PLIRO VS SHIAM PERSAND

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MINISTRY OF LABOUR, HUMAN RESOURCE DEVELOPMENT AND TRAINING (PLIRO) VS SHIAM PERSAND

Cause Number: 130/21

THE INDUSTRIAL COURT OF MAURITIUS

In the matter of:-

MINISTRY OF LABOUR, HUMAN RESOURCE DEVELOPMENT AND TRAINING (PLIRO)

VS

SHIAM PERSAND

RULING

Introduction

The Accused stands charged with the offence of having caused violence at work in the form of a sexual harassment in breach of sections 54(1)(a) and 54(2) of the Employment Rights Act 2008. The Accused pleaded not guilty to the charge against him and was assisted by Counsel.

At the outset, prior to the case being heard on the merits, Learned Defence Counsel raised a point in Law reading as follows: *Ex facie the Information and the list of witnesses provided, the investigation by the police and not by the Industrial relation officer of the Ministry themselves coupled with the lodging of this case by PLIRO before this venue is contrary to the Employment Rights Act 2008 and the Industrial Courts Act. Therefore, the case cannot be heard by the Industrial Court*. Learned Counsel for the Prosecution has objected to the motion by the defence, warranting an Argument in Law on the matter.

Observations

I have given due consideration to the submissions of both Learned Defence Counsel and Learned Counsel for the Prosecution. It is to be noted that the governing legislation at the

time of the present alleged offence, being the 28th November 2018, falls within the ambit of the Employment Rights Act 2008, now repealed and replaced by the Workers' Rights Act.

Coming back to the present matter, it is undisputed that the enquiry was conducted by the police, this being the bone of contention in this case. The power to make enquiries under the Employment Rights Act is contained in section 61 of the Act, which I reproduce below:

61.Power to make enquiries

(1) The Permanent Secretary may –

(a) enter without previous notice, at any hour of the day or night, any place of work, other than premises used solely for residential purposes except with the permission of the occupier thereof;

(b) enter by day and without previous notice any premises which he has reasonable cause to believe to be a place of work other than premises used solely for residential purposes except with the permission of the occupier thereof;

(c) carry out any examination or enquiry which he may consider necessary in order to satisfy himself that this Act or any other enactment relating to labour or employment is being strictly observed;

(d) interview alone or in the presence of any other person, as he thinks fit, and at such place he deems appropriate, the employer or his representative and any person employed in the enterprise, regarding the application of this Act or any other enactment relating to labour or employment, and any such person shall answer such questions truly to the best of his ability provided that no such person shall be required to give any information tending to incriminate himself;

(e) require the production of any books, records or other documents, whether prescribed by law or kept by the employer, relating to terms and conditions of employment, in order to ascertain whether this Act or any other enactment relating to labour or employment are being complied with, and copy such documents or make extracts therefrom;

(f) enforce the posting of such notices as may be required by this Act or any other enactment relating to labour or employment;

(g) require an employer to submit in writing any information relating to remuneration, and terms and conditions of employment, of a worker, as well as the worker's name, address, date of birth, date of commencing employment and category;

(h) *require an employer or his representative to furnish the facilities and assistance required for entry, inspection, examination or enquiry in the exercise of any of the powers conferred under this Act or any other enactment relating to labour or employment.*

(2) The Permanent Secretary shall, on the occasion of an inspection visit, notify the employer or the employer's representative of his presence, unless neither of them is present or easily accessible at that time, or he considers that such notification may be prejudicial to the performance of his duties.

(3)The Permanent Secretary may request the assistance of a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duties.

(4) No person shall –

(a) *willfully impede or delay the Permanent Secretary in the exercise of any power under this Act or any other enactment relating to labour or employment;*

(b) *fail to comply with a requirement or request or to answer a question of the Permanent Secretary under subsection (1);*

(c) *conceal or prevent any person from appearing before or being examined by the Permanent Secretary or any officer delegated by him, or attempt to do so.*

A careful reading of section 61 of the Employment Rights Act makes it clear that the sole powers of investigations for enquiries resides with the Permanent Secretary. I have taken good note that the word "may" has been used in section 61(1) of the Act. According to the general rules of interpretation, the word "may" is defined under the Interpretation and General Clauses Act as *"permissive and empowering"*. In the circumstances, I find that section 61 of the Employments Rights Act empowers the Permanent Secretary to exercise its discretionary powers to instigate and conduct enquiries according to the procedural requirements and exigencies of section 61 of the Employment Rights Act.

The discretionary power of the Permanent Secretary to initiate and conduct investigation is limited to its prerogative as defined under 61 of the Employment Rights Act. This means that the Permanent Secretary may or may not make enquiries and in the event of an enquiry, has the privilege of opting for different methods of investigation as defined under sections 61(1) to 61(4) of the Act. The word "may" in section 61 of the Act gives a discretionary

power to the Permanent Secretary only and does in no way mean that any other authority or body may exercise such power. I find the reasoning of the Prosecution that the word "may" means that the investigation can be carried out by the police instead of the Permanent Secretary to be flawed since the sole powers of investigation lies with the Permanent Secretary only. Also, such a reading of the Law will sit unevenly with section 61(3) of the Employment Rights Act.

Indeed, I have paid special attention to subsection 3 of section 61 which states that the Permanent Secretary may request the assistance of a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duties. This means that the intervention of the police is only limited as an assistance in specific cases of obstruction in the execution of the duties of the Permanent Secretary. It cannot be extended to mean that the police have the power to investigate and make enquiries.

The gist and purport of section 61 of the Employment Rights Act is mirrored in section 118 of the Workers' Rights Act 2019. Section 62 of the Employment Rights Act reinforces the notion of the sole ultimate power of enquiry to the Permanent Secretary by giving the power to the latter to summon a party in relation to the Act or any enactment pertaining to labour or employment dispute.

I have taken good note of section 9 of the Police Act which confers duties on police officers to take lawful measures for, inter alia, preserving, preventing, apprehending, regulating, assisting, executing and prosecuting in cases where there is a reasonable suspicion of an offence having been committed. I agree with the line of reasoning of Learned Defence Counsel that for an offence similar to the one in the present case, being one of harassment, the police have the powers to make enquiries, where such offence is couched under the Criminal Code. However, in a situation where the harassment becomes a violence at work in the midst of an employment scenario falling within the ambit of the Industrial Court, it is the Employment Rights Act and now the Workers' Rights Act which takes precedence, with specific exclusive powers endowed to the Permanent Secretary to make enquiries.

I find that if the intention of the Legislator was to include the police as an empowered authority to make enquiries, this would have been apparent from the Employment Rights Act or the Workers' Rights Act. I shall draw an analogy here to refer to the Fisheries Act 2023 which defines *a police officer under the Police Act and the National Coast Guard Act* as a *fisheries control officer* under the Act. Same is not the case in the Employment Rights Act and the Workers' Rights Act wherein exclusive powers are conferred to the Permanent Secretary to make enquiries.

It is noteworthy to highlight that the Industrial Court is a Court of exclusive jurisdiction established under the Industrial Court Act. Section 3 of the Industrial Courts Act reads:

> ***3. Establishment of Industrial Court***
>
> *There shall be an Industrial Court with exclusive civil and criminal jurisdiction to try any matter arising out of the enactments set out in the First Schedule or of any regulations made under those enactments and with such other jurisdiction as may be conferred upon it by any other enactment.*

Therefore, the specificities of the Industrial Court as laid down in the Employment Rights Act and now the Workers' Rights Act must be strictly adhered to, without travelling to or through other enactments.

In a recent judgment, in the case of **BUCKINGHAM M. O.V. & ANOR v AIR MAURITIUS LTD (2025) SCJ 4**, his Lordship Mr Kam Sing commented on the exclusive nature of the jurisdiction of the Industrial Court as follows:

> *"(…) although the Supreme Court has unlimited jurisdiction, it must nevertheless decline to entertain claims which Parliament has found it appropriate to confer to specific courts and specialised tribunals. Holding otherwise will run contrary to the complete and coherent legislative scheme put into place by the legislature in virtue of which only the Industrial Court, under section 3 of the Industrial Court Act, has been granted "exclusive jurisdiction" to try any matter arising out of the enactments set out in the First Schedule to the Act: The Workers' Rights Act[WRA] is, and both the Labour Act and the Employment Rights Act 2008[ERA] were, scheduled enactments".*

In view of the above, I find that given the exclusive nature of the Industrial Court as well as the specific powers of enquiry attributed to the Permanent Secretary of the Ministry responsible for the subject of labour and employment relations under the Employment Rights Act as applicable in the present case, enquiries cannot be conducted by the police in matters of industrial disputes before the Industrial Court.

Conclusion

Although I have borne in mind the general rule that a stay of proceedings can only be granted in exceptional circumstances, **(RE: ATTORNEY GENERAL'S REFERENCE (NO 2 OF 2001) [2003] UKHL 68, [2004] 2 AC 72)**, I find that there is a serious 'vice de procedure' in relation to the conduct of the enquiry in the present case, which would render the continuance of the present case abusive.

In a Court of specific jurisdiction, strict adherence to the enactment creating the Court, the procedures and the rules must be followed. The whole tenure of the present case rests on the enquiry conducted. The determination of the case will depend on the witnesses to be called and who have enquired in the case. Given that the enquiry has been conducted by an authority which is not empowered under the governing legislation prevailing at the time, that is the Employment Rights Act, the whole structure of the case will not stand as the foundation of the investigation, enquiry and evidence necessary to prove the case, will stumble.

I find that the present case as couched under the Employment Rights Act cannot be heard before the Industrial Court. I dismiss the case against the Accused.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Judgment delivered on: 05th March 2025