EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 195/15

Before:

Rashid Hossen	– President
Esther Hanoomanjee (Mrs)	– Member
Jay Komarduth Hurry	– Member
Khalad Oochotoya	– Member

In the matter of :-

Mrs Hemowtee Salaye Meetoo

Disputant

And

Mauritius Broadcasting Corporation

Respondent

The President of the Commission for Conciliation and Mediation referred the present labour dispute to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008, as amended.

On 25 November 2015, Mrs Hemowtee Salaye Meetoo (hereinafter referred to as the Disputant) reported to the President of the said Commission the

existence of a labour dispute between herself and the Mauritius Broadcasting Corporation (hereinafter referred to as the Respondent) as per Section 64(1) of the Employment Relations Act 2008, as amended. Conciliation meetings were held at the Commission and no settlement has been possible.

Mr S. Mohamed appeared together with Mr R. Valayden for the Disputant. Mr R. d'Unienville, Q.C., assisted by Mr M. Mardemootoo, S.A., appeared for the Respondent.

The point in dispute is:-

> *"Whether I, Mrs Hemowtee Salaye Meetoo, should be reinstated in my post of Programme Manager at the Mauritius Broadcasting Corporation with effect from 4th August 2015."*

The Disputant averred in her Statement of Case:-

- She is the holder of an HSC at the Dunputh Lallah SSS, a Diploma in Management Studies awarded by the University of Mauritius and a Bachelor's degree in Management Studies awarded by the University of Mauritius. She is the holder of various other certificates in other courses which she has successfully followed.

- She joined the Mauritius Broadcasting Corporation on the 4th of September 2009 as News Editor on a freelance sessional basis. Prior to that, she worked as News Reporter from the year 2004 to 2009 at Radio Plus, which is part of "Le Defi Media Group".

- She has been in continuous employment at the Mauritius Broadcasting Corporation, since the 4th of September 2009. During that period, many other News Reporter from the private radios joined the Mauritius Broadcasting Corporation, namely Annabelle Volbert, Josian Valere, Ashana Nuckcheddy, Kunal Gauzee, Djemila Mourade and Kendy Mangra.

- On or about January 2011, she was summoned in the Director General's Office where she was requested to attend the duties of Public Relations Coordinator which she accepted as from the 8th of February 2011. Whilst she was in employment as Public Relations Coordinator, she had to oversee the works in the Programmes Department as stipulated in her agreement. She fulfilled both duties while she was being paid only for her obligations as Public Relations Coordinator.

- She was already fulfilling the duties at the Programmes Department, when she was offered to work as Officer in Charge of the Programmes Department as from 08th February 2012 and this on a one year contract. On the 08th February 2013, her contract was renewed.

- Following an open vacancy notice for the position of Programme Manager, she applied for the job. An interview was carried out, and she was offered the position of Programme Manager as from 1st September 2013. As per the terms of the agreement, it was said that only upon completion of one year contract period that she would be

placed on the Permanent and Pensionable Establishment. After one year, she was placed on permanent capacity as from the 1st September 2014.

- Since she was in charge of the Programmes Department, she successfully monitored and launched new television channels like MBC Digital 4, Sports 11, Cine 12, Senn Kreol, Bhojpuri Channel, Marathi Channel, Tamil Channel, Telegu Channel, Urdu Channel, Tv Rodrig and MBCSAT.

- Lastly, as from 1st July 2015 she rebranded MBC Digital 4, which is today's MBC most viewed channel.

- During a meeting held in the Board Room of the MBC on the 30th July 2015, she was informed by the Director General that as from the month of August 2015, she will be given a new and additional responsibility that is to fulfill the duties of Duty Officer on a roster basis.

- One of the roles of a Duty Officer is to take appropriate decisions on behalf of the Director General when the latter is not present at the Corporation.

- On the 30th July 2015, during a Board meeting held at around 17H00 at the Mauritius Broadcasting Corporation, the Chairman of the Mauritius Broadcasting Corporation Board, the Director General and the other

members of the Board requested her to work on a new concept for a programming issue which she accepted.

- On the 04th August 2015 at around 10.00 AM, she was called at the Director General's Office, where the latter informed her that as per Mauritius Broadcasting Corporation Board's decision of 03rd August 2015, her services were terminated forthwith.

- The termination letter was handed to her where no reason for her dismissal was underlined.

- On the 05th of August 2015, she wrote an official letter to the Director General of the Mauritius Broadcasting Corporation and requested to know the reason/s that followed the termination of her services.

- Further to her request, on the 07th of August 2015, a letter was sent to her, signed on behalf of the Director General, where it is mentioned *"we must inform you that there is no obligation on our part to disclose the reasons for deciding as we do."*

- On the 05th August 2015, she wrote official letters to the President and the Secretary of the Union of the Mauritius Broadcasting Service Staff Association informing them about her dismissal from the Mauritius Broadcasting Corporation and requested to know the course of actions they would take to ensure her reinstatement.

- On the 06th of August 2015, she wrote an official letter to the Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training to inform about the termination of her services from the Mauritius Broadcasting Corporation and requested for his intervention for her reinstatement.

- On the 12th of August 2015, she made an official complaint at the Ministry of Labour of Port Louis about the sudden, abrupt, unjustified and arbitrary termination of her services from the Mauritius Broadcasting Corporation and requested for her reinstatement.

- She was convened at the Ministry of Labour of Port Louis on the 4th of September 2015 at 14H00 whereby once again she requested for her reinstatement.

- She has also made an application under Section 68(1) of the Employment Relations Act.

- Her contract of employment was terminated in contravention to Sections 37(2), 38(2) and eventually 38(3).

- She has two alternatives, either to refer the matter to Court for payment of severance allowance or to apply to the Tribunal for reinstatement.

- Her dispute has been declared under Section 69(7) for reference to the Tribunal for arbitration.

In reply to Disputant's Statement of Case, the Respondent averred:-

- The Disputant's contract of employment was terminated on 4th August 2015.

- She joined service at the Mauritius Broadcasting Corporation as News Editor on a sessional freelance basis on 21 September 2009 instead of 04 September 2009.

- It cannot be certified that she worked as News Reporter from 2004-2009 at Radio Plus.

- She has been in continuous employment at Mauritius Broadcasting Corporation as from 21 September 2009 instead of 04 September 2009.

- It cannot be certified that the other names mentioned were from private radio.

- It cannot be certified whether on or about January 2011, she was summoned in the then Director General's office to attend to duties of Public Relations Coordinator.

- However, as per records in her personal file, she was offered a contract of employment as Public Relations Coordinator as from 08 February 2011.

- In her contract of employment as Public Relations Coordinator, her duties are as follows:

  (a) to attend to the public relations matters of the Corporation and to liaise with appropriate organisations to promote Mauritius Broadcasting Corporation image;

  (b) to ensure that public queries and complaints are effectively being dealt with;

  (c) to coordinate the activities of the Programmes Department, ensure the promotion of Radio and TV prorammes and develop programme policies in response to viewers' demands;

  (d) to ensure that Mauritius Broadcasting Corporation programmes cater for the cultural diversity of the audience with particular emphasis on quality content and delivery;

  (e) to perform such other duties directly related to the main duties listed above.

  There was no mention made that she had *"to oversee the works in the programmes department."*

- She was offered a contract of employment as Officer in Charge of the Programmes Department with effect from 08 February 2012. Her contract of employment as Officer in Charge Programmes was renewed for a further period of 1 year with effect from 08 February 2013.

- She had to attend to her duties of Programmes Manager.

- It cannot be certified that the then Director General informed her that she "*be given a new and additional responsibility as Duty Officer"*.

- As per Mauritius Broadcasting Corporation Board's decision of 30 July 2015, she was requested to make arrangements to explore for dubbing in multiple languages.

- On the 4th August 2015, Mrs Salaye was informed by the former Director General that her services were terminated as per Board's decision of 03 August 2015.

- No reason is mentioned in letter of termination of employment.

- It cannot be certified whether on 05 August 2015, she wrote official letters to the President and Secretary of the Union of the Mauritius Broadcasting Service Staff Association.

- It cannot be certified that on 06 August 2015, she wrote an official letter to the Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training.

- However, on 25 August 2015, Mauritius Broadcasting Corporation was requested to attend a meeting at the Ministry on 04 September 2015, as Mrs Salaye had filed a complaint.

- Mauritius Broadcasting Corporation attended the meeting at the Ministry on 04 September 2015.

- Mauritius Broadcasting Corporation had attended to all meetings convened by the Ministry of Labour and maintained the termination of employment of Mrs Salaye as decided by the Mauritius Broadcasting Corporation Board against payment of severance allowance and as per legal advice sought by Mauritius Broadcasting Corporation thereof.

The Disputant deponed as to the facts she averred in her Statement of Case, laying particular emphasis on the fact that no reason was given to her apart her termination of employment. She was not cross-examined.

The Respondent did not adduce evidence.

Mr R. D'Unienville, Q.C., Counsel for the Respondent, submitted that an employer can terminate the employment of an employee without stating the reason as long as severance allowance in accordance with the law is being paid and that apart from certain circumstances in cases brought before the Industrial Court and also in cases of redundancy, there cannot be any order for reinstatement.

Mr S. Mohamed, Counsel for the Disputant, stressed on the equitable jurisdiction of the Tribunal. According to Counsel, the Tribunal is not restricted to common law or statutory law and it is to look into fairness and equity and the legitimate expectation of an employee.

The Tribunal dealt in the recent past with the issue of reinstatement and we will refer extensively to some of the relevant parts of Awards and a Ruling delivered.

Award - Miss Mahentee Boolakee & Central Electricity Board (ERT/RN 10/13)

".....Under *section 2* of the *Act*, a labour dispute means a dispute between a worker and an employer which relates wholly or mainly to, *inter alia*, reinstatement or suspension of a worker. As per the terms of reference of the present matter, the Disputant is asking for her reinstatement with effect from 16 November 2011 at the *CEB*.

Although the meaning of a labour dispute under the *Act* includes a dispute relating to reinstatement of a worker, the *Act* does not specifically make any provisions in relation to the reinstatement of a worker. As is customary in our legal system, we may turn to French Law for guidance as per what was stated in *The United Bus Service v Gokhool* [*1978 MR 1*]:

> *Our common law being derived from the French Codes, we have no doubt that the same principles should apply here – the more as they appear to us more realistic, more consistent with the spirit of our labour law (under which an employee should be dismissed only in the last resort) and more likely to conduce to a harmonious development of our law.*

It may be noted from *Mementos Dalloz, Droit du travail Vol. 2 by J-M. Verdier, A. Coeuret and M-A. Souriac, 16e édition*, that under French Law a worker may be reinstated in cases of *licenciement injustifié* and *nullité des licenciements portant atteinte à un droit fondamental*. In the former case, it may be noted (at page 287):

La procédure est respectée, mais la cause n'est pas réelle ou pas sérieuse.

- *Le juge peut proposer la réintégration. Il a donc un choix. La réintégration est facultative aussi pour les parties, donc pour l'employeur.*
  Si la réintégration est effective, elle entraine le maintien des avantages acquis, en particulier de ceux attachés à l'ancienneté (primes, durée du préavis, indemnités de licenciement, électorat, éligibilité…). En outre, la réintégration signifiant la continuation du contrat du travail, le salaire est dû entre le licenciement et la réintégration (une «indemnité» équivalente, pour la Cour de cassation, car il n'y a pas eu travail).

  Bien que facultative pour le juge et pour l'employeur, la réintégration constitue dans l'esprit de la loi la sanction normale. Mais, selon la Cour de cassation, le texte opérerait une conciliation raisonnable entre le droit de chacun d'obtenir un emploi et la liberté d'entreprendre (Soc. 14 avril 2010, Dr. Soc. 2010. 815).

In relation to the reinstatement of a worker in cases of *nullité des licenciements portant atteinte à un droit fondamental*, it may be noted (at page 288):

Bien qu'en vertu des dispositions de l'article L. 1235-3 du Code du travail, la réintégration du salarié soit facultative pour le juge

et pour chacune des parties, la jurisprudence s'est orientée dans un sens différent lorsque le licenciement constitue une atteinte à une liberté fondamentale du salarié, auquel cas le juge pourrait ou devrait ordonner, au besoin sous astreinte, la poursuite de l'exécution du contrat et la réintégration du salarié, obligatoire pour l'employeur, le licenciement étant nul.

The basis for the reinstatement of a worker under French Law is either the unjustified dismissal of a worker or the nullity of a dismissal due to a breach of a fundamental right. However, given the lack of jurisdiction of the *Tribunal* in matters of unfair or unjustified dismissal of a worker, which arises out of the *ERA* as discussed above, French Law does not necessarily finds its application. We may therefore turn to English Law for guidance.

Under the *Employment Rights Act 1996* (as amended) in the UK, in relation to reinstatement, the following has been provided for in *sections 113 & 114*:

113. The orders.

An order under this section may be –

(a) an order for reinstatement (in accordance with section 114), or

(b) an order for re-engagement (in accordance with section 115),

as the tribunal may decide.

114. Order for reinstatement.

(1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.

In the matter of *McBride v Strathclyde Police Joint Board [2013] CSIH 4*, reported in *[2013] IRLR 297*, the *Scottish Court of Session* held:

> *Reinstatement is unconditional; re-engagement is not. That reinstatement involves being returned in all respects to the contractual position is consistent with s.114(3) which specifies that a person reinstated must be treated as if they had benefited from any improvement in the terms and conditions of employment from which they would have benefited if not dismissed.*

Furthermore, from *McBride v Strathclyde Police Joint Board* (*supra*), the following may be noted in relation to factors to be taken into account by an *Employment Tribunal*:

> *In considering whether to make such an order, the tribunal were required under s.116 (1) of the Employment Relations Act 1996 ('the Act') to take into account whether the complainer wished to be reinstated and whether it was practicable for the employer to comply with such an order. They also required to consider whether the appellant had to some extent caused or contributed to her dismissal. (Vide paragraph 8)*
>
> *As to the issue of whether the appellant caused or in some way contributed to her dismissal, the tribunal's finding on that matter was made wholly in the context of s.116(1)(c), which enjoins a tribunal, when considering reinstatement, to take into account 'where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement'. (Vide paragraph 33)*

However, from *section 111* of the *Employment Rights Act 1996*, it may be noted that a person may present a complaint to an *Employment Tribunal* against an employer that was unfairly dismissed by the employer, following which pursuant to *section 112* the tribunal shall explain to the complainant

what orders may be made under *section 113* (i.e. reinstatement or re-engagement) in the event that the grounds of the complaint are well-founded. The relevant parts of *sections 111* and *112* read as follows:

> ***111 Complaints to employment tribunal.***
>
> *(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.*
>
> ***112 The remedies: order and compensation.***
>
> *(1) This section applies where, on a complaint under section 111, an employment tribunal finds that the grounds of the complaint are well-founded.*
>
> *(2) The tribunal shall-*
>
> *(a) explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and*
>
> *(b) ask him whether he wishes the tribunal to make such an order.*

It is therefore clear from the above provisions of the *Employment Rights Act 1996* in the UK that the basis of an order for reinstatement of a worker is a complaint of unfair dismissal, which under our law would be within the jurisdiction of the *Industrial Court* (*vide section 3* of the *Industrial Court Act* (the "*ICA*"); and *Raman Ismael v United Bus Service* (*supra*))."

Award - Mr Sheryad Hosany and Cargo Handling Corporation Ltd (ERT/RN 40/13)

"'Labour dispute' is defined at section 2 of the Act as follows:

"(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)…."

The definition includes the term "reinstatement" but apart from this definition the Act as it stood prior to the amendments brought by the Employment Relations (Amendment) Act 2013 or even after these amendments does not contain any other reference to the term "reinstatement". The Employment Rights Act as amended by the Employment Rights (Amendment) Act 2013 on the contrary specifically provides that the Industrial Court may order the reinstatement of a worker in his former employment under section 46(5B) of the said Act. Under section 39B of the same Employment Rights Act, the Employment Relations Tribunal may order the reinstatement of a worker in his former employment in cases of reduction of workforce. One of the objects for the amendments to the law, as stated on the Explanatory Memorandum to the Employment Rights (Amendment) Bill which later became the Employment Rights (Amendment) Act 2013, was with a view to "*introducing the concept of reinstatement in cases of unfair termination of employment on grounds of redundancy, discrimination and victimisation for participation in trade union activities*."

"Reinstatement" in former employment may now be ordered following the recent amendments brought to the law. However, such an order may only be made in a limited number of cases. Section 46 (5B) **(above)** provides that the Industrial Court may where it finds that the termination of employment of a

worker, who has been in continuous employment for a period of not less than 12 months with an employer, is effected on the ground of the worker's race, colour, caste, national extraction, social origin, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, marital status or family responsibilities or by reason of the worker becoming or being a member of a trade union or otherwise participating in trade union activities, the Court may, with the consent of the worker, order that that worker be reinstated in his former employment. Section 39B **(above)** at its subsection (9) provides that the Tribunal may, with the consent of the worker, order that a worker be reinstated in his former employment where it finds that the reduction of workforce is unjustified. This Tribunal has been granted an added jurisdiction for the first time under the Employment Rights Act in relation to the reduction of workforce and the closing down of an enterprise (sections 39A and 39B of the said Act).

The Employment Relations Act as its name suggests relates to employment relations and save for "reinstatement" (to be dealt with further down) all the items specifically mentioned in the definition of "labour dispute" relate to situations whereby the contract of employment between the worker and the employer still exists and has not been severed. Section 3 of the Industrial Court Act provides that "*There shall be an Industrial Court with exclusive civil and criminal jurisdiction to try any matter arising out of the enactments specified in the First Schedule, or of any regulations made under those enactments, and with such other jurisdiction as may be conferred upon it by any other enactment*."

The Employment Rights Act has replaced the Labour Act and is mentioned in the First Schedule to the Industrial Court Act. The Industrial Court thus shall have exclusive jurisdiction to try any matter arising out of the Employment Rights Act. This is subject to section 46(5A) of the Employment Rights Act which provides that where a matter has been referred to the Tribunal under section 39B (Reduction of workforce), the Industrial Court shall have no jurisdiction to hear the matter. Otherwise, all matters arising out of the

termination of a contract of employment or contract of service fall under Part VIII (Termination of agreement) of the Employment Rights Act(except for a public officer or local government officer as per section 3(2)(a) of the Employment Rights Act). Section 71 of the Employment Relations Act further provides the following:

71. Exclusion of jurisdiction of Tribunal

The Tribunal shall not enquire into any labour dispute where the dispute relates to any issue-

(a) within the exclusive jurisdiction of the Industrial Court;
(b) which is the subject of pending proceedings before the Commission or any court of law.

Reinstatement in one's former employment is provided for, as stated above, only in a few specific cases under the Employment Rights Act itself and apart from cases of reduction of work force, it is our view that the Tribunal has no jurisdiction to order reinstatement of a worker in his former employment. As rightly pointed out by Counsel for Respondent, such a dispute would involve considering the fairness of the dismissal, the procedure adopted and the reasons put forward by the employer for the dismissal. This is beyond the jurisdiction of the Tribunal which has only been given jurisdiction (with the new amendments to the law) in relation to termination of a contract of employment where there is reduction in workforce. The procedure applicable in cases of reduction of workforce is completely different and we are not here in the realm of a case of reduction of workforce.

The only plausible interpretation of the words "reinstatement or suspension of employment of a worker" in the definition of "labour dispute" at section 2 of the Employment Relations Act would thus be that they relate to claims for

reinstatement following a suspension or following a "rétrogradation" which may be a form of disciplinary sanction and whereby the disputant before the Tribunal would be seeking reinstatement in his former post. Such an interpretation would also be in line with the "*in pari materia*" canon of statutory interpretation where the meaning of an ambiguous statute may be determined in light of other statutes on the same subject matter (The Employment Rights Act and Industrial Court Act)."

Ruling – Mr Suraj Dewkurun and Gamma Materials Ltd (ERT/RN 70/13)

"The issue of reinstatement following the termination of a contract of employment by an employer has already been considered by the Tribunal (**vide Mr Sheryad Hosany v Cargo Handling Corporation Ltd RN 40/13** and **Miss Mahentee Boolakee v Central Electricity Board RN 10/13**). Part VIII (Termination of Agreement) of the Employment Rights Act includes sections 36, 37 and 38 of the said Act which, according to Counsel for the Disputant, have been breached in the case of Disputant. These are matters to be thrashed out before the Industrial Court. We will refer again to the Employment Rights (Amendment) Act 2013 for guidance. In the case of **Mr Sheryad Hosany (above)**, the Tribunal stated the following:

One of the objects for the amendments to the law, as stated on the Explanatory Memorandum to the Employment Rights (Amendment) Bill which later became the Employment Rights (Amendment) Act 2013, was with a view to "introducing the concept of reinstatement in cases of unfair termination of employment on grounds of redundancy, discrimination and victimisation for participation in trade union activities."

"Reinstatement" in former employment may now be ordered following the recent amendments brought to the law. However, such an order may only be made in a limited number of cases. Section 46 (5B) ***(above)*** *provides that the*

Industrial Court may where it finds that the termination of employment of a worker, who has been in continuous employment for a period of not less than 12 months with an employer, is effected on the ground of the worker's race, colour, caste, national extraction, social origin, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, marital status or family responsibilities or by reason of the worker becoming or being a member of a trade union or otherwise participating in trade union activities, the Court may, with the consent of the worker, order that that worker be reinstated in his former employment.

Though we bear in mind that this dispute was reported to the CCM on 20 February 2013 (as per the letter of referral), that is, before the coming into force of the Employment Rights (Amendment) Act 2013 on 11 June 2013, there is nothing to suggest that the Tribunal had jurisdiction prior to those amendments to order reinstatement following the termination of a contract of employment/service. Indeed, under section 71 of the Employment Relations Act 2008 the Tribunal could not enquire into any labour dispute where the dispute relates to any issue within the exclusive jurisdiction of the Industrial Court. The Tribunal thus in the case of **Mr Sheryad Hosany (above)** stated the following in relation to the term "reinstatement" as mentioned in the definition of 'labour dispute' at section 2 of the Employment Relations Act :

The only plausible interpretation of the words "reinstatement or suspension of employment of a worker" in the definition of "labour dispute" at section 2 of the Employment Relations Act would thus be that they relate to claims for reinstatement following a suspension or following a "rétrogradation" which may be a form of disciplinary sanction and whereby the disputant before the Tribunal would be seeking reinstatement in his former post. Such an interpretation would also be in line with the "in pari materia" canon of statutory interpretation where the meaning of an ambiguous statute may be determined in light of other statutes on the same subject matter (The Employment Rights Act and Industrial Court Act).

The Tribunal added the following:

Reinstatement in one's former employment is provided for, as stated above, only in a few specific cases under the Employment Rights Act itself and apart from cases of reduction of work force, it is our view that the Tribunal has no jurisdiction to order reinstatement of a worker in his former employment. As rightly pointed out by Counsel for Respondent, such a dispute would involve considering the fairness of the dismissal, the procedure adopted and the reasons put forward by the employer for the dismissal. This is beyond the jurisdiction of the Tribunal which has only been given jurisdiction (with the new amendments to the law) in relation to termination of a contract of employment where there is reduction in workforce.

It is apposite to note that the legislator whilst enacting the Employment Relations Act 2008 which has repealed the former Industrial Relations Act has brought amendments to the definition of disputes which may be heard before the Employment Relations Tribunal (as renamed from the former Permanent Arbitration Tribunal). "Industrial dispute" under the old Industrial Relations Act meant a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to […] the termination or suspension of employment of an employee. In our view, the word 'termination' had been deliberately removed from the definition of 'labour dispute' in the Employment Relations Act 2008 (the obvious reason being to avoid conflicts of jurisdiction) so that the last part of the definition would read "reinstatement or suspension of employment of a worker".

Also, if the Tribunal was to find that it had jurisdiction prior to The Employment Rights (Amendment) Act 2013 to order reinstatement of a worker in the case of termination of a contract of employment, this would lead to absurd results. Indeed, the Employment Rights (Amendment) Act 2013 would be wrongly interpreted as now <u>restricting</u> the right of workers for reinstatement in only a few specific cases where termination is effected on one of the grounds mentioned above, instead of <u>introducing</u> (underlining is ours) the concept of reinstatement in cases of unfair termination of

employment on the grounds mentioned. Similarly, there would have been no need to introduce the concept of reinstatement in cases of unfair termination of employment on the ground of redundancy since a worker would always (even in a case of reduction of workforce) have been able to report a dispute seeking reinstatement following the termination of his employment. Such an interpretation is clearly untenable."

We wish to add that the inclusion of the word 'reinstatement' in the definition of labour dispute in the Employment Relations Act 2008, as amended, is not confined to the Employment Relations Tribunal. The Act covers the jurisdiction of the National Remuneration Board and the Commission for Conciliation and Mediation. Nothing prevents the latter for example to deal with cases of reinstatement in its attempt to conciliate parties. In the same breath, the Tribunal may, with agreement of parties, delve into issues of reinstatement even after a dismissal or termination of employment has taken place.

Much has been said by Counsel for the Disputant regarding the equitable jurisdiction of the Tribunal. We hold that the powers of the Tribunal are derived from the statutory provisions laid down in the Employment Relations Act 2008, as amended and the Tribunal does not have any inherent power, equitable or otherwise.

We conclude that the legislator would have made it clear and in no uncertain terms if it intended to empower the Tribunal to deal with issues of reinstatement after termination of a contract of employment.

We award accordingly and the dispute is set aside.

(Sd) Rashid Hossen
(President)

(Sd) Esther Hanoomanjee (Mrs)
(Member)

(Sd) Jay Komarduth Hurry
(Member)

(Sd) Khalad Oochotoya
(Member)

16 March 2016