Kauroo-Rugbur P. v Tropic Knits Ltd

2020 IND 7

Cause Number 544/10

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Parvatee Kauroo-Rugbur

Plaintiff

v.

Tropic Knits Ltd

Defendant

Ruling

It is common ground that Plaintiff joined the employment of Defendant company as Secretary on 21 August 1998 and was confirmed to that post on 4 December 1998. On 1 October 1999, Plaintiff was appointed Research and Development Technician as from 1 October 1999 and was confirmed to that post on 1 January 2000.

Plaintiff avers that on 6 August 2010 she was summarily dismissed without justification and in glaring breach of the prevailing legal provisions and that at the time of her dismissal she was drawing a monthly pay package of Rs. 15,403.

At this stage, I find it appropriate to reproduce paragraphs 4,5,6,7,8,9,10,11&12 of the plaint:

"4. Plaintiff avers that by letter dated 28.07.10, under the signature of Bertrand Thevenau, Defendant's Executive Director, Plaintiff was suspended from duty on the false allegation that, in breach of her contractual obligations,

(i) Plaintiff has been "engaged in activities of another enterprise involved in garment production

(ii) and that the Company's property has been used for such activities,

(iii) part of the work was being done during Plaintiff's normal working hours."

5. (a) Plaintiff avers that by the same letter of 28.07.2010 Plaintiff was requested to appear before a Disciplinary Committee on 05.08.2010 at 2.00 p.m. at the office of Tropic Knits Ltd, Forest Side to explain why disciplinary action should not be taken against her.

(b) However, at the request of Plaintiff's Counsel, the Disciplinary Committee was rescheduled for 06.08.2010 at 15.00 hrs at Room No. 605, 5th Floor, Chancery House, Port Louis.

6. The Plaintiff was heard before a one-member panel and she denied the charges levelled against her.

7.(a) The Defendant Company, assisted by Counsel, called Mrs. Veena Ghurburrun as its only witness, and Plaintiff, who was also assisted by Counsel, gave evidence denying the charges levelled against her.

7(b) In the course of the hearing Mrs. Veena Ghurburrun produced a statement recorded from Plaintiff on 28.07.2010.

8. Plaintiff avers that no witness was called by Defendant to substantiate the charges against her.

9.(a) Plaintiff avers that on the same date, at about 17.00 hrs, Counsel appearing for Defendant handed over to Plaintiff a scanned, undated letter under the signature of Bertrand Thevenau Executive Director, informing the Plaintiff that the Disciplinary Committee has come to the conclusion that the charges levelled against her have been proved and that this amounts to a gross misconduct.

(b) By the same letter, Defendant terminated forthwith Plaintiff's contract of employment.

*10. Plaintiff avers that in the light of the testimony of Mrs. Veena Ghurburrun, no reasonable body could have found Plaintiff guilty of the charges levelled against her, and still less of "**gross misconduct**", a charge which was never put to Plaintiff.*

11. Plaintiff had accordingly requested Defendant to communicate to her a copy of the proceeding and findings of the Disciplinary Committee but Defendant has categorically refused to do so.

12 Plaintiff avers that in the circumstances, the Plaintiff's dismissal is unreasonable, unjustified and in glaring breach of the legal provisions."

Thus, Plaintiff is claiming severance allowance and wages in lieu of notice as indemnity from Defendant.

The latter, for its part, has denied liability.

Ex facie the averments of the plaint:

1. It is not the contention of Plaintiff that the provisions of Section 38(2) of the Employment Rights Act 2008 have not been complied with namely the mandatory time limits as clearly illustrated and confirmed by the Judicial Committee of the Privy Council in **Mauvilac Industries Ltd v Ragoobeer**[2007 MR 278][2006 PRV 33] given that the Legislature has adopted a policy of laying down a fixed time limit in line with the International Labour Organisation with the aim of ensuring that both parties know where they stand as quickly as possible:

Section 38 of the Employment Rights Act 2008, Act No. 33 of 2008 replacing the Labour Act 1975 reads as follows:

> "***38. Protection against termination of agreement***
>
> *(1) (…)*
>
> *(2)* No employer shall terminate a worker's agreement-
>
> (a) for reasons related to the worker's misconduct unless –
>
> (i) he cannot in good faith take any other course of action;

(ii) the worker has been afforded an opportunity to answer any charge made against him in relation to his misconduct;

(iii) he has within 10 days of the day on which he becomes aware of the misconduct, notified the worker of the charge made against the worker;

(iv) the worker has been given at least 7 days' notice to answer any charge made against him, and

(v) the termination is effected not later than 7 days after the worker has answered the charge made against him or where the charge is subject to an oral hearing, after the completion of such hearing."

2. It is clear that the charges put to Plaintiff in relation to which she was heard by Defendant's Disciplinary Committee were indeed charges of alleged misconduct which she had termed as "false allegations" in breach of her contractual obligations.

3. Now, Plaintiff's contention is that the Disciplinary hearing was postponed to a later date composing of one member panel only and that the only witness called on behalf of Defendant and what Plaintiff had to say were in line with a denial of the charges so that no reasonable body would have found her guilty of gross misconduct and because of that, the decision of Defendant to have dismissed her summarily was unreasonable and that the fact that the charge of gross misconduct was not put to her, her dismissal was unjustified. I take the view that the *"charge of gross misconduct "* not having been put to her is merely prolix as the term "gross misconduct" would only mean in the present context that the Defendant's Disciplinary Committee has found that the charge of Plaintiff essentially having been *engaged in activities of another enterprise using the Company's property during Plaintiff's normal working hours* was gross enough or serious enough so that Defendant could not in good faith take any other course of action within the meaning of Section 38(2)(a)(i) of the Employment Rights Act 2008.

Indeed, it is abundantly clear that the cause of action of Plaintiff is that no reasonable body could have come to the decision reached by the Disciplinary

Committee which means that she is challenging the decision making process of that Disciplinary Committee which is misconceived in as much as she is seeking the Court to adjudicate on the fairness of the decision making process of that Disciplinary Committee and now by trying to impute a disguised unreasonableness or unfairness in the Wednesbury sense by the one member Committee who heard her will make the Court act as if in a case of Judicial Review in order to quash in a disguised manner the dismissal as the decision making process was unreasonable or unfair is misconceived. This obviously has nothing to do with unreasonableness as the Plaintiff had been given an opportunity to be heard to answer the charges against her before a disciplinary committee prior to her dismissal. But for the Court to decide whether the dismissal or the termination of her contract was justified or not in the sense that whether there was misconduct or not is a matter of evidence to be adduced at trial stage and obviously it has nothing to do with the decision -making process of that Committee. True it is that in the course of trial following a claim of unjustified dismissal before a Court of law by virtue of a plaint with summons, the Plaintiff is at liberty to ask for particulars in the sense of being communicated with a copy of the findings and minutes of the proceedings before the Disciplinary Committee so that the same material used at the Committee would be used at the trial proper and not travelling outside as clearly illustrated in the case of **Abdurrahman N. v Total Mauritius Limited** [2013 SCJ 480]:

*"It is significant to bear in mind that it was incumbent upon the respondent as the employer to establish that the termination of the appellant's employment was justified (**Milinte v The Deep River-Beau Champ Ltd** [1987 SCJ 368]). Furthermore, in that connection, the question as to whether as an employer the respondent was entitled to justifiably dismiss the appellant had to be judged on the basis of the material which the employer was or ought to be aware at the time of the dismissal **(The Northern Transport Co. Ltd v Radhakissoon**[1975 MR 228] and **Smegh(Ile Maurice)Ltée v Persand[2012 UKPC 23]).**"*

It is only in the event that *"the employer could not in good faith take any other course of action"* in line with Section 38(2)(a) (i) of the above Act has not been established, then only that would constitute no valid reason for the termination of the employment of the Plaintiff for the purposes of Section 46(5) of the same Act for which severance allowance would be warranted but not the unreasonable decision making process of Defendant's Disciplinary Committee. As clearly stressed in the case of **Tirvengadum v Bata Shoe (Mautitius) Co. Ltd [1979 MTR 133]** which was

quoted with approval in the case of **P. Gopaul v Le Meridien Hotel & Resorts Ltd** [2011 SCJ 37] in relation to on Section 32(2)(a) of the defunct Labour Act 1975 analogous to Section 38(2) of the Employment Rights Act namely that we are not envisaging a situation whereby the employer of a worker guilty of gross misconduct must, before dismissing him, turn itself into a court and hold a formal hearing and that was clearly not so but in the same breath, it highlighted the fact that the failure to permit the worker to give any explanation at all is something that is clearly fatal.

For the reasons given above, the present cause of action is misconceived and cannot be condoned as holding otherwise will lead to a serious misdirection. Now objection has been raised in the course of the trial on the basis of the evidence sought to be adduced so that arguments were accordingly heard and which are again necessarily misconceived. Thus, being in duty bound, I dismiss the Plaintiff's action.

S.D. Bonomally (Mrs.) *(Acting Vice President)*
8.6.2020