

Bodinade M.P.D. v Comajora Limitee

2024 IND 28

Cause Number 392/20

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

In the matter of:-

Mrs. Marie Pascalle Danielle Bodinade

Plaintiff

v.

Comajora Limitee

Defendant

Judgment

In this plaint, Plaintiff has averred that –

1. She was in the continuous employment of Defendant as Factory Worker since 21 April 2010. She was employed on a 6-day week basis and was remunerated at monthly intervals at the terminal basic rate of Rs 9,700 per month.
2. By way of a letter dated 4.1.2020, she informed Defendant's Director, Mr. Kreshna Ramasawmy, of her intention to resign from work as from 19.1.2020 as wages were not being paid within the prescribed delay.

3. On 13.1.2020, she phoned Defendant's Human Resource Manager, Mr. Selvan Kolanthan, and informed him that she no longer intended to resign and to which Mr. S. Kolanthan replied: "ok, merci, faire une lettre envoyer."
4. By way of a letter dated 15.1.2020, she requested Defendant's Director to disregard her letter of resignation dated 4.1.2020 as she took that decision under the influence of emotion.
5. Defendant did not reply to her letters dated 4.1.2020 and 15.1.2020. But she was paid full wages for the month of January 2020 and since Defendant did not reply to her letter dated 15.1.2020, she considered that her request has been granted.
6. She attended work normally up to 13.2.2020 and she recorded her attendance by fingerprint every day. On 13.2.2020, at about 8.30 a.m., while she was at work, Defendant's Human Resource Manager, Mr. S. Kolanthan, phoned her and terminated her employment in the following terms: "*Aller, pas reste la, moi pas le trouve ou ici*".
7. She has considered that Defendant has terminated her employment without notice and without any justification on 13.2.2020.
8. She worked for period 21.1.2020 to 12.2.2020 but Defendant has failed to remunerate her for same.
9. She has, therefore, claimed from Defendant the sum of Rs. 300,886.54 representing one month's wages as indemnity in lieu of notice: Rs 9,700, severance allowance for 117 months' continuous service (Rs 9700 x 3 x 117/12 years): Rs 283,725 and her outstanding wages for period 21.1.2020 to 12.2.2020 (Rs 9700/26 x 20 days): Rs 7,461.54.

It is common ground that Defendant's pay period was from the 21st day of the current month to the 20th day of the following month.

Defendant, for its part, in its plea, has denied that it has terminated Plaintiff's employment. It has admitted that by way of a letter dated 4.1.2020, Plaintiff informed Defendant's Director, Mr. Kreshna Ramasawmy, of her intention to resign from work as from 19.1.2020 as wages were not being paid within the prescribed delay.

Plaintiff's resignation was effective as from 19.1.2020 which was unequivocal and was duly accepted. She duly served the notice period and was paid her salary until the end of the notice period, that is, 19.1.2020. Upon receipt of Plaintiff's resignation letter, Defendant took immediate steps to find another factory worker so that its operation would not be disturbed after the 19.1.2020.

Defendant has averred that it never received the letter dated 15.1.2020 from Plaintiff. In any event the mere fact that the Plaintiff sent a letter to the Defendant, which is denied, does not mean and cannot mean that the Plaintiff's resignation letter dated 4.1.2020 was discarded and or superseded. Defendant did not receive any letter from Plaintiff after receipt of her letter of resignation of 4.1.2020 and what she was paid upon her resignation in January 2020 was her salary up to the 19.1.2020. It has moved that the plaint be set aside.

The case for the Plaintiff unfolded as follows:

Plaintiff gave evidence in Court. She stated that she had been working for the Defendant since 21 April 2010 in her capacity as Factory Worker following a verbal contract of employment on a 6-day per week basis and upon a monthly salary of Rs 9,700. Her pay slip for January 2019 was Rs 9,400 as per Doc. P1, but then as from January 2020, there was a salary increase of Rs 300 according to Government policy. The pay period was from the 21st of the current month up to the 20th of the following month.

By way of a letter dated 4.1.2020, she informed the Director of Defendant, Mr. Kreshna Ramasawmy of her intention to resign as from 19.1.2020 by complying with the notice period, because salaries were not being paid within the prescribed delay as per Doc. P2.

On 13.1.2020, she phoned Mr. Kolanthan to tell him that she would not resign as she needed to work to look after her three children and in view of the delay of payment of her wages, that she took the decision to resign which could be seen in the letter dated 4.1.2020. He thanked her and asked her to write another letter and to send it to him which she did on 15.1.2020 as per Doc. P3. In the latter she had asked for the retraction of her resignation and her reintegration into her job.

The Defendant did not reply to her and as such she continued to work and she inserted her attendance by way of her fingerprints until 13.2.2020. On the latter day,

Mr. Kolanthan called her in his office to tell her “*sorte dépi là aller, ki mo pe faire là et li pou faire la police vine tire moi*”.

By such an act from him, she understood that she was dismissed from her employment and for which she did not agree. She was not given prior notice of her dismissal and nor did she receive her wages as from 21.1.2020 to 12.2.2020. She was only paid until 19.1.2020 by Defendant.

She did not find any new worker after 19.1.2020 working in her place and she continued to work. When it was put to her that the Defendant contended that it never received her letter dated 15.1.2020 and that it did not owe her the sum claimed or in any other sum whatsoever, she did not agree. She has therefore, claimed the sum of Rs 300,886.54 from Defendant as per the breakdown given in her plaint.

Under cross-examination, she stated that she did not agree that the Defendant accepted her resignation as per her letter dated 4.1.2020, as she received her salary on 13.2.2020 whereby she was paid her salary for the period of 21.12.2019 to 19.1.2020. But she accepted that her resignation took effect as from 19.1.2020 and she received her salary until 19.1.2020. She admitted having informed Mr. Kolanthan that she wanted to take her job anew as she changed her mind. She was aware that Mr. Kolanthan was an HR Administrator. After 13.1.2020, she did not have any conversation with Mr. Kolanthan and nor the Director namely Mr. Ramasawmy in that respect prior to 13.2.2020. Equally, she did not receive any letter from Mr. Kolanthan and Mr. Ramasawmy. She stated that she was not familiar with the procedure as regards the payment of wages, and how they were paid. She was not familiar with the procedure involving fingerprints.

Then, she accepted that the procedure for fingerprints was meant to record the attendance for payment of salary as to the days she attended work. She admitted that both Mr. Kolanthan and Mr. Ramasawmy were not based at Defendant but at a different place in Phoenix. She admitted that as from 21.1.2020 to 20.2.2020, it was another pay-period. She also admitted that as from 21.1.2020 to 20 February 2020, the Administrator used the fingerprints in order to know who worked and who were absent and for how many days for payment purposes. She further admitted that she was not aware that it was only after 20.2.2020 that the Administrator would take cognizance of the workers during the period 21.1.2020 to 20.2.2020. However, she did not agree that by the very fact that she affixed her fingerprints daily at her place of work, neither Mr. Kolanthan nor Mr. Ramasawmy would have known that she went

to work daily because when she went to work on 12.2.2020, Mr. Kolanthan was well aware that she was still working. The fact that Mr. Kolanthan thanked her and asked her to write a letter and although she did not get any reply, she understood that she could continue working and that her request was accepted. She sent her resignation letter, as each month she received her salary late meaning on the 9,12 and 16 and the fact that she had three minor children at that time, it was not easy for her.

Mr. Kevin Sewraz, in his capacity as Labour Officer gave evidence in Court. On 13.2.2020, he registered a complaint from Plaintiff against Defendant. He filed the original of the complaint as per Doc. P4. It was a complaint of termination of employment on 13.2.2020. Plaintiff stated that she was working as factory worker since 24.3.2010 and was drawing a salary of Rs 9,400 and her employment was terminated verbally by Mr. Selven Kolanthan, HR Manager, on 13.2.2020. That was the nature of the complaint. He enquired into that case.

Mr. S. Kolanthan was convened at the Curepipe Labour Office on 17.2.2020 and he refused to sign the minutes of the report written by the said Labour Officer as regards the version of facts revealed to him by Plaintiff.

Mr. K. Sewraz stated that the version of Defendant was in fact that her termination was effective as from 19.1.2020 and was treated like that by the said company at all times. He was not aware that Plaintiff at any point in time said anything about anyone else having contacted her on behalf of Defendant. She had only mentioned having sent a letter to Mr. Ramasawmy and speaking to Mr. Kolanthan over the phone. He agreed that he gave the version of the HR Manager namely Mr. Kolanthan as per his version. He also agreed that during his enquiry the Plaintiff sent a letter on 15.1.2020 to reintegrate her job, but her request was turned down.

Mr. Jean Marie Judex Chinien in his capacity as Supervisor gave evidence in Court. He had been working for Defendant for 13 years and was the Supervisor of Plaintiff. He started employment with Defendant as from 31.8.2009. He had to stop working about a year ago as salaries were paid late all the time, that is, on the 7,16,18 and 10. Plaintiff was working on 13.2.2020 when the HR Manager phoned her, telling her that he did not wish to see her in the Defendant premises and to go to her house. He phoned her only. No one before 13.2.2020 on behalf of Defendant meaning the Director or the HR Manager or the top management informed him that Plaintiff was not working for the Defendant company.

The case for the Defendant rested on the evidence led by Mr. Kolanthan in his capacity as HR Manager.

In January 2020, he was HR Manager for Defendant. He was in charge of the recruitment and payment of salary, forming part of the payroll, the welfare of entities, motivation and redundancy. At the material time, his office was based in Phoenix as opposed to Curepipe where the Defendant company was based. Given that there were several entities namely above 30 around Mauritius at that time, they had a head office in Phoenix. In fact, he was not dealing only with HR but also with the operation of several shops inclusive of Defendant.

He was aware of the plaint entered by Plaintiff wherein she stated that she was employed by Defendant since 21.4.2010 and was earning a salary of Rs 9,700 per month. In fact, the whole Group worked from 21st of the current month up to the 20th of the following month in order to get the time to prepare the salary and the money for the entities in order to be able to pay the workers.

He was aware of the letter dated 4.1.2020 (Doc. P2) wherein Plaintiff informed Mr. K. Ramasawmy viz. the Director of her intention to resign from her work with effect from 19.1.2020.

About 10 days after, Plaintiff phoned him telling him that she had changed her mind and no longer wanted to resign because of her three children. She took a wrong decision as she acted under emotion and wanted to resume work as it was difficult for her to look for another job. He listened to her so as to find a solution by trying to help her. He did not say that to her: "*ok, merci, faire une lettre envoyée*". But, he asked her to send another letter asking for a disregard of her resignation and he also told her that given that her letter of resignation was addressed to Mr. K. Ramasawmy, he was not the only one that could take a decision on that, but they had maintained her date of leaving on 19.1.2020 following her notice period which took effect. It was the Board together with that Director that took a decision together. Plaintiff sent a letter dated 15.1.2020 addressed to Mr. K. Ramasawmy whereby she asked him to disregard her resignation as per her letter dated 4.1.2020 as she acted under the influence of emotion. He did not personally see that letter.

He agreed that he did not receive any answer for her request be it in writing or verbal from Mr. Ramasawmy as regards her first request. But he had a conversation with Plaintiff. The Defendant did not authorize her to work after the 19.1.2020 and

she was paid her wages after the 19.1.2020. Although she said that she continued to work after 19.1.2020 till 13.2.2020, it was on the 13.2.2020 that he happened to know of her presence at work.

When he learnt that she was working there, he phoned Defendant and talked to her Supervisor. He asked her to come to his office and she was told that it was illegal for her to stay after 19.1.2020 as per her letter. But she insisted to work and then he had to tell her that in that case, he would have to call the Police to remove her from Defendant's premises. She had put her fingerprints for all the days after 19.1.2020 for attendance purposes. It was after that happened that they discovered that she did so for those number of days. There was a machine for fingerprints, but Defendant would not have access to them as access was restricted to the compound only by virtue of the machine used for that purpose namely ZK Time Machine. The fingerprints were not accessible in Phoenix and it was only when the funds were closed on 20th or 21st that they went there in the compound, removed the information through a pendrive from the computer found therein and placed same in their computer. Thus, he got to know that Plaintiff worked for Defendant from 20.1.2020 to 13.2.2020. It was only as from the pay period that Defendant would have got access to such information.

Defendant did not owe her anything as she was working illegally for Defendant as she was not authorized by the Defendant's representative to do so. There was no unjustified dismissal as she was the one who terminated her contract of employment. As at 13.2.2020, there was no working relationship between the Defendant and Plaintiff. Her attendance was recorded by her by payroll fingerprint system. Formerly, her name was put on the payroll either by him or the factory manager or the Supervisor.

He admitted that had a worker resigned, her name should have been removed from the system. Her name was removed from the system after one month because her record was needed for payment of salaries and that was why it was not removed immediately. They had to keep that information otherwise it would have been deleted. The deregistration of an employee was done after one month. At that time there were about 500 employees. Plaintiff was aware herself that her resignation took effect as from 19.1.2020 so that after 19.1.2020 she was not supposed to be working for Defendant. Plaintiff's fingerprint was not used to open the door of the Defendant company's factory, as the door remained open. But the fingerprint was used simply for attendance purposes. Anyone could have come inside the

compound. He admitted that should instructions need to be given, then it had to be linked to the Supervisor or the factory manager.

The factory manager and the Supervisor were aware that she had resigned as from 19.1.2020, because they were the ones who gave him that letter. He received that letter through the Supervisor or the manager, as he did not have direct access to it. When the question was put to him that Defendant did not pay her for the period from 21.1.2020 to 12.2.2020, he replied that it was not wages but illegal stay. When the question was put to him again that the Plaintiff was not paid her said wages despite the fact that there was a Supervisor and a factory manager, he replied that there was no proof that she was physically present apart from her fingerprints. He did not agree that Plaintiff continued to work and that on 13.2.2020, he terminated her contract of employment so that her claim as per her plaint was true. The Defendant did not owe her in the sum claimed or in any other sum whatsoever.

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

First and foremost, I bear in mind the appreciation of the need to adopt a stricter approach when dealing with the resignation of less qualified employees as opposed to the more qualified ones as set out in **Island Management Ltd & Anor v Lecluzio M.F.A. [2024 SCJ 225]** where the Supreme Court relied on the following extract from **Jurisclasseur Fasc 2/12 CADRES, note 64** which is reproduced below:

'Cette définition suppose que le salarié ait conscience de la signification et de la portée de son acte. Dans leur appréciation de cette condition, les juges semblent plus exigeants pour caractériser la démission, lorsqu'elle procède de salariés peu qualifiés (CA.....). En revanche, leur appréciation est moins rigoureuse lorsque le niveau de qualification ou de classification professionnelle du salarié concerné est élevé, estimant sans doute qu'il est, de ce fait, capable de mieux mesurer la signification et la portée de son acte.....'

At this stage, I deem it appropriate to reconcile such reasoning with the reasoning in the following extract from **Tyack L. Gerard v Air Mauritius Ltd & Ors [2010 SCJ 257]** at pages 2 and 3 which reads as follows:

"Modern Law is still very traumatized by the one-time regime of slavery and serfdom, more particularly Mauritius where there existed the Code Noir which has now been replaced by the Code Civil:

<< La démission est l'acte juridique par lequel un salarié décide de mettre fin au contrat de travail – à durée indéterminée – le liant à son employeur. La démission, dans la mesure où elle émane du salarié lui-même, ne fait l'objet que d'une intervention limitée du législateur (C. trav., art. L. 122-4, L. 122-5, L. 122-3, L.122-14-3, L. 122-15), le salariée ayant a priori clairement conscience des conséquences de ses actes.>> **Dalloz, Droit du Travail, janv. 1994, para 1.**

Thus, the case of plaintiff which is one of a contract of employment “à durée indéterminée,” the right of the employee to leave his job is an exercise of his free will, if subject to sanctions for absence of notice or for any resulting prejudice; so much so that he need not even give any reason for his termination:

<<La liberté de donner sa démission est posée comme un principe fondamental ... Cette démission n'a pas à être motivée, le désir du salarié de quitter son emploi n'ayant pas été justifié auprès de l'employeur.>> **Dalloz, Droit du Travail, janv. 1994, para 2.**

What is more, no particular form is required of an employee to terminate his employment. He may do so at any time, in any manner, orally, in writing, by conduct or otherwise. We read from **Dalloz, ibid.**: << Il apparaît donc bien que la démission peut être donnée: par écrit; verbalement; enfin se déduire du comportement du salarié, qui par son attitude explicite ou implicite a démontré qu'il entendait irrévocablement quitter l'entreprise.>> **Dalloz, Droit du Travail, janv. 1994, para. 19.**

The only concern of the law in this area is whether the termination amounted to a termination in the circumstances:

<<Toutefois, il faut impérativement que cet acte de rupture soit bien constitutif d'une démission ...

The rationale behind the existence of this principle resides in the adverse consequences that flow such an act in the case of a worker whom the law desires to protect:

<< compte tenu des conséquences qui s'y attachent: perte de tout droit à indemnité de licenciement; rupture instantanée ou à l'issue d'un préavis souvent plus court que celui qui est dû en cas de licenciement; exclusion du bénéfice des allocations de chômage puisque celles-ci sont en principe réservées aux salariés qui

ont été << involontairement privés d'emploi>> (V. *infra*, nos 122 et s.): **Dalloz, Droit du Travail, janv. 1994, para.3.**

For that reason, it is the court's business to ensure that a resignation is given thoughtfully and freely:

<< Mais au-delà de la forme que peut revêtir la démission, se pose une triple exigence; la démission doit être sérieuse, c'est - à dire n'être pas irréfléchie; elle doit être libre, c'est - à dire n'avoir pas été imposée par des manoeuvres ou des pressions; elle ne doit pas être assimilée à l'absence non autorisée ou non justifiée (qui ne traduit pas la volonté de quitter l'entreprise).>> **Dalloz, Droit du Travail, janv. 1994, para.20.**” (all the above underlining is mine)

It is imperative to note that the test to be applied has been clearly summarized in **Georges Mahadeo Industries Ltd v Issory N [2010 SCJ 369]** in relation to a resignation so that, in substance, irrespective of its form or method, it is the Court's duty to ensure that a resignation was given thoughtfully and freely and not under a spell of emotion in view of the countervailing objective of the labour law to protect the interests of the worker. The Supreme Court in that case relied on an extract from **Dalloz, Droit du Travail, janv. 1994, para. 34** as regards the test to be applied which reads as follows:

“On observera de manière générale que le juge s'attache à apprécier *in concreto* quelle fut l'intention du salarié; entendait -il ou non quitter l'entreprise de son propre chef? Le juge ira au-delà de l'apparence pour analyser autant que faire se peut l'intention réelle du salarié; quitter l'entreprise ou y demeurer.” (**emphasis added**)

The Supreme Court in **Issory**(supra) also emphasized on the post-event conduct of the worker as being helpful in finding what the real intention of Plaintiff was. In that respect, the Court will have to bear in mind the prompt and summary manner in which the resignation was made and the prompt protest against such resignation in order to hold that there was no free or informed decision of resignation.

I take the view that the resignation of Plaintiff was seriously, thoughtfully, freely and unequivocally given by her after having closely and carefully analysed all the evidence put forward before me *in concreto*, bearing in mind the post-resignation conduct of Plaintiff and the manner the words of the resignation letter were handwritten by her for the reasons given below:

1. There is no evidence borne on record to support the fact that there has been a sudden recent lateness encountered by the Defendant in the payment of salaries to workers, in order to infer that the Plaintiff finding herself with three minor children, acted under the spell of emotion, when she wrote her resignation letter on 4.1.2020 to the Director viz. Mr. K. Ramasawmy by giving the notice period so that her resignation would become operative as from 19.1.2020 let alone that she admitted that such late payment was not a first encounter for her. On the contrary, it remained unrebutted that Defendant was late all the time in the payment of the monthly salaries of workers as conceded by the Supervisor of Plaintiff namely Mr. Chinien who quitted employment with Defendant for that purpose.
2. Bearing in mind that Plaintiff reckoned about 10 years continuous employment with Defendant, at no point in time prior to her resignation did she write to the HR Manager, nor did she phone him to have a meeting convened, so that she could voice out to him her grievances as regards the late payment of her salary, due to the fact that she had to cater for the needs of her 3 minor children, so that she could exceptionally be given her salary earlier.
3. On the contrary, she chose to write a letter of resignation, giving thoughtful notice as per her verbal contract of employment of her prompt and summary resignation on 4.1.2020 to the Director of Defendant namely Mr. Kreshna Ramasawmy effective as from 19.1.2020 as follows:

“Moi, Danielle Bodinade j’ai le regret de vous informer ma démission dans votre Compagnie Comajora, Cause du soucis de la date de la paye.

Merci pour les 10 ans presque de service que j’occupe depuis Mars 2010.

Je respecterai le préavis de mon départ sera donc effectif le 19 Janvier 2020.

Je vous prie d’agréer, Monsieur, l’assurance de mes sentiments très distingués.”

4. Had she the serious and true intention to waive her resignation because she had acted under the spell or influence of emotion as claimed by her in her letter dated 15.1.2020, she would have done so on the following day of 4.1.2020 or the day after, by sending a letter of apology to the same Director or to phone him and to inform him of her retraction of her resignation.

Instead, she chose to phone the HR Manager, Mr. S. Kolanthan on 13.1.2020 meaning more than 7 days after, in order to explain then, her said grievances to him and to have her resignation withdrawn as per the averments of her plaint and which is supported by the testimony of Mr. Kolanthan.

5. Thereafter, it remained unrebutted that Mr. Kolanthan who informed her on 13.1.2020 that Defendant had approved her date of leaving her employment on 19.1.2020, asked her to send another letter as she did to the Director which is quite obvious and which she claimed she did on 15.1.2020. Now, at no time in the said letter dated 15.1.2020 as per Doc. P3, she mentioned therein that she was awaiting a retraction acceptance letter or a verbal acceptance from Defendant and that should she not hear from the Defendant prior to 19.1.2020 being the operative date of her resignation be it verbal or in writing, she would have considered that her retraction of her resignation was accepted by Defendant. Furthermore, at no time, she mentioned in that letter dated 15.1.2020 as per Doc. P3, that she was requested on 13.1.2020 over the phone by Mr. Kolanthan namely the HR Manager to send such letter after having been thanked by him as regards her retraction of her resignation.
6. Be it as it may, finding herself with no reply prior to 19.1.2020, she ought to have phoned the HR Manager to ascertain the status of her retraction and whether her request has been accepted by Defendant. She instead disrespectfully chose to affix her fingerprints for the purpose of attendance for payment of salaries on the ground that her post was not filled yet as from 21.1.2020 till 13.2.2020 in total disregard to the procedure in place whereby the deregistration of an employee was done after one month, so that she could benefit from the fact that her name was still on the computer system of the Defendant compound. Besides, no witness deposed to the effect that she was found working on a full-time basis for Defendant as from 21.1.2020 to 13.2.2020. Moreover, no witness deposed to the effect that he had seen the retraction letter of Plaintiff dated 15.1.2020. It also remained unrebutted that, it was only for payment of salary at pay periods that the fingerprints would come to the knowledge of Mr. Kolanthan or Plaintiff's Supervisor.
7. She departed from the averments of her plaint as regards the conversation she had with Mr. Kolanthan over the phone on both the 13.1.2020 and on 13.2.2020 which sheds light on her unreliable post resignation events which in fact lend support to the plea of Defendant that her resignation was

accepted and that at no point her resignation was discarded or superseded so that the Defendant was not liable in the sum claimed or in any other sum whatsoever.

8. Although she was paid her salary on 13.2.2020, it was not for the whole month of January 2020 as opposed to the averments of her plaint, but for the notice period till 19.1.2020 being the day on which her resignation was operative in line with the plea of the Defendant. The fact that she was paid her salary on 13.2.2020 for the pay period of 21.12.2019 to 20.1.2020 meaning before the next pay period namely of 21.1.2020 to 20.2.2020, obviously it cannot be inferred that her request for a disregard of her resignation was accepted by Defendant, inasmuch as it was not a novel occurrence for her to be paid her salary late. Obviously, when she was found on the premises on 13.2.2020 working, I find nothing sinister in Mr. Kolanthan asking her to leave, as she was there on the premises illegally bearing in mind that no witness has deposed that he saw her working full time at Defendant's factory as from 21.1.2020 till 13.2.2020.
9. She stated that she was called at the office of Mr. Kolanthan on 13.2.2020 and there she was asked to leave as she was working illegally or else he would have called the police. She departed from the averments of her plaint where she averred that he asked her to leave the premises over the phone. Indeed, such departure lends support to the contention of Mr. Kolanthan that he never thanked her when she told him that she did not want to resign anymore, bearing in mind that it remained unrebutted that Defendant had about 500 workers at that time.
10. She again departed from the averments of her plaint by saying in Court that Mr. Kolanthan asked her to send the letter with a view to disregarding her resignation to him which as per Doc. P3 was in fact addressed to Mr. Ramasawmy, the Director.
11. Now during the course of the enquiry by the Labour Officer namely Mr. K. Sewraz, he recorded the version of Mr. Kolanthan as per the minutes recorded by him. However, I am not prepared to act on what Mr. Kolanthan told him because of lack of reliability as Mr. Kolanthan did not sign the minutes as conceded by that officer.

12. True it is that Plaintiff was asked to leave the premises of Defendant by Mr. Kolanthan on the 13.2.2020 as he saw her there. That does not mean that he knew she had been working for Defendant until 13.2.2020, as fingerprints were meant for attendance purposes only, for the purpose of payment of salary. It was not proof that she had worked for Defendant which fact remained unrebutted given the fact that she was not authorised to do so after her resignation.
13. Following her resignation letter dated 4.1.2020 as per Doc. P2, Plaintiff having contradicted herself as regards the tenor of the phone conversation she had with Mr. Kolanthan on 13.1.2020 and the way forward to have her resignation waived by traveling outside her averments in her plaint, such a state of affairs lends support to the testimony of Defendant's witness namely Mr. Kolanthan in that the resignation letter in conformity with the notice period was accepted by Defendant and that it did not see her retraction letter.
14. Indeed, there is nothing to show that she was pressurized to resign under a spell or influence of emotion and there is no tension meted out to her which was reflected in her handwriting which showed a very relaxed and easily legible resignation letter as per Doc. P2 (see- **Issory**(supra)).

Thus, I am not convinced on a balance of probabilities that it was the Defendant which terminated Plaintiff's contract of employment as it is abundantly clear that Plaintiff terminated her employment with Defendant by resigning on 14.1.2020 "*en toute connaissance de cause*" (see – **Tyack**(supra)).

Further, I hold that the claim of Plaintiff has not been proved on a balance of probabilities and that it is bent on bad faith when pitched with the fact that it was the Defendant that could have legitimately claimed indemnity from Plaintiff for the rest of the notice period not covered by Plaintiff pursuant to Section 63(4) of The Workers' Rights Act 2019 which is now 30 days as the length of notice given by her was half the statutory period only.

Section 63(1) and Section 63(4) of the **Workers' Rights Act 2019** provide:

"Section 63. Notice of termination of agreement

(1) Subject to section 61(1), a party to an agreement may, except where he is prohibited by an enactment from doing so, terminate the agreement on the expiry of a notice, given by him to the other party, of his intention to terminate the agreement.

(4) Notwithstanding any provision to the contrary in any agreement, the length of the notice to be given under subsection (1) shall not be less than 30 days."

For all the reasons given above, the plaint is dismissed. No costs.

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

31.7.2024