Bhoyroo v National Computer Board

2022 IND 22

CN635/19

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Ghansiam Rao BHOYROO

Plaintiff

v/s

NATIONAL COMPUTER BOARD

Defendant

RULING (NO. 1) (PROPOSED AMENDMENT TO THE PLEA)

The Plaintiff is praying for:

1) His reinstatement as a Manager with the Defendant and refund of his salary by the Defendant for the period starting as from the date of his termination of employment up till the date of his reinstatement and the payment of such indemnities for any sum that should have accrued to him in his continued employment;

   or in the alternative

2) The sum of Rs5 458 650/- together with Interests as from the date of termination of employment to the date of final payment with Costs, from the Defendant, for unjustified termination of his employment by the Defendant.

The Defendant filed its Plea, and the matter was fixed for Disposal, in vain.

The Defendant then moved to file a Proposed Amended Plea, to which the Plaintiff objected on the Grounds set out in his Notice of Objection dated 22-09-21.

The matter was therefore fixed for Arguments.

Each Party was assisted by Learned Counsel, and the Proceedings were held in English for the purposes of the Arguments.

Case For The Plaintiff

Learned Counsel for the Plaintiff submitted in essence that the proposed amendments as per the Proposed Amended Plea amounted to a *rétractation d'aveu*, without having raised the issue that the said *aveu* was due to an error of fact.

Learned Counsel for the Plaintiff also invited the Court to consider the stage of the Proceedings, i.e. Trial, at which the proposed amendments were being sought, and highlighted that the said proposed amendments were being sought after the Parties had attempted to find a settlement of the present matter.

Learned Counsel for the Plaintiff further submitted that he would not go to the extent of saying there was bad faith on the part of the Defendant, but that the proposed amendments sought were a bit abusive, as the Defendant was saying one thing and the exact contrary 02 lines afterwards.

Learned Counsel for the Plaintiff referred to **Rule 48 of the District, Industrial and Intermediate Courts Rules 1992 (hereinafter referred to as DICCR)**, and referred to, and filed copies of, the following cases in support of his Submissions:

1) **Aimée v Radio Plus Ltd [2020 SCJ 16]**;
2) **Joyseery v Pattar [1971 MR 75]**;
3) **Maubank v Beeharry [2021 SCJ 5]**;
4) **Lamco v Hungley [2017 INT 236]**; and
5) **Sinassamy v Navitas Holdings Ltd [2021 SCJ 79]**.

In Reply, Learned Counsel for the Plaintiff submitted in effect that the Defendant knew from the start what issues the Plaintiff was going to raise, and that the Defendant was attempting to raise a new Defence in the middle of a Defence.

Case For The Defendant

Learned State Counsel appearing for the Defendant submitted in effect that the Defendant's denial was maintained, and that the Defendant was, through the proposed amendments, seeking to add Particulars which form part of the Defence

Learned State Counsel further submitted that there was nothing untoward and no bad faith, and that the Defendant was not introducing some completely new cause of action or Defence, by means of the proposed amendments.

Learned State Counsel went on to submit that the primary principle in considering whether to allow amendments was whether such amendments would serve to resolve the material issue in controversy between the Parties, and that fair play weighed on the side of the Defendant in the present manner, the more so as there would testing of the evidence to be led by the Defendant through cross-examination, and a subsequent appreciation thereof on the part of the Court.

Learned State Counsel also submitted to the effect that the proposed amendments were being sought prior to the Trial having started and not during same, and that more leniency is afforded when amendments are being sought prior to the Trial having started.

Learned State Counsel referred to, and filed copies of, the following cases in support of her Submissions:

1) **Monroe v The State Bank of Mauritius** [2008 SCJ 73];
2) **Dumur & Ors v Megha & Another [SCR:102832 – 1/371/09]**;
3) **Aldrex Suppliers Ltd v Madhoo & Another** [2013 SCJ 481];
4) **Bhadain v Independent Commission Against Corruption** [2004 SCJ 33]; and
5) **Best Luck (Mauritius) Ltd v Murdhen & Anor** [2013 SCJ 335].

Analysis

The Court has duly considered the Submissions of each Learned Counsel, as well as the cases and Authorities referred by each Learned Counsel.

Rule 48 of the **DICCR** reads as follows:

> **48.** The District Magistrate may, at all times, amend all defects and errors, both of substance and of form, in any proceedings in civil matters, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; all such amendments may be made with or without costs, as to the Magistrate may seem fit, and also such amendments as may be necessary for the purpose of determining, in the existing suit, the real question in controversy between the parties shall be so made. (emphasis added)

The basic principle is that the Court has wide powers of amendments, at all times.

Although the issue of bad faith as to the purpose of the proposed amendments being sought was raised in the Grounds of Objection, Learned Counsel for the Plaintiff expressly stated in Court that he was not going to say so.

The Court therefore proceeds to determine the ground of objection raised and submitted upon by Learned Counsel for the Plaintiff, which was in essence that of *rétractation d'aveu*.

As per paragraph 15 of the Proecipe, it is clear that the Plaintiff is raising the issue of delay in relation to the disciplinary procedure, such that this was made a live issue from the outset.

By the wording of paragraph 14(c) of the Plea, it is clearly averred that the Board was informed on 03-02-16, that an agreement was signed between the Defendant and Techno Women Organisation (hereinafter referred to as TWO).

And the Defendant is seeking, by way of the proposed paragraph 14(d) and (e), to add that it was only on 23-05-19, following an internal committee, setup to scrutinise the processes and procedures adopted by the Plaintiff in respect inter alia of the agreement signed with TWO, submitting its Report, that the Board became aware of the fact that the said agreement had been signed by the Plaintiff without the approval of the Board.

True it is that the said proposed amendments are being sought prior to the Trial proper, however the Court is of the considered view that by their very nature, the said proposed amendments tend to qualify the said paragraph 14(c) of the Plea, by not only adding the specific date of 23-05-19, bearing in mind that the date of 03-02-16 is specifically averred in paragraph 14(c) of the Plea, but also by adding that 23-05-19 was the date on which the Board became aware that the said agreement had been signed by the Plaintiff without the prior approval of the Board.

The effect of the said proposed amendments is to modify the purport of paragraph 14(c) of the Plea, as regards when the Defendant's Board became aware that the said agreement had been signed without the approval of the Board.

Paragraph 14(c) of the Plea mentions that the Defendant's Board was informed that an agreement was signed between the Defendant and TWO, without making any mention of the issue of the Board's approval or lack thereof.

It is however worth noting that in its Plea at paragraph 14(b), the Defendant had already averred that the Plaintiff had signed the said Contract without waiting for the approval of the Board.

So that the new substantial elements which are being introduced by the said proposed amendments are the date on which the Defendant's Board became aware of the signing of the said agreement without the Board's approval, and the mechanism through which the Board became aware of same.

It can hardly be said, in the circumstances, that the said proposed amendments are in the nature of Particulars, the purport of which is to clarify the issues for determination (**Ketteman v Hansel Properties Ltd [1987 A.C. 189]**).

By way of the said proposed amendments, the Defendant is seeking to qualify its averment made at paragraph 14(c) of the Plea, which in effect, in the Court's considered view, is an attempt at retracting an *aveu*, which *aveu* was specific, and made in clear and unequivocal terms at paragraph 14(c) of the Plea.

The Court also notes that it was not argued that the said averment at paragraph 14(c) of the Plea was as a result of an *erreur de fait* (Art. 1356 of our **Civil Code**), and that hence the Defendant were entitled by Law to seek to retract the said *aveu*.

Further, there is nothing on Record to prove such *erreur de fait* (Art. 1356 of our **Civil Code**) (see **Joyseery (supra)**).

It is trite Law that amendments can be sought, and allowed, at any stage of the Proceedings, if same will enable the Court to determine the real issues in controversy between the Parties.

However, in the present matter, the Court is of the considered view that to allow the amendments sought as per the Proposed Amended Plea would be allowing the Defendant in effect to raise a new Defence, which affects the essence of the Defence as per the Plea (**Tive Hive Ors v Kam Tim [1953 MR 80]**), bearing in mind that the Plaintiff had raised the issue of delay in taking disciplinary action from the outset in his Proecipe.

The Court is of the considered view that the amendments sought will alter the issues in controversy between the Parties, and would not assist the Court in determining the real issues in controversy between the Parties.

The Court is also of the considered view that were such amendments allowed, they would result in prejudice to the Plaintiff, which prejudice cannot be compensated by way of an Order for Costs, inasmuch as such amendments would likely result in thwarting the issue of delay raised by the Plaintiff from the outset in his Proecipe.

Conclusion

Without deciding on the Merits of the case, in light of all the above, and for all the reasons given above, the Court finds that the Motion for Amendment made by the Defendant cannot be entertained and is therefore not granted.

[Delivered by: D. Gayan, Ag. President]
[Industrial Court]
[Date: 22 April 2022]