

Goonniah A. v Sibartie V.

2020 IND 10

Cause Number 774/17

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Mrs. Achamah Goonniah

Plaintiff

v.

Mrs. Vijayantee Sibartie

Defendant

Judgment

Plaintiff has averred that she was in the continuous employment of Defendant as Part Time Household Worker since 2 October 2013 being employed on a 6-day per week basis and was remunerated at monthly intervals at the terminal rate of Rs.6,298 per month.

Plaintiff has averred that on 8 October 2016, Defendant's husband caused the police to investigate into a case of alleged theft at her residence.

On 10 October 2016, when she reported for duty, Defendant's husband allegedly terminated her employment by addressing to her as follows: "*mo pas pou capave garde ou cotte moi pou travail, ou fine faire trop beaucoup degats*".

She considers the termination of her employment to be without notice and without any justification as further alleged.

Plaintiff is, therefore, claiming from Defendant the sum of Rs.62,980/- representing one month's wages as indemnity in lieu of notice: Rs.6,298 and severance allowance for 36 months continuous service: (Rs.6,298 x 3 months x 36/12 years): Rs.56,682.

Defendant, for her part, has denied liability and has moved that the plaint be dismissed. Her plea is essentially as follows:

- (a) Plaintiff was employed as a part time Household Worker since 02.10.2013 and was paid Rs. 6,298 per month.
- (b) On Saturday 08.10.2016, Defendant observed that many household items were missing in the house, namely bottles of Champagne, Whisky, leather bags and so on.
- (c) Defendant requested the Police to initiate an investigation and since the Plaintiff was the only person other than the Defendant and her husband to have the house keys, she was the prime suspect according to Police.
- (d) On Monday 10.10.16, Plaintiff was informed that a police enquiry would be carried out and that Police may extend its investigation at her residence.
- (e) On hearing police investigation, she decided to quit her job on the spot. She handed over the house keys and mobile phone that was given to her and left the house of the Defendant.
- (f) On 15.10.16, the husband of the Defendant reported the matter to Floreal Police Station (OB 1257 refers) to the effect that the Plaintiff had left her employment on her own, thus committed a breach of the employment agreement.

It has been delimited in Answers to demand of particulars that Plaintiff's contract of employment was verbal, she did not have any pay slips, documentary evidence and witnesses as there were only herself, Defendant and Defendant's husband.

The evidence on behalf of Plaintiff unfolded as follows.

Plaintiff gave evidence in Court. She has departed from the averments of her plaint by admitting that on the 10 October 2016 she was told by Defendant's husband to take her belongings and to leave for the police station for an ongoing enquiry at her level which might extend to her residence and which she did after having remitted the mobile phone belonging to the Defendant to her as she had already been questioned by two police officers on the 8 October 2016 about missing objects in Defendant's house. Indeed, she conceded that she went to the police station and that the police did carry a search at her residence in that respect and that she was further required to go to the police station again after one week. She admitted that she was informed by Defendant, Defendant's husband and furthermore by the two police officers on 8. 10. 2016 about the missing objects and that she gave the same explanation that she was not aware. Indeed, she further conceded that she was a first suspect as she was the only one having access to the house of Defendant as the latter gave her two keys for the purposes of her work and that was why she remitted the two keys to Defendant before leaving on 8 October 2016 as she would not have been able to take the responsibility of those 2 keys given that she did all the household chores and looked after the yard as well. She further departed from her averments in line with the plea of Defendant that the latter informed her on Monday 10 October 2016 when she turned up for work that the police was carrying out an enquiry and in the course of its investigation, the police would even be able to come to her residence for that purpose. She was requested by the Police who came to her residence asking her to come to the police station for the purposes of the enquiry and she went to Curepipe Police Station on 8th and 10th and also one week after. On the 10th Defendant's husband told her that the police was enquiring in relation to the stolen objects and that she was a first suspect and that there could be a search effected at her residence by the police. He then further told her that she could take her belongings in relation to her work meaning her uniform, slippers and so on and to leave with a view to getting in touch with the police for the purposes of that ongoing enquiry. She did so after having returned Defendant's mobile phone and she admitted that it was on Monday the 10th that the police made a search at her residence in that connection.

Defendant gave evidence in Court to the effect that she neither terminated Plaintiff's contract of employment nor did her husband. Plaintiff was a prime suspect because of the said missing objects and that there was an ongoing enquiry being carried out by the police. After the 10 October 2016, Plaintiff never turned up again and she did not contact her again nor did her

husband and that they had no idea about the outcome of the enquiry. Defendant's husband supported her version in Court on major issues.

I have given due consideration to all the evidence put forward before me and the submission of learned Counsel appearing for the Defendant. The cause of action before this Court is the termination of Plaintiff's employment without notice and without any justification by Defendant's husband and as a result of which Plaintiff is claiming from the Defendant that the termination of her employment to be without notice and without any justification.

Now, it is significant to note that Plaintiff has departed from the material/essential averments of her plaint in the course of her evasive testimony in Court on major issues which affects the very root of her cause of action namely the termination of her contract of employment by Defendant's husband as highlighted above. This state of affairs has fortified the plea of Defendant in line with the straightforward and unchallenged testimonies of the Defendant and her husband that they did not terminate her employment nor dismissed her on the 10 October 2016 let alone that more importantly at no time Plaintiff stated in Court that she was compelled to leave the two keys and the mobile phone given to her for the purposes of her work. At this stage, it is significant to note that a "cause of action" comprises of "every fact which is material to be proved to enable the plaintiff to succeed; in other words, every fact which, if traversed, the plaintiff must prove to obtain judgment" (- see **Heera v Ramjan & Ors.**[\[1976 MR 220\]](#)).

For the reasons given above, I am unable to find that the case for the Plaintiff has been proved on a balance of probabilities. Accordingly, the plaint is dismissed.

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

9.6.2020

