

MOUSHLEMEEN SULTAN VS HOLDEM HOLDINGS LTS

2023 IND 41

THE INDUSTRIAL COURT OF MAURITIUS

Cause Number: 271/2022

In the matter of:-

MOUSHLEMEEN BIBI SULTAN

Plaintiff

VS

HOLDEM HOLDINGS LTD

Defendant

Judgment

Introduction

The Plaintiff was in the continuous employment of the Defendant as graphic designer since 5th November 2018. By virtue of a claim backed by the Plaintiff's testimony in Court, she is claiming from the Defendant the sum of Rs 129,693.94/- representing one month's indemnity in lieu of notice, wages, bonus and severance allowance.

The facts

The Plaintiff testified that she was employed on a 5 day-week basis for and in consideration of a basic monthly wage of Rs 25,400. By way of letter dated the 4th November 2019, the Defendant terminated her employment on the ground of poor performance.

The Plaintiff averred that the Defendant terminated her employment without notice and without any justification as she was not afforded an opportunity to answer any charge levelled against her in relation to the alleged poor performance of work. She contended that the Defendant did not pay her for the period of 26th October 2019 to the 4th November 2019 as well as the end of year bonus for the year 2019.

In view of the above, the Plaintiff claimed from the Defendant the sum of Rs 129,693.94/- made up as follows:

(i)	Wages for the period of 26.10.19 to 04.11.19	Rs 6,927.27
(ii)	One month's wages as indemnity in lieu of notice	Rs 25,400.00
(iii)	Severance allowance for 12 months' continuous service	Rs 76,200
(iv)	End of year bonus for year 2019	Rs 21,166.67

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In the present case, the Defendant has left default despite having been warned to attend Court through previous personal appearances.

Observations

I have assessed the evidence on record and the documents produced. It is to be remembered that "*making out a case does not mean that one has got to jump both feet all over the principles of evidence and all the matters required in order to make out a case...*". **(VELVINDRON VS NOORDALLY (1979) MR 243).**

The undisputed facts of the case reveal that the Plaintiff was in the continuous employment of the Defendant from the 5th November 2018, as evidenced by her contract of employment with the Defendant duly filed in Court. Her payslip for the month of October 2019 shows that the Plaintiff was receiving a basic monthly wage of Rs 25,400. I have also been apprised of a letter sent by the Chief Financial Officer of the Defendant company informing the Plaintiff of the termination of her employment with immediate effect as at the 4th November 2019.

In view of the specific requirements of section 64(6) of **THE WORKERS' RIGHTS ACT 2019**, the Defendant was not entitled to terminate the Plaintiff's contract of employment on the ground of poor performance without having given her an opportunity, with due notice, to answer the charge made against her. It is also noted that the Plaintiff worked for the period of 26th October 2019 to the 4th November 2019, for which she was entitled to a remuneration.

In the circumstances, I find that the Defendant has committed a breach of the contract of employment by terminating the Plaintiff's employment without complying with the provisions of **THE WORKERS' RIGHTS ACT 2019** by failing to give the Plaintiff an opportunity to answer the charge against her and by failing to pay the necessary wages to the Plaintiff in line with section 61(2)(b). It is therefore indebted to the Plaintiff in the sum of Rs 129,693.94/- representing the outstanding notice, wages, bonus and severance allowance.

Conclusion

In light of the above, I find that the Plaintiff has established her case on a balance of probabilities. I order the Defendant to pay to the Plaintiff the sum of Rs 129,693.94/- together with interests at the rate of 12% per annum on the amount of remuneration due from the date of non-payment to the date of payment.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Judgment delivered on: 05th June 2023