

Cooshneapa J. v Glossal Holdings Ltd

2023 IND 3

Cause Number 241/19

**IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)**

In the matter of:-

Mr. Jeeraj Cooshneapa

Plaintiff

v.

Glossal Holdings Ltd

Defendant

Judgment

This is a plaint where Plaintiff has claimed that his employment has been allegedly terminated on 25.8.2018 without notice but not on the ground that it was unjustifiably terminated.

He has, therefore, claimed from Defendant one month's wages in lieu of notice: Rs 8,500 and his unpaid wages for period 21.8.2018 to 24.8.2018 (Rs 8500/26 x 4 days): Rs 1307.69 in the sum total of Rs 9807.69 as alleged.

Plaintiff has averred that on 24.8.2018 after his working hours, Mr. Feroze Toonah, his Supervisor, informed him to see the Director, Mrs. Rossun, in her office. But he could not do so due to an urgency and had her informed that he would meet her on the following day. On 25.8.2018, when he resumed work at 6.00 a.m. he was

asked to wait for the Director. Mr. Toonah who arrived at 8.00 a.m. informed him that his contract of employment has been terminated.

Defendant, for its part, in its plea, has denied that it has terminated Plaintiff's employment. It has averred that Plaintiff on his own resigned from work with Defendant on 24.8.2018 in the presence of 4 persons namely F.Tonna, Z.Jadoo, W.Botte and N.Taujoo and has moved that the plaint be dismissed.

It is common ground and which has been reflected in evidence that-

1. Plaintiff was in the continuous employment of Defendant as pump attendant since 2.1.2018.
2. He was employed on a 6-day week basis and was remunerated at monthly intervals at the rate of Rs 8,500 per month.
3. His terms and conditions of employment were governed by Distributive Trades Remuneration Regulations of 2004, GN 172 of 2004 as subsequently amended.
4. He worked from 6.00 a.m. to 2.00 p.m.

Plaintiff gave evidence in Court.

As regards the disputed issues, Plaintiff stated that –

On 24.8.2018 about 1-2 minutes before his work was over meaning still within his working hours as opposed to the averments of his plaint that it was after, Mr. Feroze Toonah, his supervisor, told him that the Director of Defendant Company had just asked him to come to her office.

Plaintiff told him that he was in a hurry, it was urgent for him to go home and that he would meet her on the following day. When he was leaving, the Security officer amongst others came towards him and told him that the Director needed him. Mr. Toonah even followed him till the bus stop where he was heading telling him that the Director had conveyed the message namely that if he did not go to her office on that day, he should not come to work on the following day. Yet, he did not comply as he said that there was a stone mason working at his place.

On 25.8.2018, since his usual transport did not pick him up, he reached his place of work after 6.00 a.m. by bus and he was asked to wait for his supervisor. He was

not allowed to work on that day as Mr. Toonah told him at about 8.00 a.m. that his contract was terminated and that he would receive a letter at home. Then, he went home and on that day itself, he received a letter from Defendant by post as per Doc. A wherein it was stated that he made a verbal resignation which was accepted with immediate effect in the presence of Mr. Toonah, Mr. Z. Jaddoo, Mr. W. Botte and Mr. N. Taujoo. In that letter it was also mentioned that he had to go to his place of work on 28.8.2018 to return his uniform. He went there on the 28.8.2018 as he had to collect his wages for 4 days and brought his uniform. He was being given 3 days salary only and he refused to take same and left.

Given that on 25.8.2018, he was not allowed to work in the morning, he has considered that he has been dismissed as he had never said that he would stop working by giving his verbal resignation on 24.8.2018 as per that letter signed by 4 persons otherwise he would not have turned up for work on the next day. He did not receive his wages for 4 days viz. from 21.8.2018 to 24.8.2018.

Having considered that he was dismissed on 25.8.2018, he was claiming his salary for 4 days: Rs 1,307.69 and indemnity in lieu of one month's notice: Rs. 8,500 giving a total amount of Rs. 9,807.69. He was presently working for another employer earning a basic salary of Rs 9,700 per month and thus, he has also claimed wages lost for 2 days for coming to Court in the sum of Rs. 738.46.

In cross-examination, he stated that before he was employed with Defendant, he was working for Indian Oil at Verdun as pump attendant in 2017 and when he joined employment with Defendant, he was asked to fill an application form as to where he was working before and he signed on it on 22.12.17 and he started working as from 2.1.2018 with Defendant as per his contract.

As from 2.1.2018 he started working until 25.8.2018 according to him. He worked until 24.8.2018 rather and at Indian Oil, he worked as from April to December 2017. He quitted at Indian Oil as he was underpaid. As regards, the present case, he received a letter from Defendant dated 24.8.2018 on 25.8.2018 that he resigned since 24.8.2018 but he had never stopped working. He did not resign but the letter mentioned that he made a verbal resignation.

On 25.8.2018, he realised that Defendant was trying to dismiss him and he went to the Labour Office on that day. Then, he decided that the first day he went there was on Friday 24.8.2018 at about 2.00 p.m. after having finished his work and

that he informed that Office that he had a doubt that his employer was trying to dismiss him and he made a declaration to that effect. He further decided that he did not go and meet the Director of Defendant because she took a lot of time with him and that he had to leave as he had to go to the Labour Office. He did not agree and maintained that he had never said earlier in Court that he had left without meeting her because there was a stone mason working at his place. He went on to say that he had never resigned from his work and that he had never told the 4 persons mentioned in Doc. A that he was quitting his job. He went to the Labour Office on Saturday as well but it was closed.

He did not agree that his work ceased on 25.8.2018 as he resigned himself verbally on 24.8.2018. He further admitted that he went to the Labour Office on Friday and Monday and that he resigned on 24.8.2018 as per the following extract at page 13 of the proceedings of 31.8.2022 which reads as follows:

“Q: *Dakor. C'est-à- dire ou finn alle Vendredi et Lundi ?*

A: *Oui.*

Q: *N'est-ce pas?*

A: *Oui.*

Q: *Dakor. Moi mo dire ou ki ou finn arrete travay pour ou meme oralement et a okenn moment, ou travay pas finn terminer le 25 aout 2018 mais ou, ou finn termine ou meme ou travay le 24 aout 2018?*

Court: *Repondez s'il vous plaît.*

A: *Oui, le 24, oui, 24, savedir zonn le 25 ki zonn donne-moi – monn gagne let la oui. Le 25 mo ti aller travay, lerla zot dire mo pour recevoir enn let.*

Q: *Le 25 letemps ou finn alle travay apres ki ou finn demissioner, Missie Toonah inn dire ou, fini avoy ou enn let pour confirmer ki ou meme ou finn demissioner, ou pas capave demissioner et revinn travay ou meme, ou bizin ki ou envi?*

A: *Non. Alors, le 24, le 25, mo ti alle travay lerla linn dire moi ou pour recevoir enn let.”*

The case for the Defendant unfolded as follows.

Mrs. Sumayya Rossenkhan in her capacity as Director of Defendant gave evidence in Court. Mr. Toonah was the supervisor. Mrs. Rossun was herself, Mrs. Rossenkhan. On 24.8.2018, the supervisor had authority to speak to Plaintiff on his own but because Plaintiff was a bit of a difficult person who talked and argued a lot and even paying his salary took at least three hours because of the details, he had requested Plaintiff to come and meet her and he refused to turn up. She had called Plaintiff to her office to speak of his behaviour and she did not have the intention to terminate his contract of employment on that day.

Mr. Toonah, Mr. Z. Jaddoo, Mr. W.Botte and the security officer called him several times on 24.8.2018 and he refused and they all went to the bus stop when speaking to him as they knew how he changed his words very often and witnesses were needed. He was asked to come in for that meeting with her and he absolutely refused. When he was asked why he was refusing whether he was leaving work and was resigning, he said that he was not coming back again, he did not work anymore and that he was resigning.

She was told by Mr. Toonah that Plaintiff was not going to work there anymore. There was a letter sent to him in relation to the exact conversation that they had namely that he resigned and that they had accepted his resignation witnessed by all those persons because of his ways of changing what he said.

Given that his resignation was accepted, it was mentioned in that letter that he should return the company's belongings as per Doc. A. In that document, Mr. Toonah signed as a witness as to what occurred there. As he had resigned on 24.8.2018, on the following morning, no transport came to pick him up as he no longer worked there meaning for Defendant. She did not agree that his employment was terminated when Mr. Toonah told him on the 25.8.2018, that he could not work and that she needed to give him one month notice prior to having his employment terminated on 25.8.2018. He refused his wages for 21.8.2018 to 24.8.2018 which were there for his collection and even on the day she was deposing in Court. She agreed to pay him his wages as per the attendance book from 21st to the 24th in the sum of Rs. 1,307.69 but not for the rest.

Mr. Feroze Toonah in his capacity as supervisor for Defendant's company gave evidence in Court. He worked at the filling station of Defendant and he knew the Plaintiff. He confirmed that it was his signature found in the letter dated 24.8.2018 wherein Plaintiff made a verbal resignation viz. Doc. A. On 24.8.2018, it was the day

employees were paid their salary as it was pay day and in that exercise the employees were being explained as to how their wages were computed. Mrs. Rossun called him in her office to collect his wages and to explain to him how his wages were computed. He did not meet her saying that he was in a hurry and he did not collect his wages. The supervisor called Plaintiff together with the security officer among other employees and ran to the bus stop as he was on his way to the bus stop and he said that he would not come again and that he was leaving the job and left. He resigned verbally and they wrote that fact in that letter that he resigned verbally as per Doc. A in which they all signed as witnesses. He turned up on the following day, saying that he turned up for work by bus as the transport did not pick him up. Mr. Toonah told him that he could not work as it was not necessary for him to do so as he had resigned on the eve.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel for Defendant.

It has remained unrebuted that Plaintiff refused to collect his wages on the 24.8.2018 which was pay day and he has himself conceded that he was called to meet the Director of Defendant, Mrs. Rossun, on that day within working hours failing which he should not come to work on the following day. He contradicted himself as per the averments of his plaint that he was called by Mrs. Rossun outside working hours while in Court, he stated that it was still within working hours viz. before 2.00 p.m. He further contradicted himself by saying that he did not meet Mrs. Rossun on the 24.8.2018 as he was in a hurry to go home as a stone mason was working there when later on he stated that he was in a hurry to go to the Labour Office as he was of the view that Defendant was going to dismiss him. He stated that he was not being paid 4 days' salary but only 3 which was on 28.8.2018 when he was asked to return his uniform as per Doc. A. Thus, it is clear that he did not collect his said salary neither on the 28.8.2018 nor on the 24.8.2018. Moreover, on the latter day, it is common ground that he did not raise the issue of underpayment of his salary for 4 days instead of three with the Director despite having been asked to come to her office but instead rushed to the Labour Office which he found to be an urgency for him.

I find it apt, at this stage, to reproduce Section 2 of the Employment Rights Act 2008 (although the terms and conditions of Plaintiff's employment were governed by the Distributive Trades Remuneration Regulations of 2004, GN 172 of 2004 as subsequently amended) where "employer" was defined (subject to Section 33 and

such Section 33 does not apply to the present case as it deals with the Sugar Industry) as per its subsection (a) which reads as follows:

"means a person who employs a worker and is responsible for the payment of remuneration to the worker."

Therefore, it means that the fact that the worker had refused his wages on Pay Day viz. on 24.8.2018 and then on 28.8.2018 and that he had refused to meet his Director failing which he should not come to work on the following day, had chosen to attend the Labour Office instead means that he by his own volition no longer wanted to be bound by his contract of employment as the employer would no longer have power on him as he had refused remuneration pursuant to Section 2 of the Act.

Now at no time, it has been established in Court that he had left without taking his wages because he had grievances about them and that was why he had to go urgently to the Labour Office after having contradicted himself that he had to go urgently home as a stone mason was working there. I find it quite far-fetched for a worker who had been asked to attend a meeting on pay day, failed to comply with an order from Management during his working hours, failed to use that opportunity to explain his grievances if any and refused to take his salary but would find it urgent to expose his grievances at the Labour Office instead.

It is abundantly clear that Plaintiff sought a device to have his employment terminated in order to come and make other claims in addition to 4 days' wages namely one month's wages in lieu of notice and unpaid salary for the days he had to attend Court under his new employment with another employer with a higher monthly basic salary from Defendant.

Indeed, he later admitted that he had verbally resigned on 24.8.2018 and that on 25.8.2018 he was told that he would receive his letter shortly in that respect which he did on that day itself although he did turn up for work on those 2 days.

Furthermore, his admission of resignation has been reinforced in that it was made in clear and unequivocal terms as he himself had admitted that he did not go and meet Mrs. Rossun, the director, on 24.8.2018 within working hours failing which he should not attend work on the following day which has lent support to the unrebutted testimonies of the witnesses for Defendant that he did not attend the meeting although informed and refused his wages for 4 days which were still at Defendant for him to collect.

Thus, this state of affairs has lent support to the version of the Defendant that Plaintiff's wages for the days claimed by him in his plaint were being paid to him at the material time on 24.8.2018 which he refused meaning for 4 days and that he refused to attend the meeting with Mrs. Rossun and his verbal resignation on that day witnessed by the 4 persons as per Doc. A. was accepted with immediate effect knowing his ways of changing his words let alone that his claim was not for unjustified termination of his employment by Defendant.

For all the reasons given above, and in view of the clear admission by Plaintiff of his verbal resignation on 24.8.2018 and which was accepted with immediate effect by Defendant as per Doc. A as per the unchallenged version of the supervisor, Mr. Toonah, Plaintiff has utterly failed to establish on a balance of probabilities that his contract of employment was terminated by Defendant so that he should have been paid one month's wages in lieu of notice and unpaid wages under his new job for the days he had to attend Court.

In the circumstances, I order Defendant to pay to Plaintiff the sum of Rs. 1,307.69 only representing 4 days' wages for the period 21.8.2018 to 24.8.2018 due to Plaintiff as admitted by the Director, Mrs. Rossun. I make no order as to costs.

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

17.1.23

