will have prevalence over the general provisions of the Code Civil Mauricien. Having said so, what the present Court has to decide at this stage is whether the prohibitions of Article 1341 in depriving a party to prove by way of oral evidence a contract worth more than Rs. 5,000 applies in the context of the Employment Rights Act 2008.

It is significant to note that as per the provisions of Section 2 of the Employment Rights Act 2008, a contract of employment meaning such *"agreement" "means a contract of employment or contract of service between an employer and a worker, whether oral, written, implied or express;"*

Hence, given that a contract of employment can be oral and even implied by virtue of Section 2 of the Employment Rights Act 2008, then clearly the provision of Article 1341 of the Code Civil Mauricien where there should be a writing to prove a contract worth more than Rs. 5000, such a writing is not required in the present case which means that such a provision of the general law has been impliedly repealed by the Section 2 of the Special law namely the Employment Rights Act 2008 (see – **Chamroo**(supra) and **Pabaroo** (supra)).

It is apposite to note that irrespective of the 2 documents produced by Plaintiff namely Docs. G and H, it is the contention of the Defendant that Plaintiff was not employed by it and that Ireland Blyth was merely acting as a processing agent for Engitech Limited with the payment of remuneration being contractually outsourced to Ireland Blyth head office for administrative reasons and which tend to be supported by the 2 documents produced namely Docs. AF and AG.

For all the reasons given above, I find that the prohibitions contained in Article 1341 of the Code Civil Mauricien and which are similar to the French Civil Code and which have been further expanded in its said French counterpart, have been

impliedly repealed by Section 2 of the Employment Rights Act 2008. Hence, the objection taken by learned Counsel for the Plaintiff as to having oral evidence being elicited in cross-examination of the Plaintiff to prove that Defendant was not the employer of the Plaintiff but Engitech Limited cannot stand and is thus overruled.

The matter is accordingly fixed *proforma* to 14 October 2022 at 9.30 a.m. for both learned Counsel to suggest common dates for continuation.

S.D. Bonomally (Mrs.) *(Vice President)*
7.10.2022