

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 22/10

RULING

Before:

Rashid Hossen	-	President
Geeanduth Gangaram	-	Member
Philippe Edward Blackburn	-	Member
Maurice Christian Aimé Laurette	-	Member

In the matter of:-

Laldeo Saleegram

And

New Educational College

In presence of: - Private Secondary School Authority

The point in dispute in the present matter is the following:-

“Whether Management of New Educational College was justified to withhold the increment of Mr L Saleegram for year 1998.”

State Counsel appearing for the Private Secondary School Authority raised an objection to the present matter on the ground that the Applicant is debarred from asking for the increment due in 1998 in view of the provisions of **Article 2279** of the **Code Civil Mauricien** namely at alinéa 3, which reads:-

“Les intérêts des sommes prêtées, et généralement tout ce qui est payable par année, ou à des termes périodiques plus courts, se prescrivent par trois ans. »

Applicant is stating in his Statement of Case that his increment for the year 1998 has been withheld.

Counsel appearing for the Respondent concurred with the submission of State Counsel on the objection.

Counsel for the Applicant submitted that the matter was initially before the Commission of Conciliation and Mediation and could not be thrashed out over there. What is time-barred under **Article 2279** are the arrears whereas the right to it is another issue. If that right is established, it would help the Applicant to move one increment along the scale ladder and this will have a direct bearing on his salary. It is further submitted that the right to the increment is there but the increment has been withheld.

In a Statement of Case dated 31st May 2010 filed by the Respondent, the latter averred that it is not a legal entity. When the matter was heard for argument, the representative of Respondent failed to address us on that issue and it goes without saying that the Applicant was not pressing on this point anymore.

A labour dispute is defined in the **Employment Relations Act 2008** as a dispute:-
“between a worker, or a recognized trade union of workers, or a joint negotiating panel, and an employer which relates wholly or mainly to wages, terms and conditions of employment, promotion, allocation of work between workers and groups of workers, reinstatement or suspension of employment of a worker..”

Suffice to say that Counsel for the Applicant contends that the Applicant is not at present asking for arrears of increment and that the Terms of Reference clearly

points to the justification or not of withholding an increment for the year 1998. The Applicant is claiming for an increment due to him in 1998. We therefore consider the issue of *“arrérages”* to be misconceived.

The claim may not be in relation to *“une créance indéterminée”*. But, according to Counsel, to a right that has been withheld and we cannot conceal our surprise regarding referral of this dispute to the Tribunal. **Section 69 Subsection (7) of the Employment Relations Act 2008** provides:-

“Where no agreement is reached in the case of a labour dispute reported by an individual worker, the Commission may, within 7 days, with the consent of the worker, refer the labour dispute to the Tribunal for arbitration.”

Indeed the Commission has a discretion which is to be exercised judiciously and after considering all the issues and having failed to conciliate the parties and with the consent of the individual worker it refers the matter for arbitration.

The dispute that goes back to some twelve years i.e. 1998 with no acceptable explanation or plausible reasons to justify such a long delay for the claim to be made (on the 19th November 2008 when the matter was formally reported to the Minister of Labour, Industrial Relations and Employment) cannot in our view be considered to be a live issue. Fear of losing one’s job, as averred by the Applicant to try to justify why he did not make a claim expeditiously, cannot close the door to a party vindicating a right. We note Applicant’s words *“if that right is proven..., this would help the Applicant to move one increment along a scale ladder and this will have a direct bearing on his salary today.”* His concern now is more towards earning an enhanced pension, but a right we believe he ought to have exercised with the seriousness and diligence it required. This is a clear case where the Applicant has slept on his rights

and suddenly woke up and decided to drag the Respondent and the Private Secondary School Authority in a dispute.

The Tribunal therefore considers that further proceedings are unnecessary. The Tribunal exceptionally orders the Applicant, in view of the unreasonable delay that has elapsed between the time formal representations have been made and the time at which the dispute arose, to pay Rs 5000 as costs to each the Respondent and the party put into cause **(Private Secondary School Authority)**.

This matter is accordingly set aside.

(sd) Rashid Hossen
(President)

(sd) Geeanduth Gangaram
(Member)

(sd) Philippe Edward Blackburn
(Member)

(sd) Maurice Christian Aimé Laurette
(Member)

Date: 17th August, 2010