

**YASHASVINEE BENGOO VS THE EXEC BUSINESS AND
COMPUTATIONAL INST**

2023 IND 40

THE INDUSTRIAL COURT OF MAURITIUS

Cause Number: 126/2022

In the matter of:-

YASHASVINEE BENGOO

Plaintiff

VS

THE EXECUTIVE BUSINESS AND COMPUTATIONAL INSTITUTE

Defendant

Judgment

Introduction

The Plaintiff was in the continuous employment of the Defendant as an IT lecturer since the 16th January 2019. By virtue of a claim backed by the Plaintiff's testimony in Court, she is claiming from the Defendant the sum of Rs 131,691.03/- representing one month's indemnity in lieu of notice, outstanding wages, end of year bonus and severance allowance.

The facts

The Plaintiff testified that she was employed on a 6 day-week basis for and in consideration of a monthly basic wage of Rs 12,400 in the year 2019 and Rs 12,700 in the year 2020. Her last day of work was on the 16th March 2020 and she was on sick leave from the 17th March to the 20th March 2020. Thereafter, she did not attend work due to the confinement period following the Covid 19 pandemic.

She averred that she did not receive her wages at the end of March 2020. On the 6th April 2020, she sent a text message to the Defendant's academy manager but was informed that she would not be paid. She sent another text message on the 23rd April 2020 and was told that she would be paid when the Defendant receives financial assistance under the Wage Assistant Scheme.

On the 28th May 2020, the Defendant, through the academy manager, informed the Plaintiff that work would resume on the 25th June 2020 but she would still not be paid as the Defendant had not received financial assistance. Given that the Plaintiff was not paid the wages for the months of March to 24th June 2020, she considered that the Defendant had breached the contract of employment as from the 25th June 2020. She claimed that she was not paid the end of year bonus for the years 2019 and 2020.

In view of the above, the Plaintiff claimed from the Defendant the sum of Rs 131,691.03/- made up as follows:

(i)	One month's wages as indemnity in lieu of notice	Rs 12,700.00
(ii)	Severance allowance for 17 months' continuous service	Rs 53,975.00
(iii)	Wages for March, April, May and 21 days for June 2020	Rs 48,357.00
(iv)	End of year bonus for year 2019	Rs 11,366.67
(v)	End of year bonus for year 2020	Rs 5,291.67

		Rs 131,691.03

In the present case, the Defendant has left default despite a substituted service effected on the Defendant, by the posting of the true and certified copy of the plaint with summons at its registered office on the 10th February 2023.

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 16th January 2019 until the 25th June 2020. The Plaintiff was legally entitled to a monthly wage. The Plaintiff has undisputedly established that the Defendant has failed to pay to her the outstanding notice, wages, bonus and allowances

despite her request for same via text messages, a copy thereof was produced in Court. The version of the Plaintiff has remained credible, unchallenged and unshattered.

In the circumstances, I find that the Defendant has committed a breach of the contract of employment by terminating the employment through failure to pay the necessary wages to the Plaintiff in line with section 61(2)(b) of **THE WORKERS' RIGHTS ACT 2019**. IT is therefore indebted to the Plaintiff in the sum of Rs 131,691.03/- representing the outstanding notice, wages, bonus and allowances.

Conclusion

In light of the above, I find that the Plaintiff has established her case on a balance of probabilities. I order the Defendant to pay to the Plaintiff the sum of Rs 131,691.03/- 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 by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Judgment delivered on: 05th June 2023