

KOOSWANTEE BALGOBIN VS GEXIM REAL ESTATE LTD

2023 IND 37

THE INDUSTRIAL COURT OF MAURITIUS

Cause Number: 216/2021

In the matter of:-

KOOSWANTEE DEVI BALGOBIN

Plaintiff

VS

GEXIM REAL ESTATE LTD

Defendant

Judgment

Introduction

The Plaintiff was in the continuous employment of the Defendant since the 7th March 1997 with her last posting being that of a typist. By virtue of a claim backed by the Plaintiff's testimony in Court, she is claiming from the Defendant the sum of Rs 1,940,649.55/- representing one month's indemnity in lieu of notice, outstanding wages, end of year bonus, outstanding annual leave and severance allowance.

The facts

The Plaintiff testified that he was employed on a 5 day-week basis for and in consideration of a monthly basic wage of Rs 26,060. Her last day of work was on the 18th March 2020 and thereafter, she did not attend work due to the confinement period following the Covid 19 pandemic. By way of a letter dated the 27th May 2020 duly signed by the managing Director under the letterhead of the Defendant, she was requested not to resume work on the 2nd June 2020 until further notice as there was no precautionary measure taken to satisfy the health protocol to prevent the spread of the Covid-19 at the workplace.

It is the case for the Plaintiff that she sustained a short payment of wages for the months of December 2019, the end of year bonus and a refund of outstanding annual leave for

the year 2019. She again faced another short payment of wages for the months of March, April and May 2020. The Defendant failed to pay her for the month of June 2020 as well as the end of year bonus for the year 2020 together with 12 days outstanding annual leave for 2020. The Plaintiff therefore averred that the Defendant committed a breach of contract which she construes as termination of her employment.

In view of the above, the Plaintiff claimed from the Defendant the sum of Rs 1,940,649.55/- made up as follows:

(i)	One month's wages as indemnity in lieu of notice	Rs 26,060.00
(ii)	Severance allowance for 279 months' continuous service	Rs 1,817,685.00
(iii)	Outstanding wages for December 2019	Rs 29,580.00
(iv)	Outstanding wages for the period of March to June 2020	Rs 40,080.00
(v)	End of year bonus 2020	Rs 13,030.00
(vi)	Refund of outstanding annual leave 2020	Rs 14,214.55

		Rs 1,940,649.55

In the present case, the Defendant has left default despite a substituted service effected on the Defendant, by the posting of the true and certified copy of the plaint with summons at its registered office on the 25th February 2022 and 5th May 2022.

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 7th March 1997 until the 01st July 2020. The Plaintiff was legally entitled to a monthly wage. The Plaintiff has undisputedly established that the Defendant has failed to pay to her the outstanding notice, wages, bonus and allowances for the

period of December 2019 to July 2020. The version of the Plaintiff has remained credible, unchallenged and unshattered.

In the circumstances, I find that the Defendant has committed a breach of the contract of employment by terminating the employment through failure to pay the necessary wages to the Plaintiff in line with section 61(2)(b) of **THE WORKERS' RIGHTS ACT 2019**. He is therefore indebted to the Plaintiff in the sum of Rs 1,940,649.55/- representing the outstanding notice, wages, bonus and allowances.

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 1,940,649.55/- 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: 30th May 2023