Appadu v Evaco

2022 IND 15

CN551/18

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Mr. Janardana Poornachandra APPADU

Plaintiff

v/s

EVACO Holidays Resorts Ltd

Defendant

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

The Plaintiff is claiming from the Defendant Company, by way of Proecipe, Salary, Remuneration In Lieu Of Notice, and Severance Allowance, together with Interests at the Legal Rate as from the date of dismissal until the date of final payment.

The Defendant Company has denied the Claim in its Plea.

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

The matter was fixed for Arguments in the Proposed Amended Proecipe, upon the Defendant Company objecting to the proposed amendments.

Case For The Defendant Company

In a gist, Learned Counsel for the Defendant Company objected to the proposed amendments to the Proecipe on the ground that the Plaintiff could not use the Law in a retrospective manner, by seeking to apply the new Law under the Workers' Rights Act (hereinafter referred to as WRA) in relation to the calculation of Severance Allowance, as the new Law includes other elements which were not provided under the Employment Rights Act (hereinafter referred to as ERA).

Learned Counsel for the Defendant Company further submitted that it was the ERA which was in force at the time the Plaintiff's employment was terminated, and referred to and put in copies of the WRA, the Interpretation And General Clauses (hereinafter referred to as IGCA), the Authorities of **Moortoojakhan v Tropic Knits Ltd** [2020 SCJ 343], of **Cathan v Chandy & Another** [2021 SCJ 278], and of **Societe des Chasseurs de l'Ile Maurice v The Commissioner of Police & Another** [2011 SCJ 252], in support of his Submissions.

In Reply, Learned Counsel for the Defendant Company submitted that Learned Counsel for the Plaintiff was obliterating the fact that the methods of calculating the remuneration has been changed under the WRA, so that remuneration now includes other aspects which were not part and parcel under the ERA, which is where the difference is occurring, and why the Plaintiff has moved to amend the Prayer to include higher figures based on the new calculations found in the WRA.

Learned Counsel for the Defendant Company reiterated his Submissions that the Parties were to stick to the Law in spite of the later amendments to the Law.

Case For The Plaintiff

Learned Counsel for the Plaintiff started by conceding that the present matter was to be decided on the basis of the ERA, and not the WRA.

Learned Counsel for the Plaintiff then proceeded to submit that the Motion for amendment to the Proecipe ought to be granted, given that even in the ERA, the word "remuneration" was used, that is the same word, "remuneration", was used in the ERA and in the WRA.

Learned Counsel for the Plaintiff went on to submit that "remuneration" was different from basic salary and from wages, which was "why the amount was calculated upwards to include other matters to calculate remuneration".

Analysis

The Court has duly analysed all the evidence on Record and all the circumstances of the present matter, and the Court has given due consideration to the Submissions of both Learned Counsel, to the enactments referred to by both Learned Counsel, and to the Authorities referred to by Learned Counsel for the Defendant Company.

At the outset, the Court places it on Record that Learned Counsel for the Plaintiff moved to amend the numbering of the paragraphs of the Proposed Amended Proecipe, to which Learned Counsel for the Defendant Company had no objection, and the Motion was therefore granted.

Learned Counsel for the Plaintiff undertook to place on Record the Proposed Amended Proecipe with the renumbered paragraphs.

From the proposed amendments as set out in the Proposed Amended Proecipe, the Plaintiff is seeking to:

1) delete the word “Salary” and replace same by the word” Remuneration” at paragraph 9(a); and
2) amend the figures at paragraph 9.

Now, s. 2 of the ERA defines “remuneration” as follows:

> “remuneration” –
> (a) Means all emoluments, in cash or in kind, earned by a worker under an agreement;
> (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;
> (ii) any money to be paid to a job contractor, for work, by the person employing the job contractor; and
> (iii) any money due as a share of profits.

And in s. 2 of the WRA, “remuneration” is defined as follows:

"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;

(ii) any money to be paid to a job contractor for work by the person employing the job contractor; and

(iii) any money due as a share of profits.

On the face of it, it does appear that the word "remuneration" has been ascribed the same meaning in both the ERA and the WRA.

"Remuneration" meaning "emoluments" in both the said Acts, the Court now addresses its mind to what is meant by "emoluments".

In the ERA, "emoluments" is not specifically defined in the Interpretation section, and in relation to Part IX of the ERA, emoluments received by the worker exclude any bonus or overtime as per s. 40(a) of the ERA.

On the other hand, in the WRA, "emoluments" is specifically defined in s. 2, that is the Interpretation section, as meaning "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".

Now, it is trite Law that "having regard to principles underlying statutory interpretation, when the words used are unambiguous the clear intention of the legislator must be put into effect for the legislator does not legislate in vain" (**Curpen v The State** [2008 SCJ 305].

Applying the above-mentioned principles to the present matter, the Court is of the considered view that the clear intention of the Legislator was for the said word "emoluments" to have a specific definition as per the Interpretation section of the WRA.

There is no such specific definition of “emoluments” in the ERA.

Had the Legislator intended for a specific meaning to be ascribed to the word “emoluments” in the ERA, the said word would have been defined in s. 2 of the said Act, which is the Interpretation section.

The very fact that the Legislator chose to ascribe a particular meaning to the word “emolument” in the WRA, and not in the ERA, inevitably shows that although in both Acts, the word “emoluments” is used, it does not have the same meaning in both said Acts.

And one cannot just import the specific meaning ascribed to “emoluments” in the WRA into the ERA, for the simple reason that both said Acts use the same word, and in the absence of any specific provision by Law.

By the same token, although the word “remuneration” has been used in both the said Acts, given it is dependent on the definition given to the word “emoluments”, which is distinct in the said 02 Acts, the Court is of the considered view that the word “remuneration” does not have the same meaning in the said 02 Acts.

Hence, the Motion for amendment cannot be entertained as this would result in the particular meaning ascribed to the word “emoluments” in the WRA, which came into effect after the termination of the Plaintiff’s employment with the Defendant Company, being imported into the ERA and altering the Rights and obligations of the Parties.

Had this been the express intention of the Legislator, this would have been clearly set out in the Act, as was expressly done in relation to s. 128(2) of the WRA.

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter, and all the reasons given above, the Court is of the considered view that the Plaintiff’s Motion for amendment in terms of the Proposed Amended Proecipe cannot be entertained, and is therefore not granted.

The matter is fixed for Pro Forma (Letter) for common dates for Trial.

[Delivered by: D. Gayan, Ag. President]
[Industrial Court]
[Date: 16 March 22]