

**EMPLOYMENT RELATIONS TRIBUNAL**

**AWARD**

**ERT/ RN 41/21**

**Before**

<b>Indiren Sivaramen</b>	<b>Acting President</b>
<b>Raffick Hossenbaccus</b>	<b>Member</b>
<b>Abdool Feroze Acharauz</b>	<b>Member</b>
<b>Arassen Kallee</b>	<b>Member</b>

**In the matter of:-**

**Mr Abdool Reshad Lalloo (Disputant)**

**And**

**Mauritius Ports Authority (Respondent)**

***in presence of : (1) Mr Louis Edwin Bignoux (Co-Respondents)***

***(2) Mr Kinsley Wilson Thomas***

The above case has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (hereinafter referred to as "the Act"). The Co-Respondents who have been specifically mentioned in the terms of reference of the dispute were joined as parties in the interest of justice and there was no objection on the part of Disputant and Respondent to them being joined as parties. The Disputant and Respondent were assisted by Counsel whereas the Co-Respondents, who were not assisted by counsel, informed the Tribunal that they would abide with the decision of the Tribunal. The terms of reference of the point in dispute read as follows:

*"Disparity between my pension and that of my junior colleagues due to the payment of two increments received by them in the grade of Controller and three increments received on promotion in the grade of Superintendent. My claim is that my salary/ pension be adjusted from Rs 74,300/ Rs 37,150 to Rs 79,650/ Rs 39,825 to be at par with my colleagues Bignoux and Thomas."*

The Disputant deposed before the Tribunal and he solemnly affirmed as to the truthfulness of the contents of his Statement of Case. He added that the basic salaries of the Co-Respondents were Rs 70,900 but that they were also receiving a Long Service Increment (LSI).

In cross-examination, Disputant stated that the Co-Respondents were earning more than him. He stated that they benefitted from a LSI. He averred that the Human Resources Development (HRD) Report of 2016 did not mention the LSI but agreed that the Consultant did recommend relevant conditions to be met for the payment of a LSI. He conceded that he was not eligible for the payment of the LSI since he did not satisfy the conditions required for the payment of the LSI. He accepted that when the HRD Report was implemented, he was occupying the post of Superintendent. He also agreed that he was already drawing the top salary of the post of Superintendent when he retired from the service. He conceded that the basic salaries of the Co-Respondents were less than his basic salary. Disputant stated that, according to him, the Co-Respondents were not supposed to be promoted when they obtained the two increments for LSI. He did not agree when it was put to him that his colleagues who had been granted the LSI had made contributions based on the LSI for pension purposes.

The Human Resource Manager deposed on behalf of Respondent and she confirmed the correctness and accuracy of the contents of the Statement of Defence filed on behalf of the Respondent. She stated that the LSI was introduced following the recommendations made by the HRD Consultant in relation to the HRD Report 2016 and was effective as from 1 January 2016. The recommendations in relation to the LSI was in a covering letter to the main report. She produced an Extract of the Terms and Conditions of Service under the HRD Report 2016, more particularly its section 9.2 (Doc A), and an extract of the covering letter to the Report where certain parts have been removed (not disclosed) with emphasis being on paragraph 2 in the said letter dealing with LSI (Doc B). She also produced a copy of an option form signed by Disputant whereby he accepted the "*emoluments, the Job Guidelines, the terms and conditions of service and organizational structures in the HRD Report of 2016 on the Review of Pay and Grading Structures and Conditions of Service of the Mauritius Ports Authority*" (Doc C).

The Human Resource Manager stated that an implementation committee was set up following the recommendations made in the HRD Report 2016 and on the recommendations of that committee, the Board approved that the LSI be made pensionable and personal to the employees who were eligible to the LSI. She averred those beneficiaries of the LSI have to contribute towards their pension on the quantum of the LSI. She stated that the Co-Respondents satisfied the eligibility criteria for LSI whereas the Disputant did not satisfy the criteria for LSI. She stated that Disputant was not eligible to any adjustment on his salary or pension.

In cross-examination, the Human Resource Manager was questioned on decisions taken in relation to the Co-Respondents. She stated that the basic salary, the LSI and other benefits and allowances would form part of the earnings of Co-Respondent No 1. She did not agree that Disputant should have had his salary adjusted. In re-examination, the Human Resource Manager stated that the LSI is separate from the basic salary. She added that the LSI has been granted to other employees who satisfy the conditions for the granting of such increments.

The Tribunal has examined all the evidence on record including the submissions of both Counsel. Counsel for Respondent has submitted that the point in dispute does not tantamount to a “labour dispute” as defined in section 2 of the Act. The Tribunal proposes to deal with this issue first since it goes to the very jurisdiction of the Tribunal to enquire into the dispute and determine same. “Labour dispute” is defined in section 2 of the Act as follows:

*“labour dispute” –*

- (a) means a dispute between a worker, a recognised trade union of workers or a joint negotiating panel, and an employer which relates wholly or mainly to –*
  - (i) the wages, terms and conditions of employment of, promotion of, or allocation of work to, a worker or group of workers;*
  - (ii) the reinstatement of a worker, other than a worker who is appointed by, or under delegated powers by, the Judicial and Legal Service Commission, the Public Service Commission or the Local Government Service Commission –*
    - (A) where the worker is suspended from employment, except where the alleged misconduct of the worker is subject to criminal proceedings; or*
    - (B) where the employment of the worker is terminated on the grounds specified in section 64(1A);*
- (b) does not, notwithstanding any other enactment, include a dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendations made in a report of the Pay Research Bureau or a salary commission, by whatever name called, in relation to remuneration or allowances of any kind;*
- (c) does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute;*

Counsel for Respondent submitted that since Disputant had opted to be governed by the recommendations made in a report of a salary commission (the HRD Report 2016), the present dispute which is in relation to remuneration or allowances of any kind is not

a labour dispute by virtue of part (b) of the definition of “labour dispute” (see above). In reply on this issue, Counsel for Disputant only submitted that the dispute is a labour dispute as per paragraph (a)(i) of the definition of labour dispute under section 2 of the Act (see above).

The Tribunal has jurisdiction to hear a dispute and determine same provided it is a labour dispute as defined under the Act. The Tribunal does not have inherent powers and only has powers granted to it under the Act. The Tribunal thus proposes to deal with the point taken by Counsel for Respondent to the effect that the point in dispute “does not tantamount to a labour dispute” as defined under section 2 of the Act. It is apposite to note the way the terms of reference have been drafted in the present matter. Indeed, whilst it is always possible for a disputant to have more than one point in dispute in one case, whereby the Tribunal would have the opportunity to address the respective points in dispute individually, in the present matter the terms of reference of the dispute seem to refer to two issues under one and the same point in dispute. There is no suggestion either that the issues in dispute are alternative disputes or that the prayers sought in the matter are in the alternative. Instead, the terms of reference as drafted would be tantamount to a duplicity of claims whereby the Disputant is claiming in one and the same dispute that his “salary” should be adjusted from Rs 74,300 to Rs 79,650 and his pension should be adjusted from Rs 37,150 to Rs 39,825. The claims cannot be in the alternative since if the salary of Disputant is not adjusted, the quantum of his pension certainly cannot be adjusted. What the Disputant is thus asking this Tribunal first is that his “salary” should have been Rs 79,650.

The Disputant has retired from the service on or with effect from 1 February 2020 and the present dispute was reported to the President of the Commission for Conciliation and Mediation only on 1 March 2021 (as per the letter of referral of the dispute from the Commission for Conciliation and Mediation), that is, more than one year after the Disputant had retired from the service. Now, the Disputant has averred the following in paragraph 3 of his statement of case:

*3. He retired from the service on 1<sup>st</sup> February 2020 and his pension was calculated on the last point of the salary scale of the grade of Superintendent [underlining is ours] which is Rs 74,300 plus extra remuneration (sic). His reduced pension at the time of retirement was Rs 37,650.*

The Disputant is nowhere claiming that he ought to have benefitted from the LSI following the HRD Report 2016 since he was qualified for such increment or that he satisfied the conditions for the granting of such LSI. It is unchallenged that Disputant opted to accept the revised emoluments, Job Guidelines and Terms and Conditions of Service as per the HRD Report 2016 (vide Doc C) which was the relevant salary commission report at the time that Disputant retired from the service. Now, having

opted to be governed by the recommendations on emoluments, the Job Guidelines, the terms and conditions of service and organizational structures in the HRD Report 2016, the Disputant cannot declare a dispute in relation to his remuneration or allowances.

The Tribunal will refer to the Supreme Court case of **Federation of Civil Service and Other Unions and others v. The State of Mauritius and Anor, 2009 SCJ 214**, where the Supreme Court stated the following:

*“It was submitted on behalf of the plaintiffs that the new provisions have denied them the opportunity, following the declaration of an industrial dispute, of having their grievances heard and adjudicated upon by bodies set up by statute and that accordingly the new provisions have breached the principle of separation of powers as well as their right to the protection of the law. We do not agree. On the coming into operation of a new PRB report, whether before or after the new provisions became effective, every public officer or employee was and continues to be free to choose whether to opt to be governed by the recommendations of the new report. Should he opt not to be governed by the recommendations in the new report, he is at liberty to declare an industrial dispute, now referred to as a labour dispute, pursuant to the provisions of the law – formerly the Industrial Relations Act and now the Employment and Labour Relations Act 2008. Should he of his own free will, however, opt to be governed by the recommendations in the new report, he is presumed like any citizen to know the law, including the new provisions, and cannot declare a dispute in relation to his remuneration or allowances. (...)” [underlining is ours]*

The (relevant) proviso to the definition of “labour dispute” at the relevant time for the purposes of the Supreme Court judgment was similar to the one at paragraph (b) of the definition of “labour dispute” (see above) except that in 2009, the proviso existed only in relation to recommendations made in a report of the Pay Research Bureau. This was later extended in 2013 to include recommendations made in a report of a salary commission, by whatever name called.

In the present case, though the dispute and claim have been termed as ‘*that my salary/pension be adjusted from Rs 74,300/ Rs 37,150 to Rs 79,650/Rs 39,825 ...*’, the crux of the matter is whether the salary of Disputant ought to be adjusted. The dispute thus relates clearly to remuneration of the Disputant. Also, it is unchallenged that at the material time, Disputant was drawing the top salary (or “last point of the salary scale” as Disputant has averred in his Statement of Case) of Rs 74,300- of the post of Superintendent. The claim would be that the salary, which we understand in view of the figure of Rs 74,300- in the terms of reference, to be the basic salary of Disputant in the grade of Superintendent to be adjusted to Rs 79,650. The Tribunal finds that in the light

of the option exercised by Disputant to be governed by the recommendations made in the HRD Report 2016, the latter cannot declare a dispute in relation to his salary, the more so when he was already drawing the top salary of his grade. For all the reasons given above, the Tribunal finds that the present dispute, which has been referred as concerning “salary/pension”, is clearly in relation to remuneration and in the light of the option exercised by the Disputant (Doc C), it is not included in the definition of a labour dispute which may be enquired into by the Tribunal. The present dispute is not a labour dispute and falls outside the jurisdiction of the Tribunal. The dispute is thus purely and simply set aside.

**SD Indiren Sivaramen**

**Acting President**

**SD Raffick Hossenbaccus**

**Member**

**SD Abdool Feroze Acharauz**

**Member**

**SD Arassen Kallee**

**Member**

**24 January 2022**