

Bhuruth A. v Chocalingum V.

2023 IND 62

Cause Number 316/22

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Mrs. Arumai Bhuruth

Plaintiff

v.

Mr. Vassooodeven Chocalingum

Defendant

Judgment

In this Plaintiff with Summons, Plaintiff has averred that Defendant has terminated her contract of employment on 1.2.2020 without notice inasmuch as she was in his continuous employment as part-time Cleaner since 6.11.2019 being employed on a 6-day week basis and remunerated at monthly intervals at the rate of Rs 3,000 per month.

She has further averred that she has worked on all the days including public holidays during period 16.12.19 to 31.1.20 but has not been paid any remuneration. Furthermore, she has not been refunded her travelling expenses incurred in attending work during period 16.12.19 to 31.1.20.

Therefore, she is claiming from Defendant the sum of Rs.13,524.92 allegedly being comprised of-

- (a) Wages as indemnity in lieu of notice: Rs 3.000.
- (b) Outstanding wages for work performed on 37 normal days during period 16.12.2019 to 31.1.2020 (Rs 3,000/26 x 37 days): Rs 4,269.23.
- (c) Outstanding wages for work performed on 10 public holidays during period 16.12.2019 to 31.1.2020(Rs 3,000/26 x 10 days x 2): Rs 2,307.69.
- (d) Outstanding travelling expenses for period 16.12.2019 to 31.1.2020(Rs 42 x 47 days): Rs 3,948.00.

Defendant, on the other hand, did not file any plea. He has also left default on the trial day although there was good service upon him. It is pertinent to note that pursuant to **Section 7(1)** of the **Industrial Court Act 1973**, all proceedings before the present Court shall be conducted in the same way as the proceedings in a civil matter before a District Magistrate and which reads as follows:

"7. Institution and conduct of proceedings

- (1) Subject to the other provisions of this Act and to any specific procedural provisions in any enactment set out in the First Schedule, all proceedings before the Court shall be instituted and conducted in the same manner as proceedings in a civil or criminal matter, as the case may be, before a District Magistrate."*

The provision of the law governing default judgments is set out under Section 16 (1) of The District and Intermediate Courts (Civil Jurisdiction) Act:

"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 as per her above averments. Furthermore, she has stressed that her contract of employment was a verbal one and that she was not issued with a pay slip. She has not claimed expenses in attending Court.

I have given due consideration to all the evidence put forward before me. It is relevant to note that by virtue of Section 2 of the Workers' Rights Act 2019, Act No.20 of 2019 – proclaimed by [Proclamation No.45 of 2019] w.e.f. 24 October 2019, an “agreement” means “*a contract of employment between an employer and a worker, whether oral, written, implied or express*”.

Hence, the present matter must be regulated exclusively by the Section 2 of the Workers' Rights Act 2019 because there is no need for a contract of employment of whatever sum to be in writing as it can be oral which has impliedly repealed Article 1341 of the Civil Code (**Chamroo v Northern Transport** [\[1969 MR 96\]](#)) because a special law will have precedence over the general one (see - **Pabaroo D.T v. Varmah K.D. & Ors.** [\[2013 SCJ 197\]](#)). Thus, testimonial evidence is allowed to prove such an oral contract of employment in whatever sum in the absence of a *commencement de preuve par écrit*.

The straightforward testimony of Plaintiff has convinced me that she is a witness of truth when pitched with the fact that Defendant showed no interest in turning up in Court nor to file his plea. I believe the testimony of Plaintiff which I find to be plausible and reliable in that Defendant has failed to pay her the remuneration due as at 1.2.20 under the verbal agreement in relation to which she was employed as a part time cleaner as from 6.11.2019 and for which she was not issued with any pay slip.

Now, as per Section 2 of the said Act, “earnings” in relation to a worker –

“(a) means basic wages specified in any Remuneration Regulations or Wages Regulations or such wages paid by an employer; and

(b) includes –

(i) wages earned pursuant to sections 24,27(5), 30 and 40;

(ii) wages paid under sections 14,17,21,22,23,28,31,32,33,45,46,47,48,49, 50,51,52(1),(4),(5) and (6) and 53;

(iii) any sum of money, by whatever name called, including commission and any productivity payment, paid to a worker, in respect of any work performed by him, in addition to the basic wages agreed upon between him and the employer; and

(iv) any payment made under any Remuneration Regulations or Wages Regulations in respect of extra work, public holidays, additional remuneration, leave taken or refunded, wages for replacing another worker drawing higher remuneration, or wages paid to a part-time or atypical worker, and any allowance paid under the Remuneration Regulations or Wages Regulations;

By virtue of the same Section 2 of the Act-

“emoluments” means “any payment in money or money’s worth which is salary, wages, leave pay, fee, overtime pay, perquisite, allowance, bonus, gratuity, commission or other reward or remuneration, by whatever name called, in respect of, or in relation to, the office or employment of a worker;”

“Remuneration”, subject to section 40(3)-

- (a) means all emoluments, in cash or in kind, earned by a worker under an agreement; and
- (b) Includes-

(i) any sum paid by an employer to a worker to cover expenses incurred in relation to the special nature of his work;”

“employer”, subject to sections 72, 111 and 115 –

(a) means a person who employs a worker and is responsible for the payment of remuneration to the worker;”

Now, it is open to the Plaintiff employee to claim from her Defendant employer pursuant to Section 61(2) (b) of the Act that her agreement has been terminated by him when he fails to pay the remuneration due to her under the agreement.

Furthermore, Section 63(5) of the Act provides:

“63. Notice of termination of agreement

(...)

(4) Notwithstanding any provision to the contrary in any agreement, the length of the notice to be given under subsection (1) shall not be less than 30 days.

(5) Any party may, in lieu of giving notice of termination of agreement, pay to the other party the amount of remuneration the worker would have earned had he remained in employment during the period of notice.” (emphasis added)

For the reasons given above, I find that the case for the Plaintiff has been proved on a balance of probabilities bearing in mind that a default judgment is not merely an administrative act but that it is soundly grounded both in law and on the facts (see - **Hurnam D. v. Bholah K. B. & Anor.** [2009 SCJ 265]).

I, accordingly, order Defendant to pay to Plaintiff the sum of Rs.13,524.92 comprising of Wages as indemnity in lieu of notice: Rs 3,000, Outstanding wages for work performed on 37 normal days during period 16.12.2019 to 31.1.2020 (Rs 3,000/26 x 37 days): Rs 4,269.23, Outstanding wages for work performed on 10 public holidays during period 16.12.2019 to 31.1.2020(Rs 3,000/26 x 10 days x 2): Rs 2,307.69 and Outstanding travelling expenses for period 16.12.2019 to 31.1.2020(Rs 42 x 47 days): Rs 3,948.

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

27.7.23.