

Goinsamy S. v Mauritius Gymkhana Club

2025 IND 68

Cause Number 398/15

**IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)**

In the matter of:

Goinsamy Soobrayen alias Shiva

Plaintiff

v.

Mauritius Gymkhana Club

Defendant

Judgment

In this plaint, it is common ground that Plaintiff was in the continuous employment of Defendant as from 1.6.1990 and was last drawing a terminal monthly salary of Rs. 23,343 as Floor Superintendent.

Plaintiff's averments are essentially as follows:

Since the year 2012, he started to have problems and clashes with one Shekhar Gopal who is actually the Secretary of Defendant and in that capacity holds power and authority. Following an incident at work on 9.12.2014, he filed a complaint against Shekhar Gopal to the Human Resource Manager of the Defendant. However, no action whatsoever was taken against Shekhar Gopal.

He was being unduly victimised and taken to task by the said Shekhar Gopal who started to make his life difficult and miserable at work. In spite of several complaints made by him against the said Shekhar Gopal on 29.12.14, 18.2.15 and on 20.2.2015, no action has been taken or even envisaged or contemplated by the Defendant.

In February 2015, the working atmosphere and relationship between him and the said Gopal has become so tense and unsustainable that he had to make a complaint at the Labour Office of Vacoas against the said Gopal. Upon being summoned by the Labour Office, one Mr. Alain Catherine represented the Defendant and the question was either Plaintiff or the said Gopal would stay and continue to work with the Defendant. As he continued to suffer mentally and he was mentally unwell and having no other alternative, he asked for a pre-retirement leave from the Defendant.

Following the complaints made by him to the Defendant about the acts and doings and behaviour of the said Gopal towards him, he was convened to appear before a disciplinary committee instituted by the Defendant. The charges levelled against him were resisted by him and before the Disciplinary Committee, they were not proved and were subsequently dismissed.

Given that he was mentally unwell and the continued victimisation, harassment and unwarranted behaviour by the said Gopal at work and the passive and negative attitude of the Defendant to take action against the said Gopal and /or remedy the situation and/or look for a solution, Plaintiff found himself in a situation where he was compelled to stop work at Defendant on grounds of constructive dismissal.

Plaintiff by way of a letter dated 3.6.2015 so informed the Defendant and stopped work with Defendant with immediate effect. He has averred that the above-mentioned acts and doings of Shekhar Gopal a préposé of Defendant and the Defendant itself amount to a constructive dismissal as explained above. He has, thus, claimed the sum of Rs 1,774,220.00 from Defendant representing one month's salary in lieu of notice and severance allowance for 25 years of continuous employment.

Defendant has essentially denied liability in its plea and has averred that it is not indebted to Plaintiff in the sum claimed or in any other sum whatsoever.

Plaintiff gave evidence in Court on his behalf while the Club Manager, Mr. Ashish Hoolass, gave evidence in Court on behalf of Defendant.

Their evidence borne on record essentially revolves around the following: -

- (a) Irrespective of whichever capacity Mr. Shekhar Gopal acted be it Secretary, member of the Club, Treasurer or member of the Executive Committee of Defendant, whatever Mr. Shekhar Gopal said was implemented by Defendant.
- (b) Plaintiff had an issue with Mr. Shekhar Gopal in 2012 whereby he had claimed that he was harassed and victimised by him. He continued to be harassed and victimised by him from 2012 to 2015 and no action was taken by Defendant despite his grievances. He had no witnesses. He produced two grievance forms only and which were dated 9.12.2014 and 20.2.2015 as per Docs. P8 and P13 respectively wherein no complaint was made against Mr. Shekhar Gopal.
- (c) The Club Manager was responsible for the day to day running of the Defendant club. The latter never authorised Mr. S. Gopal in any manner whatsoever to interfere into the day to day running of the club nor to give instructions to any employees of the club. Plaintiff should not listen or take instructions from Mr. S. Gopal but should have come straight to the Club Manager and have reported to the said Club Manager.
- (d) Plaintiff received instructions to work from Mr. Alain Catherine as he was his manager, and not from Mr. S. Gopal.
- (e) He was called before a disciplinary committee to answer 3 charges levelled against him and one charge of misconduct was proved against him and the issues were unconnected to Mr. Gopal as admitted by Plaintiff and he was not dismissed but issued a warning only.

- (f) He was not accorded a pre-retirement leave upon his application as per Doc. P2 as he did not attain the age of 60 yet and there were no health issues justifying same.
- (g) The Executive member could not give Plaintiff orders.
- (h) The only document produced to the effect that Plaintiff had mental health issues was Doc.P6 which is a medical document signed by Dr. A. Banymandhub dated 24.2.2015 in that he required 4 weeks off work on health grounds as he was suffering from a work-related mental disorder.
- (i) He stopped employment with immediate effect upon refusal of his pre-retirement leave by Defendant on 3.6.2015 and also because of the passive attitude in relation to Mr. Gopal by Defendant.

I have given due consideration to all the evidence put forward before me and the submissions of both learned Counsel for the Plaintiff and Defendant.

First and foremost, Plaintiff has departed from the averments of his plaint inasmuch as he did not make any grievances against Mr. S. Gopal to the Defendant as per the only 2 grievance forms (Docs. P8 and P13) produced as from the year 2012 to 2015 which lend support to the plea of the Defendant that it was not liable. Therefore, he could not expect the Defendant to have reacted on the basis of such grievance forms namely (Docs. P8 and P13).

Further, at no time, Plaintiff stated in Court that Mr. Alain Catherine being his manager from whom he received instructions as far as his work was concerned, compelled him to abide to what Mr. Gopal had said so that he continued to be harassed and victimised by Mr. S. Gopal.

Plaintiff had a work-related mental illness as per Doc.P6 only on 24.2.2015 whereby 4 weeks off work were sufficient enough as per his treating Doctor let alone that such a medical document does not fall within the exceptions to the rule against hearsay by virtue of sections 181B and 181C of the Courts Act and for which no weight can be given to such disputed fact let alone that no reason has been given to justify the inability of the treating Doctor(Dr. A. Banymandhub) to attend Court.

Plaintiff departed from the averments of his plaint when he said that all the three charges levelled against him by Defendant were (subsequent to the complaints he made to the Defendant as regards the acts and doings and behaviour of Mr. Gopal

towards him) and thus,) connected to Mr. S. Gopal and were all dismissed before the Disciplinary Committee of Defendant while in Court, he admitted that the said three charges were unconnected to the issue regarding Mr. Gopal and he was found guilty for one charge for which he was inflicted a warning lasting for one year. He admitted that he had retained the services of Counsel at his Disciplinary Committee hearing.

Moreover, it was only after his pre-retirement leave had been disapproved by Defendant that he decided that such disapproval coupled with the passive attitude to the acts and doings of Mr. S. Gopal towards him in terms of harassment, victimisation and proximity with Defendant, he was constructively dismissed by Defendant by trying to import that Mr. S. Gopal had a say in such refusal.

This is clearly not plausible, as Plaintiff had never made any written grievance against Mr. S. Gopal to the Defendant in relation to him being harassed and victimised in the year 2012 and onwards and obviously, such a state of affairs cannot be linked to any unsubstantiated mental illness encountered by him.

Had he really been harassed and victimised as from the year 2012 to 2015 by Mr. Gopal as claimed by him, in his course of duty and for which no action had been taken by Management, he would have had acted well before and would have had considered himself to have been constructively dismissed then by the Defendant and he would not have applied for a pre-retirement leave instead in the year 2015(see- **Adamas Limited v Mrs. Yong Ting Ping How Fok Cheung[2011] UKPC 32** where Lord Denning's well-known dictum in Western Escavating (ECC) Ltd. v Sharp [1978] 1 QB 761, 769C was cited: *"that the employee "must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged"*).).

It is apt to quote an extract from the Supreme Court case of **Joseph J v Rey & Lenferna Ltd [2008 SCJ 342]** which reads as follows:

"In a case of constructive dismissal, the employee's response to the employer's conduct is an important factor. The employee must be careful that his response does not imply a willingness to accept the new conditions. He must not stay on in circumstances which imply that he does not regard his employer's conduct as entitling him to terminate his contract of employment.

Our case law has laid down that the test for constructive dismissal is a contractual test. A constructive dismissal by an employer occurs where an employee

is entitled to put an end to his contract of employment by reason of his employer's conduct. Although the employee terminates his employment, it is the employer's conduct which constitutes the breach of contract." (emphasis added)

In the present case, there has been no conclusive evidence of any conduct emanating from Defendant that would have entitled the Plaintiff to terminate his contract of employment, inasmuch as Plaintiff had not made any grievances in writing against Mr. S. Gopal to the Defendant as per Docs. P8 and P13 leading to his unsubstantiated mental illness and which tend to show for the simple reason that he had received orders only from Mr. Alain Catherine, his manager.

Indeed, although he was found guilty of one charge of misconduct at his hearing before a disciplinary committee set up by Defendant, the latter was lenient enough not to have dismissed him.

Nor has it been established that the conduct of the Defendant employer by the fact of having denied the Plaintiff pre-retirement leave prior to his attaining the age of 60 on the basis of unsubstantiated mental illness, was to such an extent to have entitled the Plaintiff employee to put an end to his contract of employment by reason of he having been constructively dismissed by Defendant. Thus, the Plaintiff has plainly failed the contractual test in order to be able to invoke constructive dismissal (see - **Rey & Lenferna** (supra)).

For all the reasons given above, the case for the Plaintiff has fallen short of having been proved on a balance of probabilities. The plaint is accordingly dismissed with costs.

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

30.9.2025

