

**EMPLOYMENT RELATIONS TRIBUNAL**

**AWARD**

**ERT/ RN 50/21**

**Before**

<b>Indiren Sivaramen</b>	<b>Acting President</b>
<b>Raffick Hossenbaccus</b>	<b>Member</b>
<b>Karen K. Veerapen</b>	<b>Member</b>
<b>Ghianeswar Gokhool</b>	<b>Member</b>

**In the matter of:-**

**Mr Diovanni Cotte (Disputant)**

**And**

**Collège de la Confiance (Respondent)**

***In presence of: (1) Private Secondary Education Authority (Co-Respondent No 1)***

***(2) Mr Jocelyn Poudret (Co-Respondent No 2)***

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”). Co-Respondent No 2 was joined as a party to the proceedings by the Tribunal (he was already referred to by the Disputant and Co-Respondent No 1 in their initial Statement of Case and Statement of Defence respectively) since the latter may be affected by an award of the Tribunal. All the parties were assisted by Counsel except for Respondent whose stand is to abide by the decision of the Tribunal. It is apposite to note that the Tribunal proceeded with the dispute on the basis that the employer of Disputant is the Manager of Collège de la Confiance and since the terms of reference of the dispute does refer to the Manager of Collège de la Confiance. The terms of reference of the point in dispute indeed read as follows:

*“Whether the Manager of Collège de la Confiance should assign duties of Head of Department of Agriculture for the year 2021-2022 on a seniority basis in the respective Private Secondary School according to PRB 2016, Recommendation 5, OR on seniority reckoned as from the date of joining the mainstream according to a PSEA letter Ref ST/33/87 Vol. 15.”*

The Disputant deposed before the Tribunal and he swore as to the correctness of the averments contained in his (amended) Statement of Case. In cross-examination, he did not agree when it was put to him that years of service in this case would be either in relation to the pre-vocational stream or the mainstream. He did not agree that because he joined the mainstream in January 2020, he was thus not the most senior in the department of Agriculture. He stated that he was at the Respondent since 2002 and was thus the most senior in that department. The Disputant averred that he had a Teaching Licence to teach even before his eligibility certificate of 11 May 2021. He stated that after having obtained his degree, he was given a letter to annex to his Teaching Licence. He agreed that in 2002 he joined Respondent and taught in the pre-vocational stream. He could not say if Agriculture taught in the mainstream was of the same level as in the pre-vocational stream. He maintained that he did Animal Farming, Animal Science and so on in a Foundation Course when doing his BSc in Horticulture. He did not agree when it was put to him that he was not eligible to be the Head of Department of Agriculture at the Respondent since his BSc in Horticulture did not include Animal Farming and Animal Science.

In re-examination, he stated that the relevant ‘grade’ is Educator and that it is not grade 1, grade 2 or grade 3. He produced a copy of a document showing the module outline of the Foundation Year for his BSc (Hons) Horticulture.

The representative of Respondent did not wish to adduce evidence before the Tribunal. The Principal Supervisor of Co-Respondent No 1 then deposed before the Tribunal and he explained the difference between mainstream and pre-vocational stream. He stated that they were very different and that at the level of Co-Respondent No 1, authority has never been given to a person to work in both streams at the same time. He stated that the ‘mainstream’ Educator and Pre-vocational Educator teach in a different context with respect to all aspects of education. He referred to different curricula, aims and objectives, textbooks used, resources used, pedagogies for learning and frameworks for evaluation and assessment in the two streams. He also suggested that the Pay Research Bureau (PRB), in the PRB Reports of 2003 and 2016, distinguished between Education Officer/ Educator in the mainstream and Education Officer (Pre-Vocational) / Educator (Secondary) (Prevocational).

The Principal Supervisor stated that Disputant was recruited as a teacher of Pre-Vocational and that for seventeen years he continued to teach the package of subjects

specified for the pre-vocational stream. He was at no point reckoned as being a teacher of Agriculture in the mainstream department of Agriculture, which, according to him, was totally different. He was however eligible to be considered among pre-vocational teachers for a position of special Head of Department allocated to the pre-vocational sector. In the year 2018, the Government came with a program of nine-year continuous basic education, and the 'pre-vocational' started to phase out. He stated that Government came with a plan to redeploy as many teachers of the pre-vocational stream as possible, in the mainstream. He stated that the teaching licence of Disputant was issued as an exceptional measure to allow the latter to teach certain modules in the mainstream. To avoid redundancy and redeployment in another school, the latter was allowed to remain at the Respondent whilst being redeployed in the mainstream.

The Principal Supervisor produced a copy of a circular emanating from Co-Respondent No 1 which contained guidelines for designation of Heads of Departments (Doc B). He stated that the criterion of seniority is governed by a number of factors for a person to be appointed as Head of Department. The first one is service in a particular school since experience in previous schools cannot be carried forward and is not transferable to the school where the officer is then posted. Secondly, time spent in the relevant grade is considered. Thirdly, if a person was not fully qualified at a certain point, then only the period as from when he obtained the relevant qualifications would be considered. He added that the date of appointment is not necessarily an overriding criterion when determining seniority. The Principal Supervisor also suggested that Head of Department means Head of a 'subject' Department in the mainstream, so that seniority would be determined in relation to the years spent in teaching that subject in the mainstream. He stated that Disputant was not absorbed in the mainstream on the basis of a vacancy occurring in the mainstream but that provision was made for the latter to integrate the mainstream. He added that there were already other teachers in the department of Agriculture at Respondent so that Disputant did not even have a full time-table for Agriculture. Among the other teachers, there were people who have been Head of Department for years and which were more experienced with the functions of the department to lead the department.

In cross-examination, the Principal Supervisor stated that "QB" is a qualification bar between those Educators having a teacher's diploma and those Educators having a degree. Educators holding a degree cross the QB. He agreed that the PRB Report 2016 is binding on Co-Respondent No 1. He however did not agree that the criteria for seniority in the mainstream have only been listed in the PRB Report. He suggested that as per Annex 2 to Doc B, a number of criteria which are not found in the PRB Report have been elaborated by Co-Respondent No 1 so that Co-Respondent No 1 can implement the decision in different '*cas de figures*'. The Principal Supervisor conceded that the phasing out of the pre-vocational stream brought situations which were not covered by the PRB.

He added that Co-Respondent No 1 is both the regulator and the paying agent and that if the Manager appoints Disputant as Head of Department, Co-Respondent No 1 may decide not to release grants towards the payment of his allocation. He did not agree when it was put to him that the letter at Annex 9 to the Statement of Case of Disputant was entirely incorrect. He added that the letter was to be read as an advice to the Manager of Respondent.

A senior lecturer working at the Faculty of Agriculture of the University of Mauritius then deposed as a witness for Co-Respondent No 2. He stated that the BSc Agriculture and BSc Horticulture from the University of Mauritius are not equivalent. He added that in Horticulture you deal only with plants whilst in Agriculture, you deal with animal science and production and crop science and production. He stated that there is a common first year for the two modules so that someone with a BSc Horticulture from the University of Mauritius would cover part of animal science and production in the first year only.

Co-Respondent No 2 then deposed before the Tribunal and he stated that he joined the Respondent in January 2010. He graduated from the University of Mauritius in January 2002 with a BSc in Agriculture. He produced copies of his eligibility certificate to teach (Doc C) and degree certificate (Doc C1). As from 2013, he was appointed as Head of Department. He stated that a colleague resigned and he was proposed the post of Head of Department as he was already teaching in the mainstream and his two other colleagues (in the mainstream) only joined Respondent after him. He explained the duties of a Head of Department and stated that as Head of Department he relies mainly on the Cambridge O-level syllabus. He produced a copy of the Cambridge O level syllabus for Agriculture (Doc D) and a copy of his own student's transcript at the University of Mauritius (Doc E).

The Tribunal has examined all the evidence on record including the submissions of all counsel. Counsel for Disputant referred to the terms of reference of the dispute and suggested that the Tribunal should not go beyond what is required as per the terms of reference and that the Tribunal only had to decide whether assignment of duties of Head of Department of Agriculture by the Manager of Respondent should be as per Recommendation 5 of the PRB Report 2016 or seniority reckoned as from the date of joining the mainstream according to the letter of Co-Respondent No 1 Ref ST/33/87 Vol. 15. The Tribunal allowed evidence which could shed light on the dispute. Indeed, the said letter of Co-Respondent No 1 bearing reference ST/33/87 Vol. 15 (Annex 9 to the Statement of Case of Disputant) is in reply to a letter dated 30 June 2021 emanating from Respondent and refers essentially to Disputant and Co-Respondent No 2. Also, the Tribunal has ruled in several cases (**vide Mr Ugadiran Mooneepen And Mauritius Institute of Training and Development, ERT/RN 35/12; Mr Abdool Rashid Johar And Cargo Handling Corporation Ltd ERT/RN 93/12 and Mr Yousouf Ibne Abdulla Cheddy And Ministry of Labour, Industrial Relations, Employment & Training, ERT/RN 120/15**) that it does not generally give declaratory awards. Indeed, the Tribunal

deals with practical issues and delivers awards which shall, as per section 72(1) of the Act, be published in the Gazette and shall take effect on the date of their publication in the Gazette (unless the awards expressly provide otherwise). The rationale for publication of an award of the Tribunal in the Gazette can be gathered from section 72(1)(e) of the Act which provides that in respect of an award under sections 56(5) and 70(1) (which is the case here), (3) and (4), the award shall be an implied term of every contract of employment between workers and employers to whom the award applies.

The terms of reference, as worded, indeed, do not allow for an award which shall be an implied term of the contract of employment of the Disputant. An award with the said terms of reference will be of a declaratory nature. However, there is more to it and the terms of reference include an assumption that the two propositions are mutually exclusive (and which may not necessarily be the case). Also, an award delivered following strictly the present terms of reference (an award which otherwise goes outside the terms of reference will be *ultra petita* and may be quashed, *vide S.Baccus & Ors vs. The Permanent Arbitration Tribunal 1986 MR 272*) may be futile since the term “on a seniority basis in the respective Private Secondary Schools and in the grade” as used in Recommendation 5 of the PRB Report 2016 (Volume 2, Part II) may still need to be interpreted. Indeed, for the purposes of assignment of duties of Head of Department, the said Recommendation 5 cannot be considered as standing alone (though we bear in mind that the Recommendation provides that assignment of duties should “continue to be made”), and should necessarily be interpreted so that, for example, two or more Educators (Private Secondary Schools) teaching, say, Mathematics may not be assigned duties of Heads of Departments because of their seniority in Collège de la Confiance in the grade of Educators (Private Secondary Schools). ‘Seniority in the respective Private Secondary Schools and in the grade’ is certainly not enough and there are necessarily implied conditions such as that an Educator (Private Secondary Schools) cannot be assigned duties of Head of Department, irrespective of seniority, if he is not teaching subjects concerned with that Department. Now, where does one stop? Can the Manager of the Private Secondary School assign duties (against payment of a headship allowance) of Head of Department of English Language, Head of Department of Literature in English and Head of Department of English General Paper? The answer will be found elsewhere and will depend on guidelines prepared by Co-Respondent No 1 (*vide* Annex 2 to Doc B).

The Tribunal will refer to The Private Secondary Education Authority Act, as amended which provides as follows:

#### **4. Objects of the Authority**

*The Authority shall be responsible for —*  
*(a)...*

- (d) ensuring that the terms and conditions of employment of staff, in secondary or pre-vocational schools comply with the relevant laws, rules, guidelines and directives;*
- (e) the payment of grants to secondary and pre-vocational schools and ensuring that the grants are being used for the intended purposes;*
- (f) the registration and inspection of secondary or pre-vocational schools, their managers, rectors and members of teaching and non-teaching staff.*

## **5. Functions of Authority**

*The Authority shall have such functions as may be necessary to effectively further its objects and shall, in particular –*

- (a) ...*
- (b) ...*
- (c) deal with matters relating to secondary and pre-vocational schools, their managers, rectors and members of teaching and non-teaching staff;*
- (d) formulate appropriate policies, make rules, issue guidelines and directives, and set standards and conditions –
  - (i) for promoting and enhancing quality education in secondary schools;*
  - (ii)...**
- (e) undertake inspection and periodic quality audits in academic, infrastructural and other areas related to school management;*
- (f) ensure that secondary and pre-vocational schools are managed in accordance with relevant laws, rules, guidelines, directives and standards;*
- (g) ...*

## **5A. Powers of Authority**

- (1) The Authority –
  - (a) shall have such powers as may be necessary to make rules, issue guidelines and directives, and set standards and conditions to enable it to effectively discharge its functions and take appropriate action to ensure that secondary and pre-vocational schools comply with the rules, guidelines, directives, standards and conditions; and*
  - (b) ...**

The Tribunal takes note that the PRB, in its PRB Report 2021, refers to the abovementioned objects of Co-Respondent No 1 at paragraph 73.1 of the Report (Volume 2, Part II).

However, since the terms of reference refer to the PRB Report 2016, the Tribunal will have to assume for the purposes of dealing with the present terms of reference that the PRB Report 2016 is the relevant PRB Report.

The Tribunal will quote from the PRB Report 2016 at paragraphs 99.20 and 99.21 (Volume 2, Part II)

### ***Head of Department***

99.20 *Heads of Department are selected on a seniority basis in their respective Private Secondary Schools from among Educators (Private Secondary Schools) possessing qualifications required to cross the QB. In the absence of fully qualified candidates, Educators (Private Secondary Schools) who do not possess the qualifications to cross the QB, but reckon at least five years' post qualification experience and having taught (sic) up to Form V/Form VI when posted respectively in Form V/Form VI colleges are also considered for the designated position. The Heads of Department are required to advise the Rector on matters relating to their respective specialities. e.g., syllabus, choice of books, laboratory equipment, timetable, internal examinations etc.*

99.21 *The list of subjects and subject combinations for which a headship allowance is paid has been established by the Private Secondary School Authority and at present the criteria for eligibility to the position of Head of Department, are as hereunder:*

- (i) there should be two or more Educators (Private Secondary Schools) with a full time-table in the Department.*
- (ii) Educators (Private Secondary Schools) are teaching the subject for at least 1000 minutes weekly.*
- (iii) the total teaching time in the department should not be less than the full workload of a full-time teacher or approximately 1190 minutes per week.*

The PRB in its 2016 Report thus deliberately refers to and acknowledges criteria for eligibility to the position of Head of Department which have been “elaborated” by Co-Respondent No 1 (as is more apparent from paragraph 99.12 of the PRB Report 2013 (Vol. 2, Part II)). These criteria are still further elaborated in Doc B which provides in its Annex 1 the following:

...

### **(17) Criteria for HODs and SLs**

*HODs and SLs designated should satisfy the criteria listed in the relevant PSEA Circular. These include criteria based on seniority, qualifications, workloads and subjects in the current time-table. In case of non-approval of any HODs/SLs, their full workloads should be subsequently restored as far as this does not jeopardise the time-table.*

The Tribunal may, for instance, refer to one particular guideline (under Guideline 3 at Annex 2 to Doc B) which reads as follows:

*An Educator is reckoned in the department in which he/she has the highest number of periods. Though this is not expressly provided for in the PRB Report 2016, we have no doubt that this may be a convenient, practical and reasonable guideline/criterion in a relevant case.*

The Tribunal will also refer, as mere guidance, to the following provisions in the PRB Report 2021 under the heading 'Secondary School Sector' of the Chapter dealing with the Ministry of Education, Tertiary Education, Science and Technology:

*19.78 An Extended Four-Year Programme has also been introduced in a bid to give sound learning opportunities to students needing more time to attain the required level of competencies. Every Regional Secondary School is required to have a special class for students who have not met the minimum standards at the PSAC. These students complete their Basic Education Cycle in four years instead of three and sit for the National Certificate of Education Assessment at the end of the cycle. With the introduction of the Extended Four-Year Programme, the prevocational sector has phased out.*

*19.79 In the context of this Report, the Bureau had consultative meetings with both Management and the staff side of the Secondary Sector. The Unions mainly requested for:*

... [not material for the present dispute]

*19.80 On the other hand, the main submissions of Management for the Secondary Sector pertained to the integration of grades in the prevocational sector into the mainstream grades as the latter has phased out with the introduction of the Nine Year Continuous Basic Education; the scheme of service for the grade of Educator (Secondary) to be reviewed to include online teaching, assessment and evaluation; to maintain the duration of teaching of Educator (Secondary) to 1190 minutes; ....*

*19.81 ...*

*19.82 We are, in the ensuing paragraphs, making appropriate recommendations for the Secondary Sector taking into consideration several factors such as the introduction of the Nine Year Continuous Basic Education, the phasing out of the prevocational sector and the COVID-19 Pandemic.*



***Educator (Secondary) (Prevocational) (Personal)***

***Teacher (Secondary) (Prevocational) (Personal)***

19.83 *The grades of Educator (Secondary) (Prevocational) and Teacher (Secondary) (Prevocational) presently exist on the establishment of the Ministry of Education, Tertiary Education, Science and Technology. The Ministry has informed that, with the upcoming of the Nine Year Continuous Basic Education, the Prevocational Stream has phased out at the end of the 2019 Academic Year and the grades of Inspector (Prevocational), Educator (Secondary) (Prevocational) and Teacher (Secondary) (Prevocational) should be made evanescent.*

19.84 *The Ministry has also submitted proposals for the integration of incumbents in these grades into the regular stream, that is, to absorb them in the grade of Educator (Secondary). (...) We are, therefore, making appropriate recommendations to enable the Ministry to effectively make use of these officers.*

***Recommendation 13***

***19.85 We recommend that the Ministry of Education, Tertiary Education, Science and Technology should set up an Implementing Committee to look into the redeployment of officers in the grades of Educator (Secondary) (Prevocational) and Teacher (Secondary) (Prevocational) with the phasing out of the Prevocational Stream.***

***19.86 We also recommend that the grades of Educator (Secondary) (Prevocational) and Teacher (Secondary) (Prevocational) be made evanescent and abolished on vacancy. A personal salary has been provided for incumbents in post.***

The phasing out of the prevocational stream has led to a situation whereby Educators (Secondary) (Prevocational) have to be redeployed. The Disputant has averred at paragraph 1 of his amended Statement of Case that he joined Respondent in or around January 2002 to teach in the pre-vocational department. At paragraph 3 of the same amended Statement of Case, Disputant avers that the “Pay Research Bureau (PRB) in its 2003 report recommended the creation of the post of educator pre-vocational in Private Secondary Schools (PSS).” Be that as it may, there is unchallenged evidence on record that pre-vocational education is a specialised form of education and has its own specificity thus the need for specific grades for that stream (also in line with paragraph 27.37 of the extract of the PRB Report 2003 annexed as Annex 3 to the Statement of Case of Disputant).

The specific nature of the duties of Head of Department (as per paragraph 99.20 of the PRB Report 2016 (Volume 2 Part II) and Annex 2 to Doc B) necessarily entails with it some sort of specialisation in a particular discipline or department where one or more

subjects may be involved. The Tribunal will refer to Annex 4 to the Statement of Case of Disputant as guidance (since it relates to the PRB Report 1998) and which provides under the heading 'Head of Department' (paragraph 17.12) that in cases where Education Officers are assigned the duties of Head of Department of Private Secondary Schools, the duties of Head of Department are entrusted to the senior most fully qualified Education Officer in the discipline. There is unchallenged evidence that as Educator in the prevocational stream, Disputant was teaching Agriculture along with other subjects such as Maths at the pre-vocational level, that is, for first, second and third years of studies (up to "NCE" level according to Disputant). Irrespective of the eligibility certificate of Disputant to teach Agriculture as per Document F, the letter from Respondent under the signature of the Manager of the college dated 3 June 2021 (Annex 8 to the own Statement of Case of Disputant) is telling in that though Disputant joined the Respondent in 2002, he has been teaching Agriculture only in the following years: 2004, 2018, 2019, 2020 and presumably 2021 where he was only then "allocated a full workload in the Agriculture department, with 24 periods, teaching in Grade 10 and Grade 11".

In 2018, when Disputant taught Agriculture, there is undisputed evidence that Co-Respondent No 2 had already been assigned duties of Head of Agriculture as from the year 2013 in replacement of a colleague who had resigned. In 2013, Disputant did not even teach Agriculture as per the said letter of the Manager of Respondent. The evidence of the representative of Co-Respondent No 1, as quoted below, has also remained unchallenged and provides an indication as to the fallacy of the argument that an award based solely on one particular recommendation (or part thereof) in the PRB Report 2016 without references to other provisions or recommendations in the very same Report may be envisaged by the Tribunal. Indeed, the representative stated that "... *and even now he [meaning the Disputant] was not absorbed in the mainstream on the basis of a vacancy occurring in the mainstream but we made a certain provision, we gave him a way to integrate the mainstream. In the year 2020, he had only 6 periods of Agriculture, 16 periods of Mathematics and 2 periods of activities. So, he did not even have a full time table for Agriculture simply because there were already other teachers in the department of Agriculture and the number of periods could not be increased drastically. Among the other teachers, there were people who have been Head of Department for the past 10 years. So, they were much more experienced with the function of the department to lead the department.*"

Now, paragraph 99.26 of the PRB Report 2016 (Vol 2, Part II) (as per Annex 6 to the Statement of Case of Disputant) provides as follows:

***99.26 We also recommend that incumbent assigned duties of Head of Department should continue to teach their subject of specialisation for approximately 840 minutes weekly and be paid ....*** (underlining is ours).

Bearing in mind paragraph 99.23 of the same PRB Report 2016 (still at Annex 6 to the Statement of Case of Disputant), and even if we assume teaching periods of 40 minutes at the Respondent, this would amount to 21 periods weekly. As per the evidence of the

representative of Co-Respondent No 1, the Disputant was teaching Agriculture in 2020 for very much less time than as provided under paragraph 99.26 of the PRB Report 2016.

The representative of Co-Respondent No 1 has also stated that the prevocational stream was considered as a subject and that a Head of Department could be designated for the prevocational stream. Irrespective of the field in which Disputant had his degree, the Tribunal is not satisfied, on the basis of the evidence before it and on a balance of probabilities, that Disputant was teaching Agriculture in the mainstream before he was actually absorbed in the mainstream. The Disputant has not challenged before us the assignment of duties of Head of Department of Agriculture at the Respondent to Co-Respondent No 2 as far back as in the year 2013 although Disputant was then already teaching at the Respondent. The integration of Educators from the prevocational stream into the mainstream does require a careful implementation and involves many factors including the fate of Educators who may have been assigned duties as Head of Department for years but, more importantly, the enhancement and promotion of quality education in secondary schools.

The PRB Report must be read as a whole where emphasis is placed, for example, on duties at paragraph 99.20 of the PRB Report 2016 and where the PRB goes on to state that *“The Heads of Department are required to advise the Rector on matters relating to their respective specialities. e.g, syllabus, choice of books, laboratory equipment, timetable, internal examinations etc.”* The Tribunal will here again refer to the second sentence of the same paragraph 99.20 of the PRB Report 2016 (as per Annex 6 to the Statement of Case of Disputant) which reads as follows:

*... In the absence of fully qualified candidates, Educators (Private Secondary Schools) who do not possess the qualifications to cross the QB, but reckon at least five years' post qualification experience and having taught (sic) up to Form V/Form VI when posted respectively in Form V/Form VI colleges are also considered for the designated position.*

Though this provision deals with the situation where there are no fully qualified candidates, it says a lot about the assignment of headship to an Educator in that the Educator, though not fully qualified, may be considered for the 'designated' position provided he has taught up to Form V if posted in a Form V college and up to Form VI (and no longer Form V) if posted in a Form VI college. The Tribunal finds nothing wrong with this given the duties and responsibilities of a Head of Department.

For all the reasons given above, the Tribunal finds that it cannot deliver an award as per the terms of reference of the dispute based on one particular Recommendation, that is, Recommendation 5 of the PRB Report 2016, taken separately and independently, whereas the said PRB Report 2016 or any PRB Report is to be construed as a whole (including references made in the PRB Report itself to criteria for eligibility for the position of Head of Department elaborated by Co-Respondent No 1). To make matters worse, an award of a declaratory nature is being sought in relation to the PRB Report 2016 which predates the phasing out of the prevocational stream so that the particular situation arising in the present matter may not have been envisaged in the said PRB Report 2016.

For all the reasons given above, the Tribunal finds that it cannot award as per the terms of the dispute, and the dispute is purely set aside.

**SD Indiren Sivaramen**

**Acting President**

**SD Raffick Hossenbaccus**

**Member**

**SD Karen K. Veerapen**

**Member**

**SD Ghianeswar Gokhool**

**Member**

**24 May 2022**