Ramlagun v Bank Of Baroda

2023 IND 21

CN178/17

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Deomaneesingh RAMLAGUN

Plaintiff

v/s

Bank of BARODA

Defendant

RULING (NO. 1) (JURISDICTION)

By way of Proecipe date 28-02-17, the Plaintiff is claiming from the Defendant Company the total sum of Rs8 925 000/- representing Severance Allowance and One Month's Salary In Lieu Of Notice, together with Interests at the rate of 12% per annum from 31-03-16 until the date of final payment with Costs, for the unjustified termination of his employment.

The Defendant Company has denied the said Claim in its Amended Plea dated 17-05-19, and has raised a *Plea In Limine Litis* to the following effect:

> This Honourable Court has no jurisdiction to entertain the present claim inasmuch as it does not arise out of any of the enactments contemplated by the First Schedule to the Industrial Court Act 1973 (as amended). Defendant therefore moves that the plaint be set aside. With costs.

Not In Dispute

It was not disputed that the Plaintiff was not a worker for the purposes of the **Employment Rights Act (hereinafter referred to as ERA)**.

It was also not in dispute, in light of the Pleadings on Record, that the Plaintiff last worked for the Defendant Company on 31-03-16.

Applicable Law

Given the Plaintiff last worked for the Defendant Company on 31-03-16, the applicable Law at the relevant time was the **ERA**.

Prayer at paragraph 12.(a) of the Proecipe

As per Prayer 12.(a) of the Proecipe, the Plaintiff is asking the Court to "declar[e] that the Defendant's decision to retire the Plaintiff on 31st March 2016 amounted to an unjustified termination of the Plaintiff's contract of employment and [to] order[…] the Defendant to pay to him severance allowance".

The Court is of the considered view that it has no jurisdiction in relation to the Prayer as per paragraph 12(a) of the Proecipe, inasmuch as the Industrial Court has jurisdiction to determine the Rights of the Parties, but not to make a declaration, whether taken in its equitable meaning or not, as to whether the decision of the Defendant Company to terminate the Plaintiff's employment due to his having reached retirement age amounted to unjustified termination.

The Court bears in mind that Proceedings before the Industrial Court shall be conducted in the same manner as proceedings before a District Court (see for example **ss. 7, 9 and 10 of the Industrial Court Act**) and also bears in mind the provisions of **s. 104(2) of the Courts Act**:

> The jurisdiction conferred upon the Intermediate Court or a District Court by subsection (1) shall include the power to make such orders and to issue such warrants or other process as may be necessary for the enforcement of the rights of the parties and no order made or warrant or process issued under this subsection shall be deemed invalid by reason only that it is in the nature of a mandatory injunction or other equitable remedy.

The powers conferred upon the Industrial Court by **s. 104(2) of the Courts Act** relate specifically to "the enforcement of the rights of the parties".

It cannot reasonably be contended that "[d]eclaring that the Defendant's decision to retire the Plaintiff on 31st March 2016 amounted to an unjustified termination of the Plaintiff's contract of employment and ordering the Defendant to pay to him severance allowance" is necessary to enforce the Plaintiff's Rights.

For all the reasons given above, the Court finds that it has no jurisdiction in relation to the Prayer as per paragraph 12(a) of the Proecipe.

Prayer at paragraph 12.(b) the Proecipe

The Plaintiff is asking the Court to "[o]rder[…] the Defendant to pay to […] [him] the monthly remuneration of a Senior Manager at the Bank of Baroda which falls in salary scale 3, including all other associated benefits in relation to the said post as from January 2016 to 31st March 2016".

Given the Plaintiff has specified the period for which he is claiming such monthly remuneration as January 2016 (05-01-16 being the date from which he was promoted (paragraph 4.3 of the Proecipe and paragraph 4 of the Amended Plea)) to 31-03-16 (it being the last date on which he worked for the Defendant Company (paragraph 4.1 of the Proecipe and paragraph 2 of the Amended Plea)), the Plaintiff is in effect claiming unpaid monthly remuneration due on the termination of his employment, which falls within under **s. 25 of the ERA** which provides that "[e]very employer shall pay any remuneration due to a worker on the termination of the worker's agreement".

The said section of the **ERA** applies to a worker, which is defined in **s. 2 of the ERA** as follows:

> "worker", subject to s. 33 or 40 –
>
> […]
>
> (c) does not include –
>
> […]
>
> (ii) except in relation to sections 4, 20, 30, 31 and Parts VIII, VIIIA, IX, X and XI, a person whose basic wage or salary is at a rate in excess of 360,000 rupees per annum.

As per paragraph 11 of the Proecipe, given the Plaintiff was earning Rs70 000/- as monthly salary, it is beyond dispute that the Plaintiff was earning well in excess of the prescribed amount of Rs360 000/- per annum, which is Rs30 000/- per month, and hence did not fall within the definition of "worker" for the purposes of **s. 2 of the ERA**.

Further, Learned Counsel for the Plaintiff conceded that the Plaintiff did not fall within the definition of "worker" for the purposes of the **ERA**.

That being said, the sections and Parts of the **ERA** which apply to a "worker", regardless of his/her basic wage or salary, are exhaustively set out in the definition of "Worker" in **s. 2 of the ERA**, and they are:

1) **S. 4**;
2) **S. 20**;
3) **S. 30**;
4) **S. 31**;
5) **Part VIII**;
6) **Part VIIIA**;
7) **Part IX**;
8) **Part X**; and
9) **Part XI**.

No mention of **s. 25** or of **Part V of the ERA** is made in the said list of exceptions.

Not only has the Legislator set out the Parts of the **ERA** which apply to workers regardless of their basic wage or salary, but the Legislator has also set out the sections of the **ERA** which likewise apply to workers regardless of their basic wage or salary.

This clearly illustrates the intention of the Legislator, and it is trite Law that the "legislator does not legislate in vain" (**Curpen v The State [2008 SCJ 305]**).

The Court is of the considered view that had the Legislator intended for **s. 25 of the ERA** to apply to workers, regardless of their basic wage or salary, the said section and /or the said **Part V** would

have been included in the said exhaustive list set out in **s. 2 of the ERA** as regards the definition of "worker".

The Court also bears in mind the principles set out in **Maxo Products v P.S Ministry Of Labour and Industrial Relations [1991 SCJ 225]**:

> I must unfortunately conclude that Mr. Parmessur who earned more than what now appears to be the rather ridiculous sum of Rs 30,000 per year is not a worker to whom the Labour Act 1975 applies. The Magistrate of the Industrial Court had therefore no jurisdiction to entertain his claim.

The Court is alive to the fact that the abovementioned Authority specifically related to the **Labour Act 1975**, which now stands repealed. But the Court is of the considered view that given the underlying philosophy and rationale behind our Labour Laws, coupled with the very similar wording of the definition of worker in the **Labour Act 1975** and the **ERA**, pertinently as regards what is not included in the definition of "worker" and the exhaustive list of Parts and sections of the said respective Acts which apply to workers regardless of their basic wage or salary, that the principles enunciated as to the Court's jurisdiction in **Maxo (supra)** apply *mutatis mutandis* to the present matter.

In light of all the above, the Court is of the considered view that the Court's Jurisdiction is ousted, in relation to Claims pursuant to **s. 25 of the ERA**, once the employee's basic wage or salary exceeds the prescribed amount of Rs360 000/- per annum, and hence the Court has no Jurisdiction in the present matter, given the Plaintiff was earning in excess of the prescribed amount and his Claim therefore does not arise out of one of the enactments listed in the First Schedule to the **Industrial Court Act**, and hence the Court has no jurisdiction in the present matter.

Prayer as per paragraph 12.(c) of the Proecipe

As per Prayer 12.(c) of the Proecipe, the Plaintiff is asking the Court to "[o]rder[…] the Defendant to pay to […] [him] severance allowance, together with one month of salary, in lieu of notice, in the sum of **Rs 8,925,000.00** With (sic) interests at 12% per annum from 31st March 2016 until the date of final payment and with costs".

Although the Plaintiff does not fall within the definition of "worker" as highlighted above, and as conceded by Learned Counsel for the Plaintiff, the Court is of the considered view that it has jurisdiction to determine the Plaintiff's Claim for Severance Allowance in view of the fact that **Part X of the ERA** which contains **s. 46 of the ERA** is one of the specific exceptions mentioned in the definition of "worker" at **s. 2 of the ERA** as applying to a "worker" regardless of his/her basic salary or wage.

That being said, taking the Plaintiff's Claim as a whole, it appears that the Plaintiff is seeking to cumulate two causes of action in the present matter.

The first one being his Claim under paragraph 12.(b) of the Proecipe, the Plaintiff is seeking to enforce the Rights which he derives under his Contract of Employment, to be paid the monthly remuneration of a Senior Manager at the Defendant Company, for the period between his appointment in January 2016 (paragraph 4.3 of the Proecipe) and the effective date on which he last worked for the Defendant Company, i.e. 31-03-16 (paragraph 6 of the Proecipe).

And the second one being his Claim under paragraph 12.(c) of the Proecipe for Severance Allowance.

The Plaintiff cannot at the same time ask for the Defendant Company to perform the contractual obligations which the Plaintiff contends the Defendant Company has under the Contract of Employment, for the period during which he was still in employment, which are tantamount to Damages, and at the same time seek to recover Severance Allowance from the Defendant Company for the period subsequent to his being retired by the Defendant Company.

The Plaintiff is to elect whether to seek redress before the Industrial Court for Severance Allowance due to the termination of his employment by the Defendant Company being unjustified, or to go before the Civil Court to claim Damages for Breach of Contract (**Mediterranean Shipping Company (Appellant) v Sotramon Limited (Respondent) (Mauritius) [2017] UKPC 23]**).

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter, all the factors highlighted above, and for all the reasons given above, the Court upholds the *Plea In Limine Litis*

only in relation to the Plaintiff's Claims under paragraph 12.(a) and (b) of the Proecipe, but finds no merit in the *Plea In Limine Litis* in relation to the Plaintiff's Claim under paragraph12.(c) of the Proecipe.

In the Interests of Justice, the Parties are therefore invited to take a Stand in light of the present Ruling.

[Delivered by: D. Gayan, Ag. President]
[Intermediate Court (Financial Crimes Division)]
[Date: 31 March 2023]