Andre v Sotravic Ltee

2025 IND 46

THE INDUSTRIAL COURT OF MAURITIUS

(Civil Side)

In the matter of:-

CN 985/2017

EMMANUEL RENE ANDRE

PLAINTIFF

v.

SOTRAVIC LTEE

DEFENDANT

RULING

1. The Plaintiff was in the Defendant's employment as Chief Executive Officer under a contract of a fixed duration of 3 years since August 2012. According to the plaint, at the expiry of the said contract, the Plaintiff remained in employment with the Defendant by mutual consent and continued to benefit from the same terms and conditions of employment. The Plaintiff contends that he remained in post until his employment was terminated by the Defendant in the year 2017. It is the Plaintiff's case that the termination of his employment was unilateral and made without valid reasons, and, therefore, unlawful. He is, thus, seeking redress from his former employer.

2. At the outset, the Defendant has raised the following plea *in limine litis*:

> *"1. The Defendant avers that the Plaintiff's action is misconceived and should be set aside inasmuch as:-*

(a) ex facie the Plaint, the Plaintiff was, for the purposes of the law, a migrant worker being a French National, so that it was not open for him to sue for severance allowance in the light of the provisions of Section 46(1)(b) of the Employment Rights Act 2008 (as amended); and

(b) ex facie the Plaint, the Plaintiff was an employee earning in excess of Rs 360,000. per annum, so that he is debarred from claiming severance allowance and this notwithstanding the fact that he was under a contract of determinate duration which had exceeded 24 months, in line with the provisions of Section 46(1)(c) [sic] *of the Employment Rights Act (as amended).*

2. The Defendant therefore moves that the Plaintiff's action be set aside with costs."

3. Written submissions were filed on both sides, which I have considered alongside the authorities handed in. It is *"settled principle that for the purpose of the argument of a plea* in limine *only, the facts averred in the plaint with summons are assumed to be true. In the case of* ***Rama v. Vacoas Transport Co. Ltd. (1958) MR 184*** *it was held that "objections cannot properly be heard* in limine *unless the objector accepts – for the purposes of arguments only – all the facts alleged by the plaintiff but argues that, even accepting them, his opponent cannot succeed. Where the objection is based on disputed facts the court must hear the evidence before it can rule on the point in law; the objection cannot be taken* in limine*"."* – *vide* **Hurnam v. Veerabudren (2023) SCJ 236**; *vide* also **Lenferna v. Lenferna & Ors (2022) SCJ 168**. I shall, therefore, consider the points raised by the Defendant *ex facie* the plaint.

4. Section 46 of the Employment Rights Act 2008 (as amended by Act 6 of 2013) – the "ERA" –, which is the law relevant to the present dispute, provides:

"PART X – COMPENSATION

46. Payment of severance allowance

(1) Subject to subsection (1A), an employer shall pay severance allowance to a worker as specified in subsection (5) where the worker has been in continuous employment with the employer –

(a) for a period of not less than 12 months on a contract of indeterminate duration and that employer terminates his agreement; or

(b) for a period of more than 24 months under one or more determinate agreements in respect of a position of a permanent nature and that employer terminates the agreement of the worker ***other than a migrant worker****.*

(1A) Unless otherwise agreed by the parties, no severance allowance shall be payable where –

(a) a worker and an employer enter into an agreement under section 5(3A) and the agreement comes to an end;

(b) a worker and an employer enter into one or more determinate agreements for a total period of less than 24 continuous months in respect of a position of a permanent nature and the agreement comes to an end; or

(c) a worker, whose basic wage or salary is at a rate in excess of 360,000 rupees per annum, and an employer enter into a determinate agreement and that agreement comes to an end.

…".

[Emphasis added].

5. Section 2 of the ERA defines a *"worker"* as:

""worker", subject to section 33 or 40—

(a) means a person who has entered into, or works under, an agreement or a contract of apprenticeship, other than a contract of apprenticeship regulated under the Mauritius Institute of Training and Development Act, whether by way of casual work, manual labour, clerical work or otherwise and however remunerated;

(b) includes—

(i) a part-time worker;

(ii) a former worker where appropriate;

(iii) a shareworker;

(c) does not include—

(i) a job contractor;

(ii) ***except in relation to*** *sections 4, 20, 30, 31 and* ***Part****s 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."*

[Emphasis added].

6. It is to be noted that the term *"migrant worker"* is not defined under the ERA. That term has since been defined under the Workers' Rights Act 2019 – which has repealed and replaced the ERA – as *"a worker to whom a permit has been issued under the Non-Citizens (Employment Restriction) Act."*

7. In the case of **Indian Ocean Medical Institute Trust v. Dr Sreenivasulu Kalava (2024) SCJ 503**, the respondent who was an Indian national earning a net monthly salary of Rs 86,500. (i.e. more than Rs 360,000. per year) successfully claimed severance allowance from his former employer in the Industrial Court. The respondent was employed under successive 2-year contracts. On appeal, the Supreme Court upheld the trial court's interpretation and application of the provisions of the ERA and concluded that the respondent was *"entitled to severance allowance once it was established that his employment had been terminated without any justification."* The appellate Court also held that, under the ERA, *"the exclusion of migrant workers and non-citizens from the definition of "worker" related only to Part IX of the Act (Workfare Programme)"*, although the Court deplored the lack of definition for the term *"migrant worker"* under that enactment. The Supreme Court referred to the case of **De la Haye v Air Mauritius Ltd [2018] UKPC 14**, where a foreign pilot employed on a work permit was found to be entitled to claim severance allowance from his former employer under the ERA.

8. In the circumstances, I am unable to conclude on the basis of pleadings alone that the mere fact that the Plaintiff is admittedly a French national excludes him from the categories of workers entitled to claim severance allowance for alleged unjustified termination of employment. Limb 1(a) of the plea *in limine litis* accordingly fails.

9. I shall now turn to limb 1(b) of the plea *in limine litis*. It is agreed that the Plaintiff was an employee earning in excess of Rs 360,000. per annum. Be that as it may, I am of the view that, on a proper reading of the ERA, a worker cannot be debarred from seeking severance allowance from his former employer only because his basic wage or salary exceeds the prescribed amount of Rs 360,000. annually. In

fact, in relation to severance allowance claims, the definition of *"worker"* under the ERA as reproduced above has been so couched as to englobe even those at the higher end of the salary spectrum. The monetary exclusionary threshold only comes into play if the worker and his employer were bound under one or successive fixed term contracts, and that contract, or the latest one, comes to a natural end – *vide* section 46(1A)(c) of the ERA.

10. Here, *ex facie* the plaint, it can be gathered that once the initial fixed agreement of 3 years came to an end in 2015, the Plaintiff stayed in employment pursuant to another agreement which the Plaintiff contends was unlawfully terminated by the Defendant in 2017. It matters not, at least at this stage, for me to determine whether the fresh agreement was for another determinate duration of 3 years as contended by the Defendant or whether same was of indeterminate duration as argued by the Plaintiff. Even on the assumption that the second agreement was a determinate one, it did not come to a natural end. Hence, the section 46(1A)(c) *proviso* finds no application.

11. For all the foregoing reasons, the plea *in limine litis* is set aside.

20 June 2025

M. ARMOOGUM

Magistrate