

Mundloth P. v Defence Hitech Security Services Ltd

2024 IND 19

Cause Number 114/23

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Mr. Parboodeo Mundloth

Plaintiff

v.

Defence Hitech Security Services Ltd

Defendant

Judgment

The averments of Plaintiff in this plaint are as follows -

Plaintiff was in the continuous employment of Defendant as Security Guard since 5.2.2019. His terms and conditions of employment were governed by the Private Security Services Employees (Remuneration) Regulations 2019, GN No. 223 of 2019. He was employed on a 6-day week basis and worked regularly on Sundays. He was remunerated at monthly intervals at the basic rate of Rs 8,500 per month instead of Rs 8,900 as from 5.2.2019 and Rs 9,700 as from 1.1.2020 contrary to the National Minimum Wage Regulations.

He last worked on 5.4.2020 and thereafter did not attend work due to the confinement period following the outbreak of the Covid-19 pandemic. He was not requested to attend work

during confinement and no Work Access Permit was issued to him by the Defendant. As at 5.6.2020, Defendant has failed to remunerate him for period 1.2.2020 to 5.6.2020.

Thus, by failing to remunerate him within the prescribed delay, Defendant has committed a breach of contract which he construes as a termination of employment on 5.6.2020 without notice and without any justification.

He has worked for 108 hours at 1.5 rate, 48 hours at double rate and 24 hours at triple rate during the period 17.2.2020 to 5.4.2020 but Defendant failed to remunerate him. Defendant has failed to provide him with work for period 6.4.2020 to 5.6.2020 and has failed to remunerate him for that said period. The distance between his residence and his place of work exceeded 3 kilometres and Defendant has failed to refund him travelling expenses incurred for 39 days at the rate of Rs 110 per day. Defendant has failed to pay him an end of year bonus for 2019 and 2020 respectively. He had 18.33 days outstanding annual leave for year 2020 which Defendant has failed to refund him.

Therefore, Plaintiff is claiming from Defendant the sum of Rs.132,741.64 allegedly made up as follows:

- (a) One month's wages as indemnity in lieu of notice: Rs 9,700.00.
- (b) Severance allowance for 16 months' continuous employment (Rs 9,700.00 x 3 months x 16/12 years): Rs 38,800.00.
- (c) Outstanding wages for period 1.2.2020 to 5.6.2020 ((Rs 9,700 x 4 months) + (Rs 9,700/26 days x 5 days)): Rs 40,665.38.
- (d) Arrears on wages for period 1.2.2019 to 1.1.2020 (Rs 8,900 - 8,500) x 11 months +(Rs 9,700 - 8,500): Rs 5,600.00.
- (e) Overtime for period 16.2.2020 to 5.4.2020 (Rs 9,700/26x8 x 1.5 x 108 hours + Rs 9,700/26x8 x 2 x 48 hours + Rs 9,700/26x8 x 3 x 24 hours): Rs 15,389.42.
- (f) Refund of travelling expenses incurred for 39 days during period 16.2.2020 to 5.4.2020 (Rs 110 x 39 days): Rs 4,290.00.
- (g) Refund of outstanding annual leave for year 2020 (Rs 9,700/26 x 18.33 days): Rs 6,838.50.

(h) End of year bonus for 2019 and 2020 ((Rs 8,900/12 x 10) + (Rs 9,700/12 x 5)): Rs 11,458.34.

Defendant has failed to file its plea and left default on the trial day although it was duly summoned to appear.

The provision of the law governing default judgments is to be found under Section 16 (1) of the District and Intermediate Courts (Civil Jurisdiction) Act in line with Section 7(1) of the Industrial Court Act 1973 and which provides:

"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 his above averments.

I have given due consideration to all the evidence put forward before me. I am alive to the fact that a default judgment is not merely a matter of course, but that it has to be soundly grounded both in law and on the facts (*vide - Hurnam D. v. Bholah K. B. & Anor. [2009 SCJ 265]*). It is relevant 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". Therefore, pursuant to Section 61(2) (b) of the Act 2019, Plaintiff was fully entitled to claim that his contract of employment has been terminated by Defendant without notice or justification because it has failed to pay the remuneration due to him under the said agreement on 5.6.2020. Furthermore, Section 63(5) of the Act provides:

“63. Notice of termination of 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.*

(5) *Any party may, in lieu of giving notice of termination of agreement, pay to the other party the amount of remuneration the worker would have earned had he remained in employment during the period of notice.” (emphasis added)*

The wholly unrebutted, uncontested and undisputed testimony of Plaintiff has complied with the requisites of **Hurnam** (supra) and which is plausible. I find no valid reason to disbelieve the Plaintiff and I find that it is a fit case to give judgment in terms of the pressed averments of the plaintiff.

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

I, accordingly, order Defendant to pay to Plaintiff the sum of Rs.132,741.64 representing one month's wages as indemnity in lieu of notice: Rs 9,700.00, severance allowance for 16 months' continuous employment ($\text{Rs } 9,700.00 \times 3 \text{ months} \times 16/12 \text{ years}$): Rs 38,800.00 with interest at the rate of 12% per annum on the amount of severance allowance payable from the date of termination of employment to the date of payment, [outstanding wages for period 1.2.2020 to 5.6.2020 ($\text{Rs } 9,700 \times 4 \text{ months}$) + ($\text{Rs } 9,700/26 \text{ days} \times 5 \text{ days}$)]: Rs 40,665.38, arrears on wages for period 1.2.2019 to 1.1.2020 ($\text{Rs } 8,900 - 8,500$) $\times 11 \text{ months}$ +($\text{Rs } 9,700 - 8,500$): Rs 5,600.00, overtime for period 16.2.2020 to 5.4.2020 ($\text{Rs } 9,700/26 \times 8 \times 1.5 \times 108 \text{ hours}$ + $\text{Rs } 9,700/26 \times 8 \times 2 \times 48 \text{ hours}$ + $\text{Rs } 9,700/26 \times 8 \times 3 \times 24 \text{ hours}$): Rs 15,389.42, refund of travelling expenses incurred for 39 days during period 16.2.2020 to 5.4.2020 ($\text{Rs } 110 \times 39 \text{ days}$): Rs 4,290.00, refund of outstanding annual leave for year 2020 ($\text{Rs } 9,700/26 \times 18.33 \text{ days}$): Rs 6,838.50 and end of year bonus for 2019 and 2020 ($(\text{Rs } 8,900/12 \times 10)$ + ($\text{Rs } 9,700/12 \times 5$)): Rs 11,458.34] with interest at the rate of 12% per annum on the amount of remuneration due from the date of non-payment to the date of payment.

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

10.6.24.

