

Ayadee M.C. v Chocalingum V.

2023 IND 61

Cause Number 322/22

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Marie Corinne Ayadee

Plaintiff

v.

Mr. Vassoodeven Chocalingum

Defendant

Judgment

This is a plaint where Plaintiff has averred that Defendant has verbally terminated her contract of employment on 1.2.20 without notice although she was in his continuous employment as part-time Cleaner (being employed on a 6-day week basis and being remunerated at monthly intervals at the rate of Rs 3,000 per month) since 7.11.2019. She has further averred that she had worked on all the days including public holidays during period 16.12.19 to 31.1.20 but has not been paid any remuneration and that she has not been refunded travelling expenses incurred in attending work during period 16.12.19 to 31.1.20.

Therefore, Plaintiff is claiming from Defendant the sum of Rs.13,336.92 representing allegedly-

- (i) Wages as indemnity in lieu of notice: Rs 3.000.

- (ii) Outstanding wages for work performed on 37 normal days during period 16.12.2019 to 31.1.2020 (Rs 3,000/26 x 37 days): Rs 4,269.23.
- (iii) Outstanding wages for work performed on 10 public holidays during period 16.12.2019 to 31.1.2020(Rs 3,000/26 x 10 days x 2): Rs 2,307.69.
- (iv) Outstanding travelling expenses for period 16.12.2019 to 31.1.2020(Rs 80 x 47 days): Rs 3,760.

Defendant did not file any plea and has left default on the trial day although there was good service upon him (in the sense of him having been summoned to appear on that day). Section 7(1) of the Industrial Court Act 1973 stipulates that all proceedings before the Industrial Court shall be conducted in the same manner as it is the case for a civil matter before a District Magistrate. Thus, Plaintiff was allowed to proceed in the absence of Defendant in conformity with Section 16 (1) of the District and Intermediate Courts (Civil Jurisdiction) Act which governs default judgments as reproduced below:

“Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court, upon proof of the service of the summons, may give judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only, and in either case, the judgment shall, subject to subsection (2), be as if both parties had attended.”(emphasis added)

Plaintiff testified in Court in line with her above averments. She highlighted that her contract of employment was an oral one and that she was not issued with a pay slip by Defendant. Moreover, she has not claimed expenses in attending Court.

I have duly considered all the evidence put forward before me bearing in mind that a default judgment is not merely an administrative act or a matter of course, but that it has to be soundly grounded both in law and on the facts (see - **Hurnam D. v. Bholah K. B. & Anor.** [\[2009 SCJ 265\]](#)).

It is significant to note that pursuant to Section 2 of the **Workers' Rights Act 2019**, an "agreement" means "*a contract of employment between an employer and a worker, whether oral, written, implied or express*".

Thus, testimonial evidence is allowed to prove an oral contract of employment be it in whatever sum without the need to have a *commencement de preuve par écrit* opening the door to such testimonial evidence because Section 2 of the Act has impliedly repealed Article 1341 of the Civil Code (vide - **Chamroo v Northern Transport** [\[1969 MR 96\]](#)) inasmuch as a special law will prevail over the general one (vide - **Pabaroo D.T v. Varmah K.D. & Ors.** [\[2013 SCJ 197\]](#)).

Now, the straightforward testimony of Plaintiff has convinced me that she is a truthful witness when gauged with the fact that Defendant chose not to file any plea nor to turn up in Court.

I have no qualm in finding that the testimony of Plaintiff is plausible and reliable. Thus, I believe the Plaintiff when she said that Defendant has terminated her contract of employment verbally without notice on 1.2.20 and has failed to pay her the remuneration due as at 1.2.20 under the oral agreement in relation to which she was employed as a part time cleaner as from 7.11.2019 and for which she was not issued with any pay slip. It is also relevant to note that pursuant to Section 61(2) (b) of the Act, Plaintiff can also invoke that her agreement has been terminated by Defendant when he fails to pay the remuneration due to her under that agreement.

In the light of the reasons given above, I find that the case for the Plaintiff has been proved on a balance of probabilities.

Therefore, I order Defendant to pay to Plaintiff the sum of Rs.13,336.92 representing Wages as indemnity in lieu of notice: Rs 3,000, Outstanding wages for work performed on 37 normal days during period 16.12.2019 to 31.1.2020 (Rs 3,000/26 x 37 days): Rs 4,269.23, Outstanding wages for work performed on 10 public holidays during period 16.12.2019 to 31.1.2020 (Rs 3,000/26 x 10 days x 2): Rs 2,307.69. and Outstanding travelling expenses for period 16.12.2019 to 31.1.2020 (Rs 80 x 47 days): Rs 3,760.

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

27.7.23.