Chama S. & Anor. v One & Only Le Saint Geran Ltd

2021 IND 3

Cause Number 677/17

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

1. **Mr. Shyam Chama**
2. **Mr. Mahesh Anand Soomary**

Plaintiffs

v.

One & Only Le Saint Geran Ltd

Defendant

Judgment

Plaintiffs are in the continuous employment of Defendant as per their respective – (i) date of entry: 10 October 2000 and 2 September 1997, (ii) category: head waiter and cleaner and (iii) rate of pay for June 2016: Rs.12,842 and Rs.11,480.

Their terms and conditions of employment are governed by the Catering and Tourism Industries Remuneration Regulations 2014, GN 202 of 2014.

They have averred that they are employed on a 6-day week basis on a shift system of 8 hours each. They are remunerated at monthly intervals and their pay period is as from the 16th of the previous month to the 15th of the current month.

Plaintiffs have worked on two Sundays during period 16 May 2016 to 15 June 2016 viz. 22 May and 5 June and are respectively claiming payment in the sum of Rs.987.85(Rs.12,842/26 x 2 days: Rs.987.85) and Rs. 883.07(Rs. 11,480/26 x 2 days: Rs.883.07) from Defendant given that they have worked 8 extra hours on those Sundays and have been given only their basic salary.

The plea of Defendant in a gist is that Plaintiffs have, at all times, been paid all their dues at each time that they have been working on Sundays and this with strict compliance with the terms of their contract of employment and/or all applicable legal provisions by adopting an objective interpretation as regards the mode of payment. Thus, Defendant has denied being indebted to the Plaintiffs in their respective sum claimed or in any other sum whatsoever and has moved that the plaint be dismissed with costs.

The case for the Plaintiffs rested on the evidence adduced by two witnesses namely Mr. Devesh Mitra Gopaul and Plaintiff no.1.

Mr. Devesh Mitra Gopaul in his capacity as Principal Labour and Industrial Relation Officer gave evidence in Court. He was actually working at Flacq Labour Office and in February 2016, a complaint was received from a group of workers of Defendant that there was non-payment at double rate for work performed on Sundays. Following that complaint, he made an enquiry at that hotel. From the said enquiry, he secured details regarding the categories and dates of entry of workers among whom there were Plaintiff no.1 and Plaintiff no.2 and he filed a document wherein the names of those two Plaintiffs were mentioned as per Doc. A. Being given that they were claiming payment for Sundays meaning extra payment for Sundays at double rate for the work they have performed, he took details of one month specifically for the month of June 2016 concerning the two Plaintiffs and secured a copy of their attendance from their employer for that particular pay period which started on 16 May 2016 and ended on 15 June 2016 as per Docs. C & C1. For the month of June specifically, he secured two pay slips concerning each Plaintiff as per Docs. D & E. After having carried out an enquiry, no payment of double rate had been made to both Plaintiffs for the month of June 2016. As per their attendance sheets viz. Docs. C & C1 both Plaintiffs had been given days off including Sundays.

Plaintiff no.1 gave evidence in Court in relation to him and Plaintiff no.2. He reiterated that both of them work for the Defendant in line with their respective date of

entry, category and salary as highlighted above. Given that they worked for the hotel department, their conditions of work were governed by the Catering and Tourism Industries Remuneration 2014. In 2016, they were working on shifts 6 days per week and about 45 hours per week. They worked for 6 days and they had one day off. They were paid monthly as from the 16th to 15th of the following month. They had worked on 2 Sundays during the period 16 May 2016 to 15 June 2016 and they had not been paid double for those Sundays by the Defendant. Thus, he was claiming for the double pay for the Sundays on which they both had worked. He is not agreeable that Defendant paid them as per the law. His contract of employment was put in as per Doc. F by learned Senior Counsel for the Defendant. He worked for two Sundays during the period 16 May 2016 to 15 June 2016 and there were days when he was off as per his contract of employment which was governed by the Catering and Tourism Industries Remuneration Regulations 2014. At the time the case was being closed for the Plaintiffs, learned Senior Counsel appearing for the Defendant expressed the view that they were agreed on the facts it would seem and then the case was closed for the Plaintiffs.

The case for the Defendant rested on the evidence adduced by Mrs. Nalini Mutteea in her capacity as Human Resource Manager to represent the Defendant. She confirmed that both Plaintiffs had worked on 2 Sundays as per their attendance sheets as per Docs. C &C1, and were off on two Sundays and giving a total of 6 days off per month as per those documents. Then, learned Senior Counsel for the Defendant stated that it is agreed that the two Plaintiffs were paid for the 2 Sundays they had worked for during the time slot claimed but they had not been paid twice.

Learned State Counsel for the Plaintiffs submitted in a gist that Sundays are deemed to be public holidays and as such the Plaintiffs should be paid twice their basic rate and such condition could not be abated by the employer in a contract of employment although the employees have not worked for more than 45 hours per week. He relied on the provisions of the Catering and Tourism Industries Remuneration Regulations 2014, GN 202 of 2014 so that as per Regulation 2 both posts occupied by Plaintiffs namely head waiter and cleaner are covered. He based himself on the Second Schedule of the said Regulations namely paragraphs 1, 2 and 3 in relation to the normal working hours for a normal working week for the provision that every worker other than a watchperson or security officer may begin on any day whether or not a public holiday and shall consist of 45 hours work excluding time allowed for meals and tea breaks and also the notion of extra work on a public

holiday and the notion of extra remuneration that follows. He further relied on Section 2 of the Interpretation and General Clauses Act, Section 3 of the Public Holidays Act and its first Schedule, Section 95(1) of the Employment Relations Act and Section 93 of the latter Act. Payment of twice the basic rate for a Sunday which is a public holiday is of public order and cannot be derogated. Furthermore, extra work in the context of public holidays namely Sundays does not mean overtime and could well be within normal working hours.

Learned Senior Counsel in a gist submitted that the issue in not simply for the claim of the sum of about one thousand rupees but that it touches the whole industry. The employees did not exceed their working hours per week as per their contracts of employment and that the shift system as per their contracts of employment were fully complied with and they were given days off including Sundays so that they only worked for 2 Sundays and there was no extra work carried out provided they covered 6 days a week. The Defendant has complied with the law given that a worker cannot come and say that his normal working hours for a week are 45 hours and he gets 2 Sundays off and he works a Sunday and gets double pay and gets a rest day on the Saturday or any other day. The Plaintiffs have fallen within the ambit of normal working hours and one cannot expect in normal working hours to be paid twice, that is impossible. It defeats the whole purpose of the law.

I have given due consideration to all the evidence put forward before me and the submissions of both learned Counsel. It is abundantly clear that as per the evidence borne out by the record, both Plaintiffs and Defendant have no dispute as regards the tenor of the testimonies of all witnesses and all the documentary evidence produced in support.

In the same breath, there is no contest that both Plaintiffs were paid but not double on the two Sundays they had worked for namely on 22 May and 5 June during period 16 May 2016 to 15 June 2016 and that the Plaintiffs at no time worked for more than their normal working hours for a week and that they were given days off including some Sundays in conformity with their contracts of employment.

At this stage, I deem it appropriate to consider whether a Sunday is a public holiday. The relevant provisions are to be found in Section 3(1) and in the First Schedule of the Public Holidays Act which are reproduced below:

"3. Public holidays

(1) The days specified in the second column of the First Schedule shall be observed as public holidays every year.

FIRST SCHEDULE

[Section 3(1)]

PUBLIC HOLIDAYS

1. Sundays."

For the sake of completion, Section 2 of the Interpretation and General Clauses Act is reproduced below:

*"**2. Interpretation***

Unless the context otherwise requires or unless otherwise expressly provided, in this Act and in every other enactment and public document –

"public holiday" means a day described as such in the Public Holidays Act;"

Therefore, Sundays are deemed to be public holidays as rightly submitted by Learned Counsel for the Plaintiffs because the Legislator never legislates in vain.

Now by virtue of Catering and Tourism Industries Remuneration Regulations 2014 GN No. 202 of 214 (Regulations made by the Minister under Section 93 of the Employment Relations Act), both Plaintiffs' job descriptions are covered namely head waiter and cleaner pursuant to Regulation 2.

Paragraphs 1, 2 ,3 and 5 of the Second Schedule read as follows:

*" **SECOND SCHEDULE***

[Regulations 2,5 and 10]

1. Normal working hours

(1) The normal working week for every worker, other than a watchperson or a security officer, may begin on any day, whether or not a public holiday and shall consist of 45 hours work, excluding time allowed for meal and tea breaks.

(2) (….)

(3) Except where his services are required in special circumstances, a worker shall be entitled to one rest day in any working week, and the rest day shall, at least twice a month be a Sunday.

(…)

2. Extra work

(1) Subject to paragraph 3, a worker, other than a watchperson or security officer, who –

(a) works on a public holiday or a weekly rest day shall be remunerated –

(i) for the first 8 hours at twice the basic rate and

(…)

3. Extra remuneration for public holidays

(1) Where a worker, other than a monthly paid worker, remains in continuous employment with the same employer for a period of 12 consecutive months, the worker shall be entitled, in the following 12 months, to a normal day's pay in respect of every public holiday, other than a Sunday, that occurs while he is in the service of the employer and on which he is not required to work.

(2) Where a worker is required to work on a public holiday, other than a Sunday, the worker shall be paid, at the end of the next pay period –

(a) in the case of a worker who would otherwise have been entitled to a normal day's pay under subparagraph (1), the normal day's pay;

(b) in the case of a monthly paid worker, his normal wages,

in addition to any wages due for extra work under paragraph 2.

(…)

5. Notional calculation of basic rate

For the purpose of determining wages due for extra work or for any other purpose-

(a) a month shall be deemed to consist of 26 days and

(b) a day shall be deemed to consist of –

(i) in the case of a watchperson or security officer, 12 hours,

(ii) in every other case, 8 hours."

Hence, it is abundantly clear in the light of the above provisions that a worker who works on a Sunday will have to be paid extra as he is being asked to work on a Public holiday and that would qualify as extra work having nothing to do with overtime and as such he will have to be paid for the first 8 hours twice his basic rate. The Plaintiffs had to be remunerated twice their basic rate on the two Sundays they had worked for and which has not been the case. Now the Catering and Tourism Industries Remuneration Regulations 2014, GN No. 202 of 214 are made under Section 93 of the Employment Relations Act and Section 95(1) of the said Act reads as follows:

*" **95. Effect of Remuneration Regulations***

(1) Any regulations made under section 93 shall be binding on the employers and workers and shall not be subject to abatement by them by individual agreement, except by collective agreement under conditions expressly provided for under this Act."

I agree with the submission of learned Counsel for the Plaintiffs that this right to double pay in the present context as regards the two Plaintiffs cannot be subject to abatement even if they consented to it in their contracts of employment bearing in mind that there has been no evidence adduced in relation to any collective agreement reached under conditions expressly provided for under the Employment Relations Act. I am also persuaded that the Plaintiffs who had worked on those Sundays in the circumstances should have been paid twice their basic rate for the first 8 hours which has not been done irrespective of whether they had been given days off including some Sundays or that they were still within the range of normal working hours for each week. Holding otherwise would mean that most employers in that sector would employ workers within the normal range of working hours per week or even slightly less in order to be able to consider some Sundays as normal

working days on the ground that they have not been doing overtime. Therefore, the literal interpretation of extra time to be equated with overtime in this context would mean that any employer would be dispensed from paying his workers double their basic rate for the first 8 hours when they have worked on Sundays meaning on public holidays by simply keeping to the normal range of working hours for each week and thus would successfully abate such provision of the law contained in Section 95(1) of the Employment Relations Act and such interpretation would lead to an absurd result.

Thus, I hold that the term "extra work" found in Paragraphs 2 and 3 of the Second Schedule of the Catering and Tourism Industries Remuneration Regulations 2014, GN No. 202 of 214 in the present context has to be given a purposive interpretation. Indeed, **Lord Simon** explained the purposive approach in **Maunsell v Olins [1975] AC 373**:

"The first task of a court of construction is to put itself in the shoes of the draftsman – to consider what knowledge he had and, importantly, what statutory objective he had … being thus placed … the court proceeds to ascertain the meaning of the statutory language."

In the light of the reasons given above, I have no difficulty in finding that the case for the Plaintiffs has been proved on a balance of probabilities. Furthermore, the 8 extra hours claimed by Plaintiffs are in the context of twice basic rate for the first 8 hours' work performed by them on the said two Sundays because they are public holidays.

I, accordingly, order Defendant to pay to Plaintiff no.1 the sum of Rs.987.85(Rs.12,842/26 x 2 days: Rs.987.85) and to Plaintiff no.2 the sum of Rs. 883.07(Rs. 11,480/26 x 2 days: Rs.883.07) for the two Sundays they have worked namely on 22 May and 5 June during period 16 May 2016 to 15 June 2016.

S.D. Bonomally (Mrs.) *(Vice President)*
30.9.21