

Cousine J.N.M. v Shield Fire Protection Equipment & Services Co. Ltd

2023 IND 79

Cause Number 245/22

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Mr. Jean Noël Mervin Cousine

Plaintiff

v.

Shield Fire Protection Equipment & Services Co. Ltd

Defendant

Judgment

This is a plaint where Plaintiff has made the following averments-

Plaintiff was in the continuous employment of Defendant as Helper since 15.6.2019. His terms and conditions of employment were governed by the Distributive Trades (Remuneration) Regulations 2019, GN No. 209 of 2019. He was employed on a 6-day week basis. He was remunerated at monthly intervals at the terminal basic rate of Rs 10,300 per month. He should have been paid Rs 10,675 per month as basic salary as from 1.1.2021.

He last worked on 4.2.2021. On 4.2.2021, Mr. N. Jeetun, Defendant's Director verbally suspended him from work by addressing him as follows: "alle la kaz quand mo pare mo pour faire ou konner". As at 1.3.2021 since Defendant had failed to remunerate him his wages for the month of February 2021, he called at Rose Hill Labour Office and when contacted over the

phone by the Labour and Industrial Relations Officer, Defendant's Director namely Mr. N. Jeetun confirmed that he had suspended him from work and that a hearing would be held.

As at 8.3.2021, Defendant had still failed to remunerate him his wages for the month of February 2021 nor did he inform him of any date the hearing would be held. Thus, by failing to remunerate him his wages for the month of February 2021 as at 8.3.2021, Defendant has terminated his employment on 8.3.2021 without notice and without any justification.

He has not been paid the additional remuneration as recommended in The Workers' Rights (Additional Remuneration) (2021) Regulations 2020, Act No.15 of 2021. Defendant has failed to remunerate him for period 1.2.2021 to 8.3.2021. At the time of termination of employment, he had 18 days outstanding annual leave for year 2021 which Defendant has not refunded. Defendant has failed to pay him the end of year bonus for year 2021.

Therefore, Plaintiff is claiming from Defendant the sum of Rs.87,143.59 allegedly made up as follows:

- (a) One month's wages as indemnity in lieu of notice: Rs 10,675.00.
- (b) Severance allowance for 20 months' continuous service (Rs 10,675.00 x 3 months x 20/12 years): Rs 53,375.00.
- (c) Arrears on wages for the month of January 2021(Rs 10,675 - Rs 10,300): Rs 375.
- (d) Outstanding wages for period 1.2.2021 to 8.3.2021(Rs 10,675 + Rs 10,675/26 x 7 days): Rs 13,549.04.
- (e) Refund of outstanding annual leaves for year 2021(Rs 10,675/26 x 18 days): Rs 7,390.38.
- (f) End of year bonus for year 2021 (Rs 10,675 x 2/12): Rs 1,779.17.

Defendant did not file any plea and has also left default on the trial day although it was duly summoned to appear.

At this stage, I find it appropriate to reproduce Section 16 (1) of the District and Intermediate Courts (Civil Jurisdiction) Act in line with Section 7(1) of the Industrial Court Act 1973 as far as default judgments are concerned:

"Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court, upon proof of the service of the summons, may give judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only, and in either case, the judgment shall, subject to subsection (2), be as if both parties had attended."(emphasis added)

Plaintiff testified in Court as per his averments above. He produced a copy of his pay slip for the month of December 2020 as per Doc. P1. He has also claimed travel expenses in attending Court for one day in the amount of Rs 70.

I have duly considered all the evidence put forward before me. The unchallenged and undisputed testimony of Plaintiff in its form and tenor in the absence of Defendant is compatible with the documentary evidence produced viz. his pay slip as per Doc. P1. Thus, the evidence led by the Plaintiff is not only soundly grounded in law (*vide - Hurnam D. v. Bholah K. B. & Anor. [2009 SCJ 265]*) but is also convincingly reliable and plausible.

For the reasons given above, I find that the case for the Plaintiff has been proved on a balance of probabilities. I, accordingly, order Defendant to pay to Plaintiff the sum of Rs.87,143.59 representing one month's wages as indemnity in lieu of notice: Rs 10,675.00, severance allowance for 20 months' continuous service (Rs 10,675.00 x 3 months x 20/12 years): Rs 53,375.00 with interest at the rate of 12% per annum on the amount of severance allowance payable from the date of termination of employment to the date of payment, [arrears on wages for the month of January 2021(Rs 10,675 - Rs 10,300): Rs 375, outstanding wages for period 1.2.2021 to 8.3.2021(Rs 10,675 + Rs 10,675/26 x 7 days): Rs 13,549.04, refund of outstanding annual leaves for year 2021(Rs 10,675/26 x 18 days): Rs 7,390.38 and end of year bonus for year 2021 (Rs 10,675 x 2/12): Rs 1,779.17] with interest at the rate of 12% per annum on the amount of remuneration due from the date of non-payment to the date of payment. I also

order Defendant to pay to Plaintiff one day's travel expenses for attending Court in the sum of Rs 70.

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

30.11.23.