

**EMPLOYMENT RELATIONS TRIBUNAL**

**AWARD**

**RN 108/13**

**Before**

<b>Indiren Sivaramen</b>	<b>Vice-President</b>
<b>Vijay Kumar Mohit</b>	<b>Member</b>
<b>Rabin Gungoo</b>	<b>Member</b>
<b>Renganaden Veeramootoo</b>	<b>Member</b>

**In the matter of:-**

**Mrs Bibi Zaheboon Nessa Joomun (Disputant)**

**And**

**Sugar Industry Labour Welfare Fund (Respondent)**

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). Both parties were assisted by Counsel and the terms of reference read as follows:

*"Whether I, Mrs Bibi Zaheboon Nessa Joomun, should be paid one additional increment with effect from 1<sup>st</sup> July 2003 as I reckon 25 years service in the same post continuously without promotion with the Committee of Social Welfare Centre / Sugar Industry Labour Welfare Fund."*

The Disputant deponed before the Tribunal and she stated that she started working in the Social Welfare Centre at Plaine des Papayes on 2 February 1978. She averred that she was working at the "Sugar Industry" whereby she was referring to Respondent. She obtained sick and local leaves as from 1979 and was even granted maternity leave in 1979.

The Disputant stated that in 1987 the "Social Welfare Fund" was integrated with the Respondent. She received a letter of offer of employment from Respondent but her letter was damaged and she produced a copy of a similar letter received by her colleague (Doc A - there was no objection to the production of same by Respondent and by the recipient of the letter). She stated that she was granted "continuous service" and referred to an earlier award (**ERT/RN 18/12**) of the Tribunal which would have upheld same. Mrs Joomun stated that she did not have any document to show that she started working as from 2 February 1978 but that the attendance register which she

has been signing will confirm same. She added that she was making contributions to the National Pension Scheme since 1979. The Disputant stated that from 1978 to 2003, she did the same job for 25 years without any promotion. She however did not have the increment as contemplated by the PRB Report of 2003.

In cross-examination, Disputant (wrongly) averred that right from the beginning she was employed by Respondent. She identified a copy of her letter dated 9 September 1987 (Doc B). Mrs Joomun stated that she accepted the move in 1987 since she was benefitting from continuous service and could from then on go directly to Respondent instead of having to go through the Social Welfare Committee. Disputant accepted that she has been given an increment as from the time Respondent considered that she had completed the required 24 years' service. She claims that she should have been paid the increment well before when she actually completed the said 24 years' service.

Mr Dhooky, secretary of the Social Welfare Community Union deponed at another sitting. He averred that he had a list of workers with their job titles, posts occupied before they joined Respondent and their salaries. He stated that, as per the list, the said workers did not have the same salaries in 1987. According to him, if they had joined Respondent at the same period, they would not have been at different salary points. He also suggested that a worker who was employed on a temporary basis would not earn increments and would start earning benefits when he is confirmed in his post. The union has written to the Social Welfare Division to have a list of workers and the dates on which they joined the Respondent.

In cross-examination, when asked if he had any document to show that Disputant started working in 1978, Mr Dhooky stated that Disputant showed him a document pertaining to deductions made for payments to the National Pension Fund (NPF) for Disputant. Her employer then was the Social Centre Committee.

Mrs Chooraman, a clerical officer of Respondent was also called as a witness at this stage and she stated that Disputant joined Respondent on 14 August 1987. She produced copies of the offer of appointment made to Disputant (Doc C), a letter in relation to the restyling of Disputant's post (Doc D) and the schedule of duties of the post of Social/Welfare worker (Doc E). She was not aware if the Social Welfare Division had given certain documents to Respondent for the purposes of the integration process. She confirmed that the Disputant is still performing the same duties as per Doc E.

Mr Shudanand, the Deputy Social Welfare Commissioner then deponed before the Tribunal and he confirmed that the Disputant was employed by the Social Welfare Committee. The Social Welfare Division was in charge of the administration and was receiving an administrative grant from Respondent for payment of expenses related to the Social Welfare Centres. He explained the reasons leading to the integration of Social Welfare staff on the establishment of the Respondent as from 13 August 1987. He stated that, according to the attendance book, Disputant assumed duty on 17 January 1978 at Plaine des Papayes. He produced a copy of an extract of the relevant attendance book (Doc F). Mr Shudanand referred to a letter issued to another worker

whereby it was clearly provided that the latter would be “on a trial basis for three months as from 1<sup>st</sup> July 1978”. He is not aware of any case where formal confirmation or appointment letters would have been issued to workers. Instead, when the trial period was over, if there was no adverse report this was it and the worker was appointed. He produced a copy of the letter issued to the other worker (no objection from the latter and from Respondent) (Doc G). According to him, the same trial period applied to all employees at that time.

Mr Shudanand stated that Disputant would have been confirmed three months after she started and could thus benefit from a first increment which was paid in the month of July at that time. He averred that if a worker was not confirmed, he would not earn the increment. In cross-examination, Mr Shudanand confirmed that the employer of Disputant before 1987 was the Committee of the Social Welfare Centre.

Mr Gooneadry, the Human Resource Management Officer of Respondent then deponed and he stated that Respondent is governed by the Pay Research Bureau (PRB) Report and has to abide by the provisions in the Human Resource Management Manual. The Respondent recognizes Disputant as his employee as from the date that Respondent issued an appointment letter to Disputant, that is, as from 13 August 1987. He explained that the start date for the purposes of the ‘long term service increment’ was taken as being 1987. He produced a copy of the notes of a meeting held in relation to the implementation of Government’s decision for Respondent to be the employer of staff employed by local committees of Social Welfare Centres (Doc H). Disputant was paid her ‘long term service increment’ as from August 2011.

In cross-examination, Mr Gooneadry stated that recommendations of the PRB are implemented and that where broad guidelines are provided, the manual must be consulted for implementation. He confirmed that a worker who is on probation would not earn increment. He stated that employees who came from the Social Welfare Division were not earning the same salary. He did not however agree that the difference in salary was because Disputant had already been confirmed in her job and had earned several increments. It was only when the decision had to be implemented that several correspondences were exchanged between the Social Welfare Centre and Respondent. According to him, the Respondent had asked for all information but received only a list of employees with their salaries. Mr Gooneadry highlighted the difference between a permanent transfer and a transfer of an employee from a non approved service to an approved service.

Mr Gooneadry did not challenge evidence adduced by Mr Shudanand. He also accepted that an employee cannot be kept on probation forever. He had no evidence to show that there was a break in the service of Disputant since she was employed in 1978. She accepted that when Disputant signed the attendance book, she must have been an employee of the Social Welfare Division. As from 1987, Disputant was put on the establishment of the Respondent and pension contributions were made to SICOM for her. He averred that for the period 1978 to 1987, she would be paid a severance allowance at the time of retirement based on the last salary drawn at the time of

retirement. He agreed that there was no change in the work performed by Disputant from 1987 to 2003 and the latter was not promoted. He did not agree that Disputant should have been granted her increment before 2003. He produced copies of correspondences exchanged between his office and the Social Welfare Division (Docs I to I 9). He is not challenging information received from the Social Welfare Division but he averred that this was not substantiated by any document (and more particularly in relation to confirmation) required from the Social Welfare Division.

Counsel for Disputant submitted that it was for the employer to keep a very good record of his employees and which had not been done in the present matter. Counsel suggested that the normal procedure is for confirmation of a worker after one year. Counsel left it for the Tribunal to determine the date on which Disputant joined service in the present matter. He suggested that Disputant should not be precluded from a benefit because of the absence of a letter of confirmation. Counsel submitted that all the conditions set out in the relevant provision (for long service increment) of the 2003 PRB report had been met. His position in relation to the date Disputant joined service however was not clear.

Counsel for Respondent referred to the previous award and interpretation delivered by another panel of the Tribunal. She averred that as the Disputant was employed by the Committee of Social Welfare, she was not, as per law, deemed to be a Government servant. She argued that the Disputant could not avail herself of the benefits and entitlements under the PRB report. She added that the calculation of increment would depend on the date of confirmation as per the Human Resource Management Manual. However, the Disputant has not been able to provide the date of confirmation of her employment.

The Tribunal has examined all the evidence on record including the submissions of both Counsel. Though proceedings took place over a number of sittings and were quite long, the issues to be decided are quite clear cut and distinct. This dispute was preceded by a fairly similar dispute reported by the Social Welfare and Community Centres Employees Union against Respondent and it concerned employees of the Committees of Social Welfare Centres / Community Centres who were taken over by the Respondent as from 13 August 1987. The award (**Social Welfare and Community Centres Employees Union v Sugar Industry Labour Welfare Fund, ERT/RN 18/12**) delivered by the Tribunal in the previous case has been annexed as Annex A1 to Disputant's Statement of Case whilst another award (**Sugar Industry Labour Welfare Fund and Social Welfare and Community Centres Employees Union, ERT/RN 66/12**) delivered by the Tribunal subsequent to a request for interpretation of the first award was annexed as Annex A to the same Statement of Case. From the above, the Tribunal has to ascertain whether the Disputant satisfied "the conditions of eligibility set out in paragraph 1.33(v) of the PRB Report 2003" (at the relevant material time) and thus would be eligible for the additional increment with effect as from 1 July 2003 (obviously if the latter had opted to accept the revised terms and conditions of service as set out in the PRB Report 2003). Curiously, there is no evidence on record that Disputant opted (underlining is ours) for the revised terms and conditions as set out in

the PRB Report 2003 and the terms of reference have been drafted without any reference to the PRB Report 2003. The Tribunal will however proceed further in view of the history of events leading to the present matter and bearing in mind that this case is a sort of 'test case'.

Paragraph 1.33 (v) of the PRB Report 2003 Volume 1 provides as follows:

*“(v) Officers reckoning 25 years’ service in a single grade, and who have been drawing the top salary of their scale prior to this Report, should be granted the converted salary corresponding to an additional increment to be read from their scale or the master salary scale with effect from 1 July 2003.”*

There is no evidence at all on record that Disputant has been drawing the top salary of her scale prior to the PRB Report 2003. This is an essential condition attached for the granting of the increment (see paragraph 1.33 (v) of the PRB Report 2003 Volume 1 above).

There is more to it however in the present case. Indeed, quite apart from the fact that there is no official letter of appointment/confirmation from the relevant Social Welfare Committee, the case of the Disputant as to the exact date she joined service with the Committee is to say the least unsatisfactory. Assuming Disputant was confirmed in her post, the date of confirmation would be similarly affected. Indeed, we have evidence from a copy of an extract of the attendance register where “Z.Joomun” would have signed her attendance since “26/1/” which is purported to stand for 26 January 1978 (page for attendance from 16 January 1978 to 25 January 1978 missing in the extract - Doc F). However, the Disputant when deponing referred to starting working at the Social Welfare Centre on 2 February 1978 (in accordance with date mentioned in her Statement of Case). Counsel for Disputant has added to the great confusion in relation to the date Disputant joined the Social Welfare Centre. Indeed, Counsel at the sitting of 7 May 2014 stated the following: *“At this stage I would like to make a statement to the Tribunal. On the last occasion the date has skipped my mind. On the last occasion the date given by the Assistant Commissioner didn’t in fact tally with the date as per my Statement of Case. But right now I would be moving this Tribunal that I shall be going by the date as given by the Assistant Commissioner but the date still stays 1978, there is only a discrepancy of one or two months with regard to months.”*

At the sitting of 26 May 2014, Counsel stated *“Yes. Grateful Mr Vice-President, for drawing my attention. In fact, my instructions are as far as the recollection of my client stands the date that she has given me is the 2<sup>nd</sup> of February 1978 and as of now, with this letter I filed, in the possession of the Tribunal I think it will be safer to proceed on a document that is uncontested which is right here.”*

Finally, in his submissions in relation to the date Disputant joined the Committee, Counsel stated the following: *“However, my position is not clear-cut, straightforward in this matter but I would like in my submission to draw the attention of the Tribunal with regard to, it is uncontested that Mrs Zaheboon Joomun was in employment prior to 2<sup>nd</sup>*

*of February 1978. It is uncontested. The exact date, we don't have it in our possession, unfortunately. But, what conclusion it leads me to in light of this evidence that is present is, had she been in employment prior to 2<sup>nd</sup> of February 1978 and herein it is written date joined service, that would appear to be the date of confirmation which is end of the issue. She could not have been in service just like that, prior to 2<sup>nd</sup> of February when, I apologize ..."*

The Tribunal finds that the least said on the last but novel version of Counsel that 2 February 1978 would be the date of confirmation of Disputant the better it is. In the present matter, the case of disputant as to when she was first appointed differs from evidence adduced on her behalf.

On the issue of "single grade", there is evidence that Disputant was performing the same work. There is also evidence that she had no promotion. The terms of reference of the dispute refer deliberately to "25 years service in the same post continuously without promotion" and not to "25 years' service in a single grade" as used in paragraph 1.33(v) of the PRB Report 2003 Volume 1. The Tribunal will leave open the issue as to whether it is sufficient for a worker to be performing similar or same duties for 25 years (as the period then was) to be eligible for the increment under paragraph 1.33(v) of the PRB Report 2003 (above). Indeed, it is interesting to note that the PRB has provided at paragraph 23.6 (xii) of its 2008 PRB Report Volume 1 a specific provision which reads as follows:

*For officers of parastatal bodies who have been re-deployed in the Civil Service, by virtue of a decision of government, and required to perform similar duties under the same or different grade appellation, the aggregate number of years of service should be taken into consideration for implementing the recommendations at paragraphs 23.6 (vii) to (ix). (after amendment following the Errors, Omissions and Clarifications of the 2008 PRB Report)*

Paragraph 23.6(viii) of the said 2008 Report is in relation to a 'long service increment' fairly similar (but not identical) to that mentioned in paragraph 1.33(v) of the PRB Report 2003 (above).

The workers employed by the Social Welfare Committees were not considered in Doc H (notes of meeting for the implementation of Government's decision for the Respondent to be the employer of staff employed by Social Welfare Committees) as having equal status to those employed by the Respondent which is a parastatal body. Indeed, it was mentioned in the minutes that Government's decision would provide more security and status to the third category of workers, that is, those who were then employed by the Social Welfare Committees.

It is apposite to note that the Tribunal in the case of **Social Welfare and Community Centres Employees Union v Sugar Industry Labour Welfare Fund (above)**, already stated the following (at pages 5-6 and 7 of its award):

*“Although the Respondent has not contested the first point of the dispute, i.e. whether an employee reckoning at least 25 years of continuous service in the same post should be paid an additional increment as per PRB Report 2003, the relevant recommendation of the PRB Report 2003 does invite consideration. Paragraph 1.33 of the PRB Report 2003 Volume I reads as follows:*

*(v) Officers reckoning 25 years’ service in a single grade, and who have been drawing the top salary of their scale prior to this Report, should be granted the converted salary corresponding to an additional increment to be read from their scale or the master salary scale with effect from 1 July 2003.*

*The aforementioned recommendation from the PRB Report 2003 clearly does not confer an automatic right to an additional increment in as much the person claiming to be entitled to same must satisfy the conditions stated therein. In particular, the officer, prior to the Report, should have been in the service for 25 years in a single grade and must have been drawing the top salary of his salary scale.*

...

*Although the issue of the posts does not form part of the present dispute, this cannot be left unnoticed in view of the requirement for the person to be in a single grade in the aforementioned recommendation of the PRB Report 2003.”*

For all the reasons given above, the Tribunal finds that the Disputant has failed to prove the essential elements specifically hinted to in the earlier award of the Tribunal (**ERT/RN 18/12**) in relation to workers **“who satisfy the conditions of eligibility set out in paragraph 1.33(v) of the PRB Report 2003 and have opted to accept the revised terms and conditions of service as set out in the aforesaid Report.”** For all the reasons given above, the dispute is set aside.

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

**(Sd) Vijay Kumar Mohit**  
**Member**

**(Sd) Rabin Gungoo**  
**Member**

**(Sd) Renganaden Veeramootoo**  
**Member**

**20 June 2014**