

EMPLOYMENT RELATIONS TRIBUNAL

RULING

RN 95/14

Before

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| Indiren Sivaramen | Vice-President |
| Raffick Hossenbaccus | Member |
| Jay Komarduth Hurry | Member |
| Khalad Oochotoya | Member |

In the matter of:-

Mr Anant Kumar Udhin (Disputant)

And

Private Secondary Schools Authority (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"). The terms of reference of the dispute read as follows:

"Whether I, Mr. Anant Kumar UDHIN, Senior Supervisor at the Private Secondary Schools Authority (PSSA), am entitled to the grant of an increment in my basic salary after having successfully completed my Master in Business Administration (MBA) degree in March 2012 as in the case of my colleague Supervisor Mr. D.Patpur for his Master's degree, in line with the – recommendation of the Ministry of Education and Human Resources as regards Educators holding that certificate."

Both the Disputant and the Respondent were assisted by counsel and counsel for Respondent has taken the following preliminary objections:

Respondent moves that the dispute be set aside with costs inasmuch as-

(1) This Tribunal has no jurisdiction to entertain the present matter-

- (a) as the Disputant's case is grounded on discrimination;
- (b) in view of the prayers sought.

(2) The present matter is a disguised application for the review of a decision of the Equal Opportunities Commission in a complaint made to the Equal Opportunities Commission by the Disputant in relation to this same matter and the present Tribunal does not have the jurisdiction to entertain same.

The Tribunal thus proceeded to hear arguments from both counsel.

For the purposes of the arguments, some evidence was adduced by the representative of the Respondent and copies of three letters were produced (Docs A, B and C). The Tribunal has examined the arguments of both counsel and the evidence adduced so far.

As regards the preliminary objection under limb (1), the contention of Respondent is that the Tribunal has no jurisdiction since the Disputant's case is "grounded on discrimination". Though reference has been made in the Statement of Case of the Disputant to the term "discrimination" on more than one occasion, the terms of reference of the dispute do not refer to discrimination. The dispute as referred to us is within the jurisdiction of the Tribunal as it is a labour dispute as defined in the Act.

Reference to the "prayers sought" will also not affect the jurisdiction of the Tribunal since the dispute has been properly referred to the Tribunal by the relevant body and the Tribunal is at this stage concerned primarily with the terms of reference. Whether to grant a particular "prayer" will be for the Tribunal to decide after hearing the matter and any submissions parties may wish to make.

As regards the preliminary objection under limb (2), there is nothing, as per the terms of reference, to suggest that the present dispute is a disguised application for review of a decision of the Equal Opportunities Commission. There is no mention of terms like "discrimination" or "discriminatory treatment" in the terms of reference. Also, we note that there is no averment that the present dispute is *res judicata*. The Tribunal is in fact the appropriate body (provided appropriate procedures have been followed) to decide whether a disputant should be granted an increment following completion of a particular degree. The Tribunal shall not, on the other hand, enquire whether there has been any discrimination towards Disputant and cannot make any declaratory award in relation thereto.

When the case is heard on its merits, Respondent will be free to raise any objection it deems fit to evidence being adduced but the dispute as referred to us by the Commission for Conciliation and Mediation is well within the jurisdiction of the Tribunal. It is apposite also to note that section 97 of the Act lists the principles which the Tribunal may, in the exercise of its functions in relation to a matter before it, have regard to and these include “the principles and best practices of good employment relations” and “the principles of natural justice”.

For the reasons given above, the preliminary objections are set aside and the case is to proceed on its merits.

(sd)
Indiren Sivaramen
Vice-President

(sd)
Raffick Hossenbaccus
Member

(sd)
Jay Komarduth Hurry
Member

(sd)
Khalad Oochotoya
Member

9 December 2014