

Dassruth v SGAS

2022 IND 4

CN282/14

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Rajendra Prasad Dassruth

Plaintiff

v/s

Satyam Gyanam Anandam Society (SGAS)

Defendant

RULING (NO. 1) (Plea In Limine Litis)

The Plaintiff is claiming from the Defendant Society Unpaid Salaries in the sum of Rs1 400 000/- for January 2012 to April 2014, End Of Year Bonus for the years ending December 2012 and December 2013 in the sum of Rs100 000/-, and any sum of money that may be due as salaries for the running months up to the time of Judgment, by way of Proecipe dated 02-05-14.

The Defendant Society is denying the said Claim in its Amended Plea dated 08-11-17.

The Plaintiff and the Defendant Society were respectively assisted by Learned Counsel.

The Proceedings were held in English.

At the outset, Learned Counsel for the Defendant Society indicated that his Submissions were only in relation to limbs 01 and 02 of the Plea In Limine Litis of the Amended Plea, which read as follows:

1. This Honourable Court has no jurisdiction to entertain the present claim because the Plaintiff is not a worker under the Employment Rights Act and therefore the Defendant moves that the Plaintiff be non-suited with costs.
2. The Defendant moves that the Plaintiff's action be set aside with costs inasmuch as ex-facie the plaint at Paragraph 13, the Plaintiff himself avers that he has resigned from his "present function".

Case For The Defendant Society

Learned Counsel for the Defendant Society submitted in effect that in light of the clear and unambiguous wording of paragraph 13 of the Plaintiff, the lack of any mention of appointment or salary as Advisor, as opposed to Spiritual Master, and the letter of resignation reproduced in toto in paragraph 13 of the Plaintiff, there was a definite severance of links with the Defendant Society, such that the Plaintiff was no longer in the employment of the Defendant Society, and was hence not a Worker, and the Court therefore has no jurisdiction.

In Reply, Learned Counsel for the Defendant Society submitted that the Plaintiff had himself to blame for any ambiguity in his letter of resignation, and had the Plaintiff intended to treat the function of Spiritual Master disjunctively from that of Advisor, he ought to have unequivocally said so, and this was why the Defendant Society was contending that there was only one function from which the Plaintiff had resigned.

Learned Counsel for the Defendant Society also submitted that the Managing Committee runs the Defendant Society, so that it was not possible for the Defendant Society to appoint the Plaintiff in a particular post, and for the Managing Committee to appoint the Plaintiff in another post.

Case For The Plaintiff

Learned Counsel for the Plaintiff submitted that the Plaintiff was the Spiritual Master and also the Advisor to the Managing Committee, his earning a monthly salary of Rs50 000/-, and that the Plaintiff was of the view that the Managing Committee, not the Association, did not trust him.

Learned Counsel for the Plaintiff further submitted that the post of Advisor was consequential to that of Spiritual Master, and that in effect, the Plaintiff had resigned as Advisor to the Managing Committee, and not as Spiritual Master, and that the Defendant Society was interpreting the Plaintiff's resignation letter in a self-serving manner.

Learned Counsel for the Plaintiff also submitted that the points raised by the Defendant were premature, and that the issues ought to be canvassed on the Merits.

Analysis

The Court has duly analysed the Submissions of both Learned Counsel.

The Court proposes to consider Limb 2 of the Plea In Limine Litis of the Amended Plea in the first instance, in view of the Motion made therein.

Ought The Issues Raised In The Plea Limine Litis Be Canvassed On The Merits?

Learned Counsel for the Plaintiff submitted that the points raised in the Plea In Limine Litis of the Amended Plea are premature and that the issues ought to be canvassed on the Merits.

The Court is however of the considered view that the 02 limbs of the Plea In Limine Litis have been appropriately raised In Limine as they are based on the Pleadings only, applying the principles set out in the Authority of **Avigo Capital Managers Pvt Ltd v Avigo Venture Investments Limited [2019 SCJ 158]**:

- (e) Points which are more appropriately raised *in limine* are those which, by reliance on the pleadings only and without having recourse to the production of evidence, or by the production of a significantly limited amount of evidence in relation to the point raised *in limine*, could dispose of the case and avoid protracted hearing of the whole evidence in the case.

The Court therefore finds that the points raised are not premature, and are not points which ought to "be raised and debated upon subsequent to the production of all the evidence in the case" (**Avigo (supra)**).

Limb 2 Of The Plea In Limine Litis Of The Amended Plea

Paragraph 13 of the Proecipe sets out in full the letter of resignation sent by the Plaintiff to the Defendant Society.

In the said letter, the Plaintiff stated that he had “[...] decided to resign from [his] present function with immediate effect”.

It was averred by the Plaintiff that the Defendant Society ought to have interpreted the said letter, to determine in which capacity the Plaintiff was resigning, given the Plaintiff was both the Spiritual Master and the Advisor to the Managing Committee.

It therefore logically follows that the Plaintiff was in effect not disputing that he had decided to resign, but was disputing the capacity in which he had decided to resign, averring that he had decided to resign only as Advisor to the Managing Committee and not as Spiritual Master.

Now, the Plaintiff used the expression “my present function”, in the said letter.

The Court notes the Plaintiff's averment made at Paragraph 34 of the Proecipe, and Learned Counsel for the Plaintiff's Submissions that the post of Advisor was consequential to that of Spiritual Master.

Now, were the Court to accept the Plaintiff's contention that he had two functions, i.e. Spiritual Master and Advisor to the Managing Committee, and had it been the intention of the Plaintiff to resign only as the Advisor to the Managing Committee and not as Spiritual Master, it would have been crucial for, and incumbent upon, the Plaintiff to make clear the capacity in which he was resigning in the said letter. His choice or failure to do so cannot, in all logic, be laid at the door of the Defendant Society, and cannot place on the Defendant Society a duty to ascertain in what capacity the Plaintiff was resigning. The Plaintiff has only himself to blame for this choice or failure.

It cannot, by any stretch of the imagination, be said to be the fault of the Defendant Society if the Plaintiff did not, for reasons best known to him, spell out in which capacity he was resigning. And in the absence of any such spelling out, it was perfectly legitimate for the Defendant Society to act on the basis of the said letter, which contained no ambiguity in view of its plain wording.

Now, Learned Counsel for the Plaintiff submitted that the Plaintiff was “appointed SM by the association but advisor by the Managing Committee” (note: “SM” standing for Spiritual Master).

It was significant for the Plaintiff to attempt in Court to draw a distinction between the appointment as Spiritual Master by the “Association”, and the appointment as the Advisor to the Managing Committee by the Managing Committee, in order to try and sustain his contention that the said letter having been sent “to the then Secretary of the Defendant” inevitably meant that the resignation was in relation to his function of Advisor to the Managing Committee, which was the appointing body.

However, from paragraph 3 of the Proecipe, which sets out Article 11.1 of the Rules of Association of the Defendant Association, the Plaintiff averred that he was appointed as Spiritual Master by the Managing Committee.

And as per paragraph 7 of the Proecipe, the Plaintiff averred that he was “also the adviser to the Managing Committee of Defendant as per Article 11.2”, there being no mention in the said Paragraph of the Plaintiff having been appointed as Advisor to the Managing Committee by the Managing Committee, and in Paragraph 38 of the Proecipe, the Plaintiff averred that he was appointed as Advisor to the Managing Committee, without the appointing body being mentioned and without any date being mentioned for such appointment.

From the above, it is clear that the Submissions of Learned Counsel for the Plaintiff were not in line with the Plaintiff’s own averments in the Proecipe.

All these variances in the Plaintiff’s case inevitably weaken the Plaintiff’s Claim.

Had the Plaintiff in fact had 02 functions with the Defendant Society, it would have been of chief importance for the Plaintiff to clearly aver in the Proecipe whether the monthly salary of Rs50 000/- related to the function as Spiritual Master and / or that of Advisor to the Managing Committee (paragraph 12 of the Proecipe). It stands to reason that had the said salary related solely to the Plaintiff’s function as the Advisor to the Managing Committee, the Plaintiff would have had no basis for such claim, in view of his own contention that he had resigned as the Advisor to the Managing Committee.

In light of the above, the Court is of the considered view that the absence of any such specific averment/s in the Proecipe points towards the logical conclusion that the Plaintiff in fact only had one function with the Defendant Society.

The Plaintiff further averred at Paragraph 38 of the Proecipe, that no decision was taken on his request within a reasonable time such that it amounted to no decision having been taken at all.

Nothing in the tone and / or wording of the said letter suggests any request being made by the Plaintiff to the Defendant Society. In fact, from a reading of the said letter of resignation, the Plaintiff was communicating to the Managing Committee his decision to resign.

Further, the fact that the Plaintiff mentioned in the said letter that he was resigning from his “present function with immediate effect” (emphasis added) leaves no room for interpretation. It was a unilateral decision by the Plaintiff to resign taking effect instantaneously, and the said letter of resignation was merely the means by which the Plaintiff was informing the Defendant Society of his said decision.

It stands to reason therefore that the question of any request of the Plaintiff having to be considered by the Defendant Society, and upon which a decision had to be taken, does not therefore arise.

The said letter is to be read in its entirety, and the wording and tone of the second paragraph of the said letter clearly support the conclusion that the Plaintiff had decided to end his employment relationship with the Defendant Society.

Also, the very fact that the said letter was ‘handed in person to the then Secretary of Defendant’ clearly indicates the Plaintiff’s clear intention that same be brought to the attention of the Managing Committee of the Defendant Society promptly.

In light of all the Pleadings, all the Submissions of both Learned Counsel, and all the factors highlighted above, the Court is of the considered view that the Plaintiff had but one function with the Defendant Society, i.e. that of Spiritual Master, and that the Plaintiff by way of the said letter

of resignation which was written in unequivocal terms, informed the Defendant Society of his unilateral decision to resign as Spiritual Master of the Defendant Society.

The Court therefore finds that the Plaintiff had resigned from his function as Spiritual Master of the Defendant Society by way of the said letter.

In light of the Court's above findings, there is no need for the Court to consider the Limb 1 of the Plea in Limine.

Conclusion

In light of all the above, the Court upholds Limb 02 of the Plea In Limine Litis raised in the Amended Plea, and dismisses the Plaintiff's action with costs.

[Delivered by: D. Gayan, Ag. President]

[Industrial Court]

[Date: 21 January 2022]