

**TOMY S J BAPTISTE VS HOLDEM HOLDINGS LTD**

**2023 IND 46**

**THE INDUSTRIAL COURT OF MAURITIUS**

(CIVIL JURSIDICTION)

**Cause Number: 274/2022**

In the matter of:-

**TOMY STEWARD JEAN BAPTISTE**

Plaintiff

**VS**

**HOLDEM HOLDINGS LTD**

Defendant

**Judgment**

*Introduction*

The Plaintiff was in the continuous employment of the Defendant as a mason since the 17<sup>th</sup> January 2019. By virtue of a claim backed by the Plaintiff's testimony in Court, he is claiming from the Defendant the sum of Rs 12,000/- representing the end of year gratuity for the year 2019.

*The facts*

The Plaintiff testified that he was employed on a 5 day-week basis for and in consideration of a basic monthly wage of Rs 18,000. By way of letter dated the 01<sup>st</sup> October 2019, the Defendant terminated his employment.

The Plaintiff averred that the Defendant terminated his employment on the 14<sup>th</sup> October 2019 without any valid reason. He contended that he has worked for 2/3 of the total number of working days during the period ranging from the 17<sup>th</sup> January 2019 to 14<sup>th</sup> October 2019 but the Defendant has failed to pay to him the pro-rated end of year gratuity for the year 2019.

In view of the above, the Plaintiff claimed from the Defendant the sum of Rs 12,000/- representing the unpaid end of year gratuity.

In the present case, the Defendant has left default despite having been warned to attend Court through previous personal appearances.

*Observations*

I have assessed the evidence on record and the documents produced. 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).**

The undisputed facts of the case reveal that the Plaintiff was in the continuous employment of the Defendant from the 17<sup>th</sup> January 2019. The Plaintiff filed a copy of the contract of employment in Court. His payslip for the month of September 2019 shows that the Plaintiff was receiving a basic monthly wage of Rs 18,000. I have also been apprised of a letter dated the 1<sup>st</sup> October 2019 sent by the Chief Financial Officer of the Defendant company informing the Plaintiff of the termination of his employment as from the 14<sup>th</sup> October 2019. The Defendant undertook to pay compensation to the Plaintiff.

In view of the specific requirements of section 31A of **THE EMPLOYMENT RIGHTS ACT 2008**, which is the applicable law in the present case, the Defendant was under the obligation to pay to the Plaintiff an end of year gratuity proportionate to the period of work. This the Defendant failed to do.

In the circumstances, I find that the Defendant is indebted to the Plaintiff in the sum of Rs 12,000/- representing the outstanding pro-rated end of year gratuity for the year 2019.

*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 12,000/-.

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

Judgment delivered on: 15<sup>th</sup> June 2023

