

Ambroise M.J.D. v Therond L.

2023 IND 73

Cause Number 379/22

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Mrs. Marie Joanne Dona Ambroise

Plaintiff

v.

Mrs. Laura Therond

Defendant

Judgment

In this plaint, Plaintiff has averred that Defendant has terminated her contract of employment on 27.9.2020 without notice and without justification inasmuch as on that day she received a text message on her mobile phone from Defendant to inform her the following which is reproduced *verbatim*: “*je vous contacte ce matin pour faire suite a une rupture de votre activite a la maison*”.

She has also averred that she was in her continuous employment as Household employee since 18 May 2020 (being employed on a 6-day week basis and being remunerated at monthly intervals at the basic rate of Rs 9,000 per month instead of Rs 9,700) and that her terms and conditions of employment were governed by the Domestic Workers (Remuneration) Regulations 2019.

She has alleged that she spent Rs 54 per day as travelling expenses to attend duty on 111 days during period May to September 2020 and Defendant has failed to refund her same. Furthermore, she has not been paid the prorated end of year bonus 2020.

Therefore, Plaintiff is claiming from Defendant the sum of Rs.18,119 representing allegedly-

- (i) One month's wages as indemnity in lieu of notice: Rs 9,700.
- (ii) Refund of travelling expenses incurred from 18.5.2020 to 26.9.2020 (Rs 54 x 111 days): Rs 5,994.
- (iii) End of year bonus(prorated) 2020 (Rs 9,700 x 3 months/12): Rs 2,425.

Defendant did not file any plea and has left default on the trial day although there was good service upon her (in the sense of her having been summoned to appear in Court on that day). Section 7(1) of the Industrial Court Act 1973 stipulates that all proceedings before the Industrial Court shall be conducted in the same manner as it is for a civil case before a District Magistrate. Thus, Plaintiff was allowed to proceed in the absence of Defendant under Section 16 (1) of the District and Intermediate Courts (Civil Jurisdiction) Act which governs the legal principles in relation to default judgments as follows:

"Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court, upon proof of the service of the summons, may give judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only, and in either case, the judgment shall, subject to subsection (2), be as if both parties had attended."(emphasis added)

Plaintiff testified in Court in line with her above averments. She highlighted that her contract of employment was an oral one and that she was not issued with a pay slip by Defendant. Moreover, she has also claimed 2 days' travel expenses to come to Court in the sum of Rs 176.

I have duly considered all the evidence put forward before me and I am satisfied that this case is soundly grounded both in law and on the facts (see - **Hurnam D. v. Bholah K. B. & Anor.** [\[2009 SCJ 265\]](#)).

It is significant to note that pursuant to Section 2 of the **Workers' Rights Act 2019**, an “*agreement*” means “*a contract of employment between an employer and a worker, whether oral, written, implied or express*”. (*emphasis added*)

Thus, testimonial evidence is allowed to prove an oral contract of employment in whatever amount without the need to have a *commencement de preuve par écrit* opening the door to such testimonial evidence because Section 2 of the said Act has impliedly repealed Article 1341 of the Civil Code (vide - **Chamroo v Northern Transport** [\[1969 MR 96\]](#)) inasmuch as a special law will prevail over the general one (vide - **Pabaroo D.T v. Varmah K.D. & Ors.** [\[2013 SCJ 197\]](#)) bearing in mind that Security of Tenure is inextricably linked with the livelihood of a worker.

Now, the straightforward testimony of Plaintiff has convinced me that she is a witness of truth as her testimony remained unchallenged in the absence of Defendant who also chose not to file any plea.

I have no difficulty in finding that the un rebutted testimony of Plaintiff in its form and tenor as being plausible and reliable. Thus, pursuant to Section 61(2) (b) of the Act, Plaintiff has claimed that her contract of employment has been terminated by Defendant because of a failure on her part to pay the remuneration due to her under the said agreement.

For the reasons given above, I find that the case for the Plaintiff has been proved on a balance of probabilities.

Therefore, I order Defendant to pay to Plaintiff the sum of Rs.18,119 representing one month's wages as indemnity in lieu of notice: Rs 9,700, refund of travelling expenses incurred from 18.5.2020 to 26.9.2020 (Rs 54 x 111 days): Rs 5,994 and end of year bonus(prorated) 2020 (Rs 9,700 x 3 months/12): Rs 2,425. I also order Defendant to pay to Plaintiff the sum of Rs 176 for 2 days' travel expenses to attend Court.

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

5.10.23.