

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 16/2023

RULING

Before: -

Shameer Janhangeer	-	Vice-President
Vijay Kumar Mohit	-	Member
Karen K. Veerapen (Mrs)	-	Member
Ghianeswar Gokhool	-	Member

In the matter of: -

Mr Ramchurn CHATOO

Disputant

and

INFORMATION & COMMUNICATION TECHNOLOGIES AUTHORITY

Respondent

The present claim for reinstatement has been referred to the Tribunal for determination by the Supervising Officer of the Ministry of Labour, Human Resource Development and Training (the “Ministry”) pursuant to *section 69A (2)* of the *Workers’ Rights Act 2019*. The Terms of Reference of the dispute read:

Whether the termination of employment of Disputant is justified or not in the circumstances and whether Disputant should be reinstated or not.

Both parties were assisted by Counsel. Mr G. Bhanji Soni appeared for the Disputant, whereas Mr R. Yerrigadoo appeared, together with Mr A. Rajee, for the Respondent. The parties have each submitted their Statement of Case in the matter. The Respondent has *ex facie* its Statement of Case raised a preliminary objection in law. This provides as follows:

The Disputant's present action falls outside the jurisdiction of the Employment Relations Tribunal inasmuch as:

- (a) The Disputant's claim for reinstatement is based on averments which indicate unjustified dismissal;*
- (b) The Employment Relations Tribunal cannot enquire into any dispute where the dispute relates to any issue within the exclusive jurisdiction of the Industrial Court, more specifically it cannot determine whether the dismissal was justified;*
- (c) The Disputant's employment was terminated summarily on grounds of gross misconduct and breach of trust following disciplinary proceedings which were initiated against him in his capacity as an employee of the Respondent;*
- (d) Therefore, the Respondent moves that the present application be dismissed, with costs.*

Counsel offered arguments on the preliminary objections raised. Learned Counsel for the Respondent put in written submissions in support. He briefly alluded to the law as it was set out in the now repealed *section 64 (1A)* of the *Employment Relations Act* (the "Act"). This provision has now been repealed by the *Finance (Miscellaneous Provisions) Act 2022 (Act No. 15 of 2022)* which has introduced a new *section 70A* in the Act and has added a new *section 69A* on reinstatement to the *Workers' Rights Act*. It was notably submitted that the Disputant, as per his Statement of Case, has made a case of unfair dismissal. However, the Tribunal cannot determine whether the very reason for his dismissal was unfair or not as this belongs to the exclusive jurisdiction of the Industrial Court as per *section 3* and the *First Schedule* of the *Industrial Court Act*. However, reinstatement remains within the exclusive jurisdiction of the Tribunal.

Counsel for the Respondent has also referred to an extract of the intervention of the Honourable Minister of Labour, Human Resource Development and Training, as per the *Parliamentary Debates (Hansard) No. 24 of 2022*, on the *Finance (Miscellaneous Provisions) Bill (No. XIV of 2022)* in relation to the new provisions concerning reinstatement. It was submitted that the intention of Parliament was to broaden the scope of referral to the Tribunal in an application for reinstatement. Although it is not disputed that an application for reinstatement can be made before the Tribunal, the Tribunal cannot determine a case of reinstatement based on a claim of unfair dismissal. As per the law, the Tribunal may only determine whether the correct procedure was observed when a worker was dismissed, failing which the worker would have to be reinstated.

Learned Counsel for the Disputant, on the other hand, concisely submitted that *section 70A* of the Act provides for the referral to the Tribunal. In the past, the law provided for the Industrial Court to have exclusive jurisdiction in certain matters and the new provision has expressly removed that limitation and conferred jurisdiction on the Tribunal. There cannot be any different reading of the law. Counsel also alluded to the intervention of the Honourable Minister, whereby it was stated that the new *section 69A* of the *Workers' Rights Act* is being excluded from the *First Schedule* of the *Industrial Courts Act*.

It has not been disputed that the present matter has been referred to the Tribunal pursuant to the provisions of *section 69A* of the *Workers' Rights Act* by the Supervising Officer of the Ministry. As rightly alluded to by Counsel for the Respondent, this section has been recently enacted via the *Finance (Miscellaneous Provisions) Act 2022*. The aforesaid section reads as follows:

69A. Reinstatement

(1) *Where an employer terminates the employment of a worker for any reason, other than reasons related to reduction of workforce or closure of enterprises under Sub-part III, the worker may, instead of claiming severance allowance under section 69(4), register a complaint with the supervising officer to claim reinstatement.*

(2) *The supervising officer may, where he is of the opinion that the worker has a bona fide case for reinstatement, refer the matter to the Tribunal.*

(3) *In this section –*

“reinstatement” has the same meaning as in the Employment Relations Act.

A careful reading of *subsection (1)* notably reveals that a worker may register a complaint with the Supervising Officer to claim reinstatement where the employer has terminated his employment for any reason other than reasons related to reduction of workforce or closure of enterprises. It is apposite to note that the worker has been given a wide ambit to register a complaint for reinstatement. This is in sharp contrast to the now repealed *section 64 (1A)* of the Act, whereby the worker could only report a dispute as to reinstatement on specific grounds. The words '*for any reason*' are deemed to be very wide in their ambit and reach.

It must also be noted that the *Industrial Court Act* has been amended by the *Finance (Miscellaneous Provisions) Act 2022* as follows:

32. Industrial Court Act amended

The Industrial Court Act is amended, in the First Schedule, by deleting the following item –

Workers' Rights Act 2019

and replacing it by the following item –

Workers' Rights Act 2019 in so far as it does not relate to section 69A

It is trite law that as per *section 3* of the *Industrial Court Act*, the Industrial Court has exclusive civil and criminal jurisdiction over any matter arising out of the enactments which appear in its *First Schedule* (vide *Georges Mademaine & Ors v Scott Granary Company Ltd* [2009 MR 184]) and this includes the *Workers' Rights Act*. With the amendment made by the *Finance (Miscellaneous Provisions) Act 2022*, the Industrial Court still retains its exclusive jurisdiction over matters arising out of the *Workers' Rights Act* with the proviso '*in so far as it does not relate to section 69A*'. Thus, matters arising out of *section 69A* cannot be subject to the exclusive jurisdiction of the Industrial Court.

Moreover, it is pertinent to note the following extract from the intervention of the Honourable Minister of Labour, Human Resource Development and Training from *Parliamentary Debates (Hansard) No. 24 of 2022*, at page 87, in relation to the amendment brought to the *Industrial Court Act*:

In this context, due to the fact that the Industrial Court Act gives the Industrial Court exclusive jurisdiction on any matter arising out of the Workers' Rights Act, a consequential amendment is also being brought to item 6 of the First Schedule to the Industrial Court Act, to exclude the new section 69A of the Workers' Rights Act from its jurisdiction.

When the Supervising Officer acts pursuant to *section 69A* and refers a matter to the Tribunal, the Tribunal is conferred jurisdiction over the claim for reinstatement pursuant to *section 70A* of the Act. This particular section has also been enacted by virtue of the *Finance (Miscellaneous Provisions) Act 2022* and reads as follows:

70A. Reference by supervising officer

(1) *Where the supervising officer refers a matter to the Tribunal under section 69A of the Workers' Rights Act 2019, the Tribunal shall proceed to hear the case and give its determination within 90 days of the date of referral.*

(2) *The Tribunal may extend the period specified in subsection (1), where the circumstances so require, with the consent of the parties.*

(3) *Where the Tribunal finds that the claim for reinstatement of a worker is justified, the Tribunal shall –*

(a) *subject, to the consent of the worker; and*

(b) *where it has reason to believe that the relationship between the employer and the worker has not irretrievably been broken, order that the worker be reinstated in his former employment and, where it deems appropriate, make an order for the payment of remuneration from the date of the termination of his employment to the date of his reinstatement.*

(4) *Notwithstanding subsection (3), where the Tribunal finds that the claim for reinstatement of a worker is justified but the Tribunal has reason to believe that the relationship between the employer and the worker has irretrievably been broken, it shall order that the worker be paid severance allowance in accordance with section 69(1) of the Workers' Rights Act 2019.*

(5) *Where the Tribunal makes an order under this section, the order shall be enforced in the same manner as an order of the Industrial Court.*

In this context, it is relevant to note the following extract from the intervention of the Honourable Minister of Labour, Human Resource Development and Training as per *Parliamentary Debates (Hansard) No. 24 of 2022*, at page 87, in relation to the powers conferred to the Tribunal following the amendments being introduced:

Therefore, the Employment Relations Tribunal is now also being empowered to make an order for reinstatement in any case of termination referred to it by the

Supervising Officer, with the consent of the worker and where the bond of trust has not been irretrievably damaged.
(The underling is ours.)

The Respondent contends that the Disputant, as per his Statement of Case, has made a case of unfair dismissal and that the Tribunal cannot determine whether the very reason for his dismissal was unfair or not as this belongs to the exclusive jurisdiction of the Industrial Court. A perusal of the Disputant's Statement of Case reveals that the Disputant is praying for his reinstatement as from the date of his unfair dismissal. This clearly demonstrates that the Disputant is seeking reinstatement, which is consistent with the provisions of *section 69A* of the *Workers' Rights Act*. Moreover, the fact that he has qualified his dismissal as being unfair does not put him outside of the ambit of *section 69A* as the section clearly provides that '*Where an employer terminates the employment of a worker for any reason,*' the worker may register a complaint to claim reinstatement. This section, as has been noted, is excluded from the exclusive jurisdiction of the Industrial Court.

It cannot also be overlooked that the worker in registering a complaint for reinstatement under *section 69A* of the *Workers' Rights Act* is foregoing a claim for severance allowance under *section 69 (4)* of the same law which would have been actionable before the Industrial Court.

It should also be noted that the matter has been referred to the Tribunal under *section 70A* of the *Act*, pursuant to which the Tribunal is bound to hear the case and give its determination. It is trite law that the mandate of the Tribunal is limited to the Terms of Reference upon which the dispute has been referred to it. As per the Terms of Reference of the present matter, the Tribunal must enquire into '*Whether the termination of employment of Disputant is justified or not in the circumstances and whether Disputant should be reinstated or not*'. Thus, the Tribunal would have to determine whether the Disputant's termination of employment is justified or not before giving a determination as to the Disputant's reinstatement.

In view of the above, the Tribunal cannot find any merit in the preliminary objection raised by the Respondent as to its jurisdiction to hear and determine the present matter. The preliminary objection is therefore set aside.

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(SD) Shameer Janhangeer
(Vice-President)

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(SD) Vijay Kumar Mohit
(Member)

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(SD) Karen K. Veerapen
(Member)

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(SD) Ghianeswar Gokhool
(Member)

Date: 4th July 2023