

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 44/2021

Before: -

Shameer Janhangeer

Vice-President

Francis Supparayen

Member

Jeanique Paul-Gopal (Mrs)

Member

Ghianeswar Gokhool

Member

In the matter of: -

Dr Hemraj Soonder

Disputant

and

Mahatma Gandhi Institute (MGI)

Respondent

The present matter has been referred to the Tribunal for arbitration by the Commission for Conciliation and Mediation pursuant to *section 69 (9)(b)* of the *Employment Relations Act*. The Terms of Reference of the dispute read as follows:

Unpaid Vacation Leaves – Proper recommendation of the applicable PRB Report was not applied.

The Disputant was assisted by Mr S. Hossany, whereas the Respondent was assisted by Miss B.H. Maheraly, Senior State Counsel, instructed by Mrs S. Angad, Principal State Attorney.

Both parties have submitted their respective Statements of Case with regard to the present dispute.

THE DISPUTANT'S STATEMENT OF CASE

The Disputant joined the Mahatma Gandhi Institute ("MGI") as an Assistant Lecturer/Lecturer on 12 April 1996. He was appointed Senior Lecturer (Creative Writing) on 27 February 2008 and Associate Professor (Indian Studies) on 27 April 2018. On 5 May 2018, he applied for vacation leave, which had accumulated to 210 days. He was verbally informed by the Head of School, Dr R. Gobin, that his application had not been approved and that he will be remunerated for his outstanding vacation leaves. He was immediately assigned a number of responsibilities. He retired on 13 July 2018.

On 16 December 2018, he wrote to the then Director General, Mrs S.N. Gayan, requesting payment of his vacation leaves but no reply has been received. He also sent a written reminder but in vain. He personally queried the Head of School of Indian Studies, who intimated that the Respondent will not approve any vacation leave until the end of the 11th World Hindi Conference. He was reassured that he would be paid cash in lieu of vacation leaves. Despite amicably requesting the Respondent to pay for same, the latter has failed to do so. He was earning a basic pay of Rs 83,000 and was entitled to 210 days' vacation leave amounting to Rs 580,999.99.

THE RESPONDENT'S STATEMENT OF DEFENCE

The Respondent has notably averred that the Disputant joined as an Assistant Lecturer/Lecturer on 2 May 1996 in the Tertiary Department and was appointed Associate Professor (Indian Studies) on 30 April 2018. He was governed by the terms and conditions of employment set out in the Pay Research Bureau ("PRB") Reports. As at 5 May 2018, the Disputant had 187 days of vacation leave in his leave bank and no application for vacation leave was received from him on or about 5 May 2018 or thereafter. It is admitted that the Disputant retired on 13 July 2018.

The Respondent admits having received the letter dated 16 December 2018 and a reply was sent on 13 July 2020. It is also admitted that a reminder was received from the Disputant. The Respondent avers that it did not accede to the request for payment of unutilised vacation leaves after Disputant's retirement as he did not satisfy the conditions of such refund as provided in the PRB Report 2016. He was accordingly informed by way of letter dated 13 July 2020. As at 12 July 2018, the Disputant had only 194 days of vacation leave in his bank. The Disputant had opted to be governed by the recommendations of the PRB and the point in dispute does not amount to a labour dispute.

THE EVIDENCE OF WITNESSES

The Disputant, Dr Hemraj Soonder, adduced evidence in the present matter. He joined the MGI as a Lecturer on 12 April 1996, was promoted to Senior Lecturer in 2008 and became Associate Professor on 27 April 2018. He first applied for vacation leave on 5 May 2018 having accumulated 210 days. He received no reply for two years and got a reply on 20 January 2020. He sent a reminder to the Director General of the MGI on 30 January 2020 (produced as Document A). He made a number of requests/applications for vacation leave and produced a letter dated 5 May 2018 (Document B) to this effect. He had to cancel his vacation leave by letter dated 28 December 2017 (produced as Document C) due to an interview. He received a letter dated 22 March 2017 from the MGI (produced as Document D) regarding his pre-retirement conditions. He wrote a letter dated 16 December 2018 (produced as Document E) regarding payment of unpaid vacation leave. He produced his application form for vacation leave dated 5 May 2018 together with an annexed letter of the same date (Documents F and F₁). He wrote to Mrs Gayan and Mr Koonjul, through his Head of Department Dr Gobin, on 25 July 2017 (letter produced as Document G) mentioning that he may opt to avail for paid vacation leave and retire immediately.

Dr Soonder also produced a letter dated 9 March 2018 from the MGI (Document H) whereby he was assigned responsibilities as Head, Department of Creative Writing & Publications; and an Internal Memo dated 27 March 2018 (Document J) from the MGI regarding headship. The World Hindi Conference was to be held in Mauritius from 18 to 20 August 2018 and he was assigned duties such as publication of journal. He had to work night and day to

complete same in time and had to produce CDs for Grades 1 to 3. He even worked a day more than his retirement leave. He was not allotted his vacation leave as he was assigned these duties. He produced a letter dated 3 April 2018 from the School of Indian Studies (Document K) and another letter dated 2 July 2018 (Document L) from the same School of the MGI. He also produced a copy of the cover of the *Diaspora Sahitya Sangam* (Document M) which mentions his name, in Hindi, as Editor and a copy of the cover of the *Mauritius Ke Bhojpuri Sahitya Sangam* (Document N) of which he was the Co-Editor-in-Chief. A letter dated 7 August 2018 from the Ministry of Education was also produced (Document O) regarding the 11th World Hindi Conference, which he was compelled to work for. His Head of Department informed him that Mrs Gayan would not approve his leave.

Dr Soonder confirmed that all he has produced and completed was during the time he applied for vacation leave. His application for vacation leave was not considered. His Head of School verbally told him to work and that he can cash his vacation leave. He was also asked to represent the Institute at the World Hindi Secretariat and the Indian High Commission for a competition ending a week prior to his retirement. All the works he carried out is listed in his Statement of Case. His sole work at the MGI was to coordinate two magazines and to look after his department; these additional works were given to him when he had to take his vacation leave. He was responsible for tertiary education having served as Lecturer/Senior Lecturer for about 13 years and was shifted to the Creative Writing Department due his writing ability. These are all tertiary. He retired on 13 July 2018. He is relying on paragraph 25.32, Recommendation 9 of the PRB Report 2016 (extract produced as Document P).

Dr Soonder was thoroughly questioned by Counsel for the Respondent. He notably replied that he did not mention the number of days of vacation leave applied for in his form dated 5 May 2018 as he had a lot of untaken leaves and annexed a covering letter asking for his untaken leaves together. He agreed that the period of 15 May 2018 to 13 July 2018 inserted does not amount to 210 days. He denied that he never sent the aforesaid application. He did not receive any reply to same. He wrote several letters and agreed that the letters are dated after his retirement. His previous vacation leaves taken were approved. He confirmed that, in his Statement of Case, he stated that he was immediately assigned a number of responsibilities after having applied for vacation leave on 5 May 2018. He became Acting Head of Creative Writing on 9 March 2018 and Head on 9 July 2018. When he became Head, there were other additional works assigned which he was not doing before.

Dr Soonder also stated that he had already retired when the *Diaspora Sahitya Sangam* (Document M) was published. The *Mauritius Ke Bhojpuri Sahitya Sangam* (Document N) was launched at the 11th World Hindi Conference. He agreed that he was paid an additional sum for his work regarding textbooks for Grades 1 to 3 and 5. The textbooks have to be reviewed every year by a panel even though they were completed in 2016. He agreed that there is no document to show that he was assigned the tasks during the period of vacation leave as he does not think that the MGI would give him a letter. He did not ask for any letter. Referring to the letter dated 7 August 2018 from the Ministry of Education (Document O), he confirmed that he was retired at the time. He agreed that he was informed by letter dated 22 March 2017 from the MGI (Document D) that he can take his vacation leave and retire immediately. He agreed that he opted for the PRB Report 2016. He never opted to cash his vacation leave and retire immediately as per paragraph 15.75 of the PRB Report 2016. He did not opt as for four years he was fighting for the post of Associate Professor. The post was advertised at the time.

Dr Soonder, moreover, did not agree that he did not have 210 days of vacation leave but only 194 days. He did not agree that paragraph 25.32 (b)(ii) of the PRB Report 2016 does not apply to academics. At tertiary level, courses are run on a semester basis and academics do not have school vacation leave. He agreed that the term time does not apply to him and is for secondary. He then did not agree that term time refers to secondary as at tertiary level they teach. Referring to paragraph 25.34 of the PRB Report 2016, he stated that academics are made to work in school vacation. Academics have school vacation when exams are over or in between but they come to the MGI or are sent to institutions where courses are being run. He did not agree that the provision he is relying upon does not apply to him. He agreed that there must be a reply from management on whether the vacation leave has been approved. He retired in July and was paid all his benefits. Upon being referred to Document A, he stated that in his reply (Document G) to the letter of 2017, he made it clear that he may opt to apply for cash and the Head of School signed upon it.

Mr Randesh Mokool, Administrative Officer, deposed on behalf of the Respondent. He swore as to the accuracy of the Respondent's Statement of Defence and produced the scheme of service for the post of Associate Professor (Document Q) held by the Disputant. Dr Soonder was governed by the recommendations of the PRB Report and he produced the option form signed by the latter for the 2016 Report (Document R). As per paragraph 15.75 of the PRB Report 2016, Dr Soonder should have written to the MGI to inform of his intention to retire and cash his vacation leave. If he had so opted, he would have had to retire 194 days prior to his retirement date; his balance of leave was around 194 days. He produced an extract of the PRB

recommendation at paragraph 15.75 from the 2016 report (Document S). No application was received from Dr Soonder for vacation leave on 5 May 2018. An application should be submitted to the Director General through the Officer's respective Head. Dr Soonder's Head was Dr Gobin, who stated that she did not receive any application from the former. A memo from Dr Gobin dated 8 March 2021 was produced to this effect (Document T). Two memos dated 11 May 2021 and 17 June 2021 from Dr Gobin were also produced (Documents U and V).

Mr Mokool also produced a letter from the Director General dated 13 July 2020 (Document W) addressed to Dr Soonder, which was in reply to the latter's letter dated 16 December 2018. At the date of retirement, Dr Soonder had accumulated 194 days of vacation leave and not 210 days. Dr Soonder's vacation leave record was produced (Document X). All requests for vacation leave by Dr Soonder were approved and none were rejected. He produced a letter dated 28 August 2015 signed by the Director General together with an application for vacation leave dated 14 August 2015 from the Disputant (Documents Y and Y₁) as well as another letter dated 5 May 2016 from the Director General together with an application for vacation leave dated 26 April 2016 from the Disputant (Documents Z and Z₁). Dr Soonder cancelled his vacation leave to proceed to India as he had applied for the post of Associate Professor. A letter dated 28 December 2017 from the Disputant together with an application for vacation leave dated 13 September 2017 was produced to this effect (Documents AA and AA₁).

Mr Mokool further stated that there was no break in Dr Soonder's headship. In a first letter dated 9 March 2018 (Document H), headship was assigned until further notice; and in a second letter dated 9 July 2018, Dr Soonder was informed that his headship would end on 12 July 2018 as he would retire on 13 July 2018. The role of the MGI at the World Hindi Conference was to collaborate in certain events and the choice of Dr Soonder was not that of the MGI. The updating of CDs for printing and coordinating textbook writing done by Dr Soonder came to an end in 2016. An internal memo dated 28 November 2016 from Dr Soonder requesting payment for review of Hindi textbooks for Grades 1 to 3 and 5 was produced (Document AB). Reference was made to the letter dated 22 March 2017 (Document D) addressed to Dr Soonder; and to the reply dated 25 July 2017 (Document G), whereby Dr Soonder never opted to avail himself of unpaid vacation leave and retire immediately. Paragraph 25.32 of the PRB Report 2016 does not apply to Dr Soonder and applies to the teaching personnel of the secondary cadre.

Mr Mokool was questioned by Counsel for the Disputant. He notably agreed that teaching formed part of Dr Soonder's duties upon being referred to the scheme of service of Associate Professor. The word '*term*' is not defined in paragraphs 15 or 25 of the PRB Report. '*Term*' is well defined for secondary as per a circular from the Ministry. He could not confirm the term applicable to Disputant. Dr Soonder was assigned responsibilities as Head of Creative Writing in the year 2018, which formed part of his duties of Head. Dr Soonder was also co-editor of a book in Bhojpuri in 2018, coordinated Hindi textbooks for Grades 1 to 3, updated CDs for printing. He disagreed that Dr Soonder represented the MGI at the World Hindi Secretariat. Referring to a letter dated 27 March 2018 (Document J), he agreed that the MGI assigned the Department of Creative Writing and Publications to Dr Soonder.

Mr Mokool also replied that paragraph 15 of the PRB Report is generally applicable to the whole public sector. Reference is made to both secondary and tertiary at paragraph 25.2 of the PRB Report 2016 under the MGI chapter. He agreed that paragraph 25.32 (b) of the PRB Report 2016 refers to teaching personnel. Paragraph (b) does not mention that any application for vacation leave must be made prior to retirement, nor after retirement. He did not agree that paragraph 25.32 was applicable to the post held by Dr Soonder. When re-examined, Mr Mokool clarified that paragraph 25.32 does not apply to tertiary education and that the conditions will not apply to the Disputant, who was part of tertiary education.

Mr Arvind Dumur, Principal Job Analyst at the PRB, was called as a witness on behalf of the Respondent. He stated that the condition of service for vacation leave was replicated for the MGI considering that they have a secondary school. It does not appear under any tertiary sector and appears for the MGI as they undertake secondary education. A bundle of extracts of PRB Reports from 2003 to 2021 was produced (Document AC) as well as the chapter pertaining to the University of Technology Mauritius in the PRB Report 2016 (Document AD).

Mr Dumur referred to paragraph 27.86 of the PRB Report 2003 for the Ministry of Education whereby only the categories of primary and secondary teachers are mentioned. Paragraph 15.4.10 of the PRB Report 2003 was also produced (Document AE). This recommendation applies to the teaching staff of the MGI. He reiterated that the recommendations made for the Ministry of Education should apply to the MGI as they have a secondary school. No provision has been made for the tertiary sector and their recommendations concern only primary and secondary. He cannot answer for Dr Soonder, who

is in the tertiary sector. Had Dr Soonder been in the secondary sector, paragraph 25.32 of the PRB Report 2016 would have applied.

Mr Dumur was cross-examined by Counsel for the Disputant. He notably stated that what they have written for the Ministry of Education is applicable to parastatals where there are secondary schools and he referred to paragraph 25.29 of the PRB Report 2016 under the MGI chapter. He did not agree that this paragraph does not say that the recommendations of the Ministry applies to the MGI. The recommendations dating from 2003 are applicable to pre-primary, primary and secondary education. He agreed that paragraph 25.2 of the PRB Report 2016 mentions both secondary and tertiary.

Mr Dumur moreover agreed that Dr Soonder had teaching in his duties upon being referred to the scheme of service for Associate Professor. Referring to paragraph 25.32 of the PRB Report 2016, he agreed that Dr Soonder formed part of the teaching personnel but did not satisfy the criteria of the PRB Report under definition. He agreed that the paragraph does not mention that an application has to be made. He agreed that the word '*term*' has not been defined in the MGI chapter of the PRB Report 2016. There is a procedure for Dr Soonder to obtain refund for vacation leave; one cannot earn vacation leave after retirement, it is earned when in service. One has to go by the criteria and is given the option to choose, to exercise the option.

THE SUBMISSIONS OF COUNSEL

Learned Counsel for the Disputant notably submitted that chapter 25 and paragraph 25.32 of the PRB Report 2016 are applicable. It has been agreed that teaching formed part of Dr Soonder's duties. Paragraph 25.32 (b) applies to the teaching personnel and the Disputant falls within this definition. The word '*term*' has not been defined in chapter 25 and the Respondent's representative could not state how many terms there are in a year. There are memos produced from Dr Gobin to the effect that she did not receive any application for vacation leave prior to retirement; however, as per paragraph 25.32, there is no mandatory requirement to make an application prior to retirement. It was humbly submitted that the witness from the PRB could not sustain his argument by comparing different PRB Reports, which are not applicable in the

present case. Irrespective of whether Dr Soonder has made an application or not, his case falls squarely under paragraph 25.32.

Learned Senior State Counsel, on behalf of the Respondent, notably submitted that the Terms of Reference in the present matter are vague and it is only during the hearing of the matter that it was understood which PRB recommendation was concerned. The PRB recommendations from 2003 to 2021 produced relate specifically to the MGI. Even the Ministry of Education recommendation refers to the recommendation in Volume 1. In 2016, the general recommendations are 18.4.22 and 18.4.23. These provisions relate to pre-primary, primary and secondary. The term '*teaching personnel*' has been clarified in the PRB Report 2021 although this is not the case for the MGI in the 2016 report. Reference was accordingly made to paragraph 31.37 of the PRB Report 2021 in the MGI chapter. Dr Soonder does not have a case as he clearly does not form part of the secondary education staff and he is not eligible for the refund he is asking.

THE MERITS OF THE DISPUTE

The Terms of Reference of the present dispute is asking the Tribunal to enquire into unpaid vacation leaves, whereby the proper recommendation of the PRB Report was not applied. The Tribunal would wish, at this stage, to observe that the Terms of Reference as drafted and referred before it appear to be very vague and are generally worded. The terms do not make any reference to the Disputant and how he is concerned nor to the recommendation of the PRB Report which ought to have been applied in relation to the unpaid vacation leaves.

It is only during the course of the hearing of the dispute that the Tribunal has been given a more precise picture of the Disputant's labour dispute with the Respondent. It must be borne in mind that the Terms of Reference of a dispute are the basis on which the Tribunal is to enquire into same. The following observation may be noted from *P. Greedharee and Mauritius Ports Authority & anor. (ERT/RN 258/11)* to this effect:

Terms of Reference which emanate from the Commission for Conciliation and Mediation remain a basis on which labour disputes are examined. The Tribunal will be unable to proceed with labour disputes unless the Terms of Reference are in order.

...

We cannot help expressing our concern at the levity with which the Terms of Reference have been drafted and forwarded.

The Disputant joined the MGI as a Lecturer in 1996, he was promoted to Senior Lecturer in 2008 and to Associate Professor on or about 27 April 2018. He retired from employment on 13 July 2018. As per the Respondent, Dr Soonder had accumulated 194 days of vacation leave prior to his retirement. The Respondent, on 22 March 2017, wrote to him regarding his retirement due on 13 July 2018. The following may be noted from this letter in relation to the Disputant's vacation leave:

Leave prior to retirement

Vacation Leave

*Kindly note that, as at 23 June 2017, you have a balance of **168** days accumulated vacation leave.*

Prior to your retirement, you are eligible for vacation leave, in accordance with the prevailing regulations as set out in the 2016 PRB Report.

You may opt to avail yourself of your vacation leave prior to retirement and thus proceed on retirement with effect from 13 July 2018.

You will therefore be requested to fill in the application form for leave accordingly.

You may also opt to cash your accumulated vacation leave and proceed on retirement at an earlier date.

Dr Soonder, on 25 July 2017, replied to the Respondent's Director General whereby he made known his intention regarding his vacation leave. It should be noted that the Disputant was, at the time, a Senior Lecturer in the Department of Creative Writing & Publications. The salient aspects of this letter may be noted as follows:

...

I have decided to retire on the effective date of my retirement i.e. 13 July 2018. I will avail of my vacation leave prior to retirement as and when required.

However, if any change in circumstances, I may opt to avail of paid vacation leave and retire immediately, which I will inform management accordingly.

Dr Soonder contended that he made an application for vacation leave on 5 May 2018 for the period 15 May 2018 to 13 July 2018. Attached to this application is a handwritten letter of the same date addressed to the Respondent's Director General. Therein, the Disputant notably wrote:

As you are aware that I am retiring from the Mahatma Gandhi Institute on 12th July, 2018.

I wish to avail of my vacation leave as from Tuesday 15th May 2018. I had in my letter dated 25 July, 2017 opted for paid vacation leave in change of circumstances, if any. Please, keep in mind for payment of all my vacation leave, taken or untaken at the time of my retirement.

The issue regarding this application and its attached letter is that it was never received by the Respondent. Mr Mokool, who deposed on behalf of the MGI, was adamant that no application was received from Dr Soonder for vacation leave on the aforesaid date. He even produced internal memos from Dr R. Gobin, the Disputant's Head, to the effect that no application was received from Dr Soonder. Previous applications for vacation leave made by Dr Soonder together with their respective approvals from the Respondent were also produced.

Moreover, Dr Soonder did admit that his previous vacation leaves were approved when questioned. The Tribunal further notes that although the Disputant wrote to the MGI regarding this alleged application, the letters he sent were after his retirement on 13 July 2018. The matter of the vacation leave being approved or not by then had become academic. If ever the application was made, an official reply should have been forthcoming from the Respondent. In the circumstances, the Tribunal cannot be satisfied that the Disputant duly made the application for vacation leave on 5 May 2018.

In any event, the Tribunal has noted from the attached letter dated 5 May 2018 that Dr Soonder confirmed that he would be retiring on 12 May 2018. This is more or less consistent with what he stated in his letter dated 25 July 2017 regarding his retirement date. It should also be noted that Dr Soonder agreed that he never opted to cash his vacation leave and retire

immediately as he was fighting for the post of Associate Professor, to which he was appointed to on or about 27 April 2018. It would therefore stand to reason that Dr Soonder had no intention of cashing his vacation leave and retiring earlier as was proposed to him in the letter dated 22 March 2017.

Despite referring to what he stated in his previous letter dated 25 July 2017 in relation to opting for paid vacation leave, there is no correspondence from the Disputant to show that he had actually opted for paid vacation leave. As noted from the aforementioned letter, he clearly stated that he would inform management accordingly. However, the letter dated 5 May 2018 makes no reference to any previous correspondence whereby he had informed management that he would opt for paid vacation leave and retire immediately pursuant to the letter of 25 July 2017. The option of cashing vacation leaves, as per the Respondent's letter dated 22 March 2017, would entail retirement at an earlier date. The evidence on record has not shown that Dr Soonder intended to retire before the 13 July 2018.

The contents of the letter dated 22 March 2017 regarding vacation leave is in line with paragraph 15.75 of the PRB Report 2016 Volume 1. This provides as follows:

Recommendation 28

15.75 We recommend that an officer proceeding on retirement should continue to be given the option to cash in full accumulated vacation leave computed on the officer's retiring salary at the rate of 1/30 of the monthly salary per day provided he retires on the day he would normally have proceeded on leave prior to retirement.

This recommendation has been reiterated at paragraph 18.4.27 of the same report:

Bureau's Views

18.4.27 Presently, officers proceeding on retirement are given the option to cash at the rate of 1/30 of the last monthly salary per day the accumulated vacation leave provided they retire on the day they would normally have proceeded on leave prior to retirement. This provision allows officers to retire earlier while providing space for other officers to be appointed earlier in the position. The request to allow officers to utilise part of the accumulated vacation leave

prior to retirement would defeat the very purpose of early retirement scheme.

In the course of the hearing of the present matter, the Disputant has categorically stated that he is relying on paragraph 25.32 of the PRB Report 2016 Volume 2 Part II, notably sub-paragraph (b)(ii). This reads as follows:

Recommendation 9

25.32 ...

- (b) *We recommend that officers of the teaching personnel:*
- (i) *may be allowed to take up to a maximum of 19 days vacation leave, during term time subject to the exigencies of the service; and*
 - (ii) *who have not taken the annual vacation leave during term time in a calendar year may be allowed to accumulate up to 50% of the annual vacation leave entitlement, over and above the leave ceiling annually, subject to a maximum not exceeding half the normal maximum accumulated vacation leave entitled to. However, officers who have already exceeded half the normal maximum accumulated vacation leave entitlement as at date of implementation of the Report, should retain same on a personal basis. Such leave may be taken as leave prior to retirement. Should the services of the officers be required during their pre-retirement leave, they will be refunded, at the time of retirement, at the rate of 1/30 of the last monthly salary per day for accumulated vacation leave not taken.*

(The underlining is ours.)

The hearing of the present matter has revealed a great rift over the applicability of this recommendation to the Disputant. The Disputant has throughout contended that he should be refunded his accumulated balance of vacation leaves because of the responsibilities he was assigned following his alleged application for vacation leave on 5 May 2018. The Respondent,

on the other hand, denies that this provision ever applied to the Disputant as it does not apply at tertiary level.

A reading of paragraph 25.32 (b)(ii) reveals that that there is no mention of the words secondary or tertiary. It has not been denied that the MGI provides both secondary and tertiary education (*vide* paragraph 25.2 of the PRB Report 2016 Volume 2 Part II). However, despite the evidence of the witness from the PRB to the effect that this provision applies to secondary, there is no actual distinction made between these two educational fields in the aforesaid paragraph being relied upon by the Disputant.

Reference has been made to '*term time*' in the aforesaid paragraph of the report. When cross-examined, Dr Soonder did recognise that at tertiary level courses are run on a semester basis and that academics do not have school vacation leave. He initially agreed that '*term time*' does not apply to him and retracted by not agreeing that '*term time*' refers to secondary. This inconsistency from the Disputant cast doubts on his evidence regarding the applicability of the aforementioned paragraph at Recommendation 9. The Disputant did, moreover, state that he was responsible for tertiary education having served as a Lecturer/Senior Lecturer for about 13 years.

The Tribunal has noted from paragraph 25.32 (b)(ii) that an officer shall be refunded accumulated vacation leave not taken should his services be required during pre-retirement leave. The evidence, in the present matter, has not revealed any pre-retirement leave taken by the Disputant. It is a matter of fact that Dr Soonder retired on 13 July 2018, which is also the effective date of his retirement as per the letter dated 22 March 2017. Thus, Dr Soonder was not on pre-retirement leave prior to his effective retirement date. Dr Soonder cannot therefore claim that his services were required when he was never on any pre-retirement leave. This essential condition, as set in paragraph 25.32 (b)(ii), regarding refund of accumulated vacation leave has not been satisfied in the present matter. This recommendation cannot therefore apply to Dr Soonder.

It has furthermore been noted that there is no letter from the MGI addressed to Dr Soonder on record to show that his services would be required. Although he claims that he was assigned a number of responsibilities for the period he ought to have been on vacation leave, he was at all material times still at work and not on pre-retirement leave.

The Tribunal has also noted that the issue of making an application for vacation leave does not apply under paragraph 25.32 (b)(ii). The paragraph notably provides that officers who have exceeded half the normal maximum accumulated vacation leave entitlement can retain same on a personal basis and that such leave may be taken as leave prior to retirement. The issue of refund of vacation leaves not taken only arises when the services of the Officer are required during his pre-retirement leave. Besides, no evidence has been adduced to show that the Disputant has exceeded his vacation leave entitlement nor was this an issue during the course of the hearing.

It should however be noted that Dr Soonder was duly informed that he would have to make an application should he opt to avail himself of his vacation leave prior to retirement and proceed to retire with effect from 13 July 2018 (*vide* the Respondent's letter dated 22 March 2017).

Dr Soonder lengthily deposed as to the additional responsibilities he was supposedly assigned prior to his retirement. It is apposite to note that the Tribunal can only enquire into matters which are within the Terms of Reference of the dispute (*vide Air Mauritius v Employment Relations Tribunal [2016 SCJ 103]*). As per a reading of the terms of the present dispute, the Tribunal is not being asked to enquire into the additional responsibilities that Dr Soonder allegedly undertook but to ascertain if the proper recommendation of the applicable PRB Report was applied (or not) regarding unpaid vacation leaves.

It is therefore not within the Tribunal's mandate to enquire into whether Dr Soonder was burdened with additional responsibilities as he has claimed to be. Moreover, in the context of paragraph 25.32 (b)(ii) of the PRB Report 2016 Volume 2 Part II, the issue of additional responsibilities does not arise inasmuch it has not been shown that his services were required during pre-retirement leave as has been previously noted.

Although it has not been denied that the Disputant forms part of the teaching personnel, as referred to in paragraph 25.32 (b), the Tribunal has noted from the MGI chapter of the PRB Report 2021 Volume 2 Part II that aforementioned paragraph has been essentially replicated at paragraph 31.31 (b) under the general heading of '*Secondary Education*'. The MGI

chapter of the 2021 report also provides a separate heading for '*Tertiary Education*'. This demarcation brings clarity to the applicability of the aforesaid provision in relation to the relevant teaching cadre at the MGI. This is in stark contrast to the manner the MGI chapter in the 2016 report was set. Despite this observation, the Tribunal does note that the Disputant is not concerned with the 2021 report in relation to the present dispute.

In view of the above, given that the Tribunal has notably found that the Disputant had no intention of retiring at an earlier date prior to 13 July 2018 and that paragraph 25.32 (b)(ii) of the PRB Report 2016 Volume 2 Part II cannot apply to the Disputant, the Tribunal cannot therefore reasonably come to the conclusion that the proper recommendation of the applicable PRB Report was not applied in relation to the Disputant's unpaid vacation leaves.

The present dispute is therefore set aside.

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SD Shameer Janhangeer
(Vice-President)

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SD Francis Supparayen
(Member)

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SD Jeanique Paul-Gopal (Mrs)
(Member)

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SD Ghianeswar Gokhool
(Member)

Date: 2nd March 2022