

IMTEAZ BHOYROO VS SMS PARIAS LTD

2024 IND 3

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Cause Number: 412/20

THE INDUSTRIAL COURT OF MAURITIUS

(Civil Division)

In the matter of:-

IMTEAZ BHOYROO

Plaintiff

VS

SMS PARIAS LTD

Defendant

JUDGMENT

Introduction

The Plaintiff is claiming from the Defendant the sum of Rs 800,037 for unjustified termination of his employment.

The facts

The Plaintiff was in the continuous employment with the Defendant as compliance security manager since August 2014 and as at February 2020, was drawing a monthly terminal salary of about Rs 35,700.

According to the Plaintiff, on the 16th February 2020, he was suspended from work and was called upon to attend a disciplinary committee which was scheduled for the 26th February 2020 and thereafter set down for the 4th and 13th March 2020. The disciplinary committee was subsequently postponed to the 23rd March 2020 but the hearing could not take place due to the nationwide lockdown following the Covid 19 pandemic.

The Plaintiff contended that during the national lockdown period, the Defendant unreasonably, unjustifiably and unlawfully stopped paying the Plaintiff his salary for the months of March, April and June 2020, despite the intervention of officers from the Ministry of Labour, Human Resource Development and Training. According to the Plaintiff, he stands advised and verily believes that his colleagues were duly paid the salaries for the same period.

The Plaintiff further added that the Defendant failed to attend the Labour Office despite his complaints and he was informed that the Defendant had taken him off the pay roll and he was not registered by the Defendant as an employee with National Pension Fund with a view to obtaining a pension. The Plaintiff was convened to disciplinary proceedings anew on

the 11th June 2020, on which date the Defendant's representative confirmed that the Plaintiff had been removed from the Defendant's payroll and had not been paid his salary for the months of March, April, May and up to 11th June 2020.

The Plaintiff contended that there was a breach of his contract of employment and he had been constructively dismissed by the Defendant. He left the disciplinary proceedings which no longer had its "raison d'être". According to the Plaintiff, the disciplinary committee was then postponed to the 19th June 2020 and he was never notified of the new hearing date. By letter dated the 24th June 2020, he was informed that his employment has been terminated with immediate effect on the ground of alleged misconduct/breach of trust.

The Plaintiff averred that the Defendant's acts and doings and/or omissions were tantamount to an illegal, unjustified and unreasonable breach of his contract of employment and/or a constructive termination of his employment by the Defendant. He also added that the Defendant did not uphold the legal and procedural requirements of the disciplinary committee. He claimed from the Defendant the sum of Rs 800,037 made up as follows:

(i)	Severance allowance	Rs 628,052.25
(ii)	End of year bonus	Rs 15,975.75
(iii)	One month Notice	Rs 35,700
(iv)	Unpaid Salary for March, April May and up to 11 th June 2020	Rs 120,309

		Rs 800,037.00

Observations

In the present case, the Defendant has left default and has failed to rebut the case of the Plaintiff. Having said that, it is to be remembered that "*making out a case does not mean that one has got to jump both feet all over the principles of evidence and all the matters required in order to make out a case...*". (**VELVINDRON VS NOORDALLY (1979) MR 243**).

In the present case, the Plaintiff has undisputedly established that the Defendant has terminated his employment without notice and without any justification. The version of the Plaintiff coupled with documents produced, has remained credible, unchallenged and unshattered. In the circumstances, I find that the Defendant has unlawfully terminated the contract of employment without cause and/or justification in breach of **THE WORKERS' RIGHTS ACT 2019**. The Defendant is therefore indebted to the Plaintiff in the sum of Rs 800,037/-representing severance allowance, end of year bonus, notice and unpaid salary.

Conclusion

In light of the above, I find that the Plaintiff has established his case on a balance of probabilities. I order the Defendant to pay to the Plaintiff the sum of Rs 800,037/-together with interests at the rate of 12% per annum on the amount of remuneration due from the date of non-payment to the date of payment.

Judgment delivered on: 30th January 2024