

**EMPLOYMENT RELATIONS TRIBUNAL**  
**RULING**

**RN 19/12, RN 20/12, RN 21/12, RN 22/12, RN 26/12, RN 28/12**

**In the matter of:-**

<b>RN 19/12</b>	<b>Mr Deenesh Patpur</b>	<b>(Disputant No 1)</b>
	<b>And</b>	
	<b>Private Secondary Schools Authority</b>	<b>(Respondent)</b>
<b>RN 20/12</b>	<b>Mr Anant Kumar Udhin</b>	<b>(Disputant No 2)</b>
	<b>And</b>	
	<b>Private Secondary Schools Authority</b>	<b>(Respondent)</b>
<b>RN 21/12</b>	<b>Mr Soorsh Ramphul</b>	<b>(Disputant No 3)</b>
	<b>And</b>	
	<b>Private Secondary Schools Authority</b>	<b>(Respondent)</b>
<b>RN 22/12</b>	<b>Mr Om Krishna Ramsahye</b>	<b>(Disputant No 4)</b>
	<b>And</b>	
	<b>Private Secondary Schools Authority</b>	<b>(Respondent)</b>
<b>RN 26/12</b>	<b>Mr Vivekanandsing Roopun</b>	<b>(Disputant No 5)</b>
	<b>And</b>	
	<b>Private Secondary Schools Authority</b>	<b>(Respondent)</b>
<b>RN 28/12</b>	<b>Mrs Bibi Aissa Sayed-Hossen</b>	<b>(Disputant No 6)</b>
	<b>And</b>	
	<b>Private Secondary Schools Authority</b>	<b>(Respondent)</b>

The above six cases have been referred to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008 (the "Act"). The cases have been consolidated with the agreement of Counsel appearing for the parties. The terms of reference are the same in all the cases and read as follows:

*"Whether the monthly ad-hoc allowance equivalent to the three increments on the relevant salary scale which was paid to Private Secondary Schools' Authority Supervisors from May 2002 to June 2008 for additional duties and due to shortage of staff, should be re-instated with effect from 1<sup>st</sup> July 2008, or otherwise"*

Counsel for Respondent has taken an objection in law to the effect that the matter is not a labour dispute and is to be set aside. The Tribunal thus proceeded to hear arguments from both counsel on the said objection. Copies of option forms signed by the disputants whereby they accept the revised emoluments and terms and conditions of service following the Pay Research Bureau (PRB) Report 2008 were produced and marked Docs A to F.

Counsel for Respondent referred to the definition of "labour dispute" in Section 2 of the Act. She then referred to paragraph 23.12 of the 2008 PRB Report (Volume 1) which read as follows:

*It is understood that acceptance, either in toto or under the foregoing options, of the revised emoluments and the terms and conditions of service contained in this Report implies that any related emoluments or allowance cannot be the subject of an industrial dispute, in conformity with the Industrial Relations Act.*

She also referred to paragraph 23.9 of the same report (Volume 1) which provides as follows:

*With the implementation of this Report, all previous authority for the payment of allowances should lapse, except for those specifically mentioned in the chapter dealing with the different departments. Allowances not covered in this Report but which may still be justified would be revised by the Bureau upon submission from the Ministry of Civil Service and Administrative Reforms.*

Counsel argued that an ad-hoc allowance is an allowance falling under the above mentioned paragraph 23.9 of the said PRB Report. She stressed on the fact that the allowance has lapsed and that the disputants cannot seek the reinstatement of something which has lapsed. She then referred to paragraph 14.21(iv) of the same PRB Report which is being relied upon by the disputants. It reads as follows:

*In areas of scarcity where few officers have to share additional workload and responsibility within a tight time frame due to acute manning problem, payment of ad hoc allowances for a specified duration can be resorted to.*

She argued that if this paragraph is being relied upon, one would expect the disputants to come with a new case altogether and not seek the reinstatement of something which has lapsed by virtue of the PRB Report. She added that even then the disputants would face a difficulty in that as per the PRB Report, additional duties have been considered for the recommendations.

Counsel for the disputants argued that this specific ad-hoc allowance is not proposed by the PRB but emanates from the specific conditions pertaining in the Inspectorate Section. He added that the disputants are not contesting any PRB recommendation in relation to salary and allowances but were in fact pressing that the Respondent complies with the PRB report. He argued that this dispute relates to a matter of evidence and that evidence will have to be heard in relation to (1) whether we are dealing with an area of scarcity and (2) whether there were additional duties being performed by the said disputants over and above what the PRB Report provided.

The Tribunal has examined the arguments of both counsel. A “labour dispute” is defined as follows in the Act-

*(a) means a dispute between a worker, or a recognised 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;*

*(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 in relation to remuneration or allowances of any kind.*

Counsel for Respondent in her arguments conceded that we are here concerned with worker and employer so that the Tribunal takes it that the worker-employer relationship exists. The dispute concerns a monthly ad-hoc allowance and thus relates wholly or mainly to wages and/or terms and conditions of work as per paragraph (a) (above) of the definition of “labour dispute”.

There is however a proviso at paragraph (b) and a labour dispute does not 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 PRB in relation to remuneration or allowances of any kind. It is not disputed (as per Docs A to F) that all the disputants have opted to accept the revised emoluments and terms and conditions of service including any modifications to the pension laws to be made to give effect to the recommendations as set out in the PRB Report 2008. Now, by so opting the disputants

have also accepted paragraph 23.9 of the said report (Volume 1) (see above) whereby they agreed that all previous authority for the payment of allowances should lapse, except for those specifically mentioned in the chapter dealing with the different departments. The ad-hoc allowance which is sought to be “reinstated” is not mentioned in the chapter dealing with the Private Secondary Schools Authority. Thus, all disputants agreed to the lapsing of the authority for the payment of the ad-hoc allowance. The disputants then cannot declare a dispute in relation to the lapsing or “reinstatement” of the ad-hoc allowance which has lapsed. Such a dispute is expressly excluded from the definition of “labour dispute” in paragraph (b) of the definition of “labour dispute” at Section 2 of the Act (see above).

Whilst Counsel for disputants argued that one should not take a literal view of the word ‘reinstatement’, the Tribunal does not agree the more so that we are now concerned with the jurisdiction of the Tribunal itself to determine the matter at hand. Indeed, the importance of having proper terms of reference cannot be minimized and the Tribunal cannot go outside the terms of reference (vide **S.Baccus & Ors v The Permanent Arbitration Tribunal 1986 SCJ 388**).

Irrespective of the evidence adduced before the Tribunal, it cannot award that the monthly ad-hoc allowance as described should be reinstated. The dispute is not one where the disputants are claiming that they should be granted an ad-hoc allowance as from 1 July 2008 as per the PRB Report 2008. The basis of the dispute before the Tribunal and that of the dispute mentioned above are very different. Further, the terms of reference are silent on the recommendations of the PRB Report 2008. Instead, the Tribunal is being embarked in an exercise which could be tantamount to revisiting what the PRB has done or has not done in the light of averments in the Statements of Case of disputants that they are relying on the provisions of the PRB report or pressing that these be complied with but whilst at the same time averring that the PRB in its report failed to take on board certain things.

For all these reasons, the objection in law made on behalf of the Respondent is upheld and the disputes are set aside.

**(Sd) Indiren Sivaramen**  
**Vice-President**

**(Sd) Geeanduth Gangaram**  
**Member**

**(Sd) Abdool Feroze Acharauz**  
**Member**

**(Sd) Maurice Christian Aimé Laurette**  
**Member**

**11 July 2012**