

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 55/16

Before:

Rashid Hossen	–	President
Vijay Kumar Mohit	–	Member
Jay Komarduth Hurry	–	Member
Khalad Oochotoya	–	Member

In the matter of :-

**Mr Etwaroo Gopaul
And
Hindu Girls' College**

I.P.O. Private Secondary Education Authority

On 22 June 2016, Mr Etwaroo Gopaul (Disputant) reported to the President of the Commission for Conciliation and Mediation a labour dispute between himself and Hindu Girls' College (Respondent) in accordance with Section 64(1) of the Employment Relations Act 2008, as amended.

No settlement has been possible at the level of the Commission and the latter has referred the dispute to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008, as amended.

The point in dispute is:-

“Whether I, Mr Etwaroo Gopaul, should have been appointed as Senior Educator at the Hindu Girls’ College.”

In his Statement of Case, Disputant avers:

- That he has 33 years of teaching experience as a graduate in mathematics on a total of some 40 years of service as teacher.
- That the Respondent is a grant aided school operating under the supervision of the Private Secondary School Authority (PSSA) which is the regulatory body.
- That his salary is being paid by the Government through the PSSA and his conditions of service are laid down in the report of Pay Research Bureau (PRB) as interpreted by the PSSA.
- That the Respondent is being managed by Mrs Padmawtee Seewooraz who is responsible for the college vis-à-vis the PSSA.
- Following decision from the PSSA this year, it has been rated out that it is necessary to implement the appointment of one senior Educator in every grant aided Private Secondary School as per Recommendation 196A of the Errors, Omissions and Anomalies Committee (EOAC) report 2013.
- For the said implementation circulars dated 6th February 2015, with the scheme of service attached and 26th May 2015 concerning clarifications on the interpretations of criteria for promotion to the post were sent to Managers of private grant aided secondary schools including Respondent.

- After receiving the said circular of 6th February 2015, the manager of Respondent selected educator Mrs. Lalinee Rambaruth as the Senior Educator at Respondent and forwarded her name to the PSSA for approval.
- However, the PSSA rejected the appointment of Mrs. L. Rambaruth as her appointment does not satisfy the criteria laid up by the PSSA under circular dated 26th May 2015. The PSSA subsequently informed the manager that he was eligible for the appointment to the post.
- According to the said circular of 26th May 2015, it has been specified that the Senior Most Fully Qualified Educator whose salary extends beyond the qualification bar in the PRB scale at Respondent would be the only eligible person to be recommended by the manager for promotion to the post of Senior Educator on the basis of the cumulative and substantive teaching experience in the secondary sector, past service in other schools being also reckoned.
- Disputant avers that in order to prevent him to be appointed as Senior Educator, the Manager of the Respondent did unlawfully and illegally meet an administrative assistant at the PSSA and was requested to justify in writing the reason for not appointing him to the said post.
- Whereas following the said request Mrs Seewooraz, did send adverse report against him based on total distortion of facts about a trifle matter in April 2015 and the said allegations were never communicated to him in writing and as such he was not given an opportunity to reply.
- Whereas furthermore he was again unlawfully apprised of a charge of disturbing another female colleague and he was wrongly warned to amend his conduct at school.
- Whereas Mrs Seewooraz, in her capacity of Manager of Respondent has acted contrary to the Rules and Regulations laid upon by the PSSA for the appointment of Senior Educator in as much as:
 - (a) Mrs L Rambaruth does not satisfy the criteria for nomination as Senior Educator and it is to her personal knowledge that she is not the Senior Most Educator at Respondent, having around 27 years of teaching experience and ranks very far behind him in the seniority list.

- (b) Disputant cannot be superseded as he has got a reproachless and blameless record as service as teacher for more than 33 years and is Senior Most Eligible Educator at Respondent for the post of Senior Educator.
- (c) The Manager of Respondent has also acted illegally by making other educators most senior to Mrs Rambaruth to decline interest for the said post.
- Disputant avers that there has been a deliberate attempt by the Manager of the Respondent to harm his good reputation and integrity with the purpose of discrediting his eligibility to be appointed as Senior Educator.
 - That the Manager of the Respondent by her unlawful acts and doings has victimized and morally affected Disputant.
 - For the reasons set forth above, Disputant avers he should have been promoted to the said post as Senior Educator. He verily believes that the acts and doings of the Manager of the Respondent are totally ultra vires and are detriment to his promotion.

In its Statement of Case the Respondent avers:-

- That the Disputant was offered appointment as Educator to teach Mathematics at the Respondent on the 15 December 2008.
- That according to the records in possession of the Respondent, the Disputant was graduated at the Punjab University, India in 1981 and started teaching mathematics at the Eden College in January 1982 until April 2009.
- Disputant has been teaching at Respondent as from April 2009 to date however he is not the senior most teacher but the sixth amongst the most experienced teachers after Mrs S Jawaheer who joined in 1978, Mrs K Deenoo in 1979, Mrs D Nundlall in March 1980, Mr D Konglar in September 1980, Mr D Choolun in 1981 and then Disputant Mr E Gopaul in 1982.
- That it received a circular from the Private Secondary Schools Authority dated 6th February 2015 sent a notice/memo to all members of staff inviting application to the post of senior educator from those having more than fifteen years of cumulative service and which reads:-
Each school is entitled for one Senior Educator and appointment to the grade may be made as from 1st March 2015.

- That the panel of interview carried out on the 17th March 2015 recommended Mrs L Rambaruth who was ranked tenth in the list.
- That the Private Secondary Schools Authority did not approve the said recommendation and informed Respondent that the Disputant is eligible to be appointed.
- That by virtue of another circular dated the 26th May 2015, the Private Secondary School Authority has informed all managers that the post of Senior Educator can be filled by all colleges in compliance with the guidelines in respect to the scheme of service for the post which have been worked out to avoid ambiguity. The same circular makes provisions under paragraph (ii) to the effect that in the event an educator who is senior most or has the longest experience is being superseded, the reasons for his supersession, with details of shortcomings noted and communicated in writing to the educator, should be submitted to the PSSA prior to making an offer of appointment to the next senior most educator.
- The Respondent denies the averments about the various means that the Manager has acted with the intention to justify his non appointment save and except that in spite of several complaints and representations made about the conduct and behavior of the Disputant towards students and female colleagues including his body language in class has not been subject to disciplinary actions due to reasons beyond control of the Respondent as the then Manager is no more working at the College.
- That as a fair minded employer, it was fully justified not to proceed with the appointment of the Disputant or any other person as Senior Educator as the school has already two deputy Rectors and a Rector to look after the activities and the Senior Educator would not contribute more to the school development but rather demotivate or frustrate further senior most educators to improve the performance of the school.
- The Respondent prays that the application be refused and/or set aside inasmuch as Disputant is not the senior most eligible person to be appointed Senior Educator.

The stand of the Private Secondary Education Authority (the Authority) which has replaced the Private Secondary Schools Authority is as follows:-

- Following the Errors and Omissions Anomalies Committee (EOAC) Report regarding the creation of the post of Senior Educator in Private Secondary Schools, a circular dated 6 February 2015 was sent to all schools. The circular contained information regarding the Scheme of Service for the said post, the number of Senior Educator each school was entitled to and the date of appointment.

- On 1 April 2015, the Manager of Hindu Girls' College submitted to the Authority the name of Mrs L. RAMBARUTH for promotion to the post of Senior Educator taking effect as from 1 April 2015.
- Following representations from various stakeholders with regard to the differing interpretation of the qualification requirements for the post of Senior Educator and with a view to keeping in line with prevailing rules and regulations, whilst reckoning the specificity of the Private Secondary Schools and the nature of duties to be performed by Senior Educators, on 26 May 2015, the Authority issued another circular letter to all schools with guidelines in respect of the Scheme of Service for the post of Senior Educator to avoid any ambiguity.
- In a letter dated 17 July 2015, the Authority was informed that the Managing Committee of Hindu Girls' College maintained its decision with regard to the promotion of Mrs L. RAMBARUTH as Senior Educator.
- On 21 July 2015, a duly filled in form annexed to this Authority's circular letter of 26 May 2015 was submitted by the Manager of Hindu Girls' College recommending Mrs L. Rambaruth as Senior Educator. According to information in the said form, 10 Educators did not apply for the post of Senior Educator.
- On 3 August 2015, the Authority wrote to 9 Educators who did not apply for the post of Senior Educator, to confirm same. 7 confirmed that they did not apply for the post and 2 did not respond.
- On 10 August 2015, the Disputant wrote to the Authority that he did not give his "No objection" to the appointment of Mrs L. Rambaruth as Senior Educator and requested the Authority to follow the criteria for the appointment of the Senior Educator.
- On 27 August 2015, the Authority informed the Manager of Hindu Girls' College that request to appoint Mrs L. Rambaruth as Senior Educator had not been acceded to. The Manager was requested to stand guided by the contents of the Authority's circular R/23/77 dated 26 May 2015 when considering appointment to the post of Senior Educator.
- On 30 September 2015, the Authority informed the Manager of Hindu Girls' College that it maintained the decision sent to her in the letter dated 27 August 2015 and that according to its records, Mr E Gopaul is the Seniormost, fully qualified Educator, eligible for appointment to the post of Senior Educator.

- In a letter dated 30 September 2015, the Manager of Hindu Girls' College informed the Authority that the Appointment Committee of the said school interviewed four candidates (including Mr E. Gopaul) to fill in the post of Senior Educator. Reports on Mr E. Gopaul and Mr D. Konglar were also attached.
- A Committee was set up at the Authority to determine applications for appointment to the post of Senior Educator. It was decided to request the Manager of Hindu Girls' College to justify as to why Mr E. Gopaul who ranked above Mrs L. Rambaruth, had not been appointed.
- On 5 October 2015, the Authority informed the Manager of Hindu Girls' College that decision conveyed to her in the letter of 27 August 2015 as reiterated in the letter of 30 September 2015 was maintained.
- In a letter dated 6 January 2016, the Manager of Hindu Girls' College informed the Authority that the Managing Committee of Hindu Girls' College Association has decided that no Senior Educator will be appointed for the year 2016.
- As per PRB Report 2016, Recommendation 3, Paragraph 99.16, all Private Secondary Schools should make necessary arrangement to appoint a Senior Educator with a view to enhancing the quality of education and providing appropriate administrative and pedagogical support to the Rector for the benefit of the students' community.
- In a letter dated 2 September 2016, the Manager of Hindu Girls' College informed the Authority that Mr E. Gopaul was suspended and that the suspension was subsequently waived on 29 September 2016.
- The Authority shall otherwise abide by the decision of the Tribunal.

On 27 February 2017, parties (Disputant and Respondent) informed the Tribunal that an agreement has been reached and which is as follows:-

The Respondent without any admission of the averments of the Disputant agrees to appoint the Disputant as Senior Educator subject to the approval being sought from the Private Secondary Education Authority i.e. the Co-Respondent.

The Disputant and Respondent moved for an Award in terms of the settlement.

The Tribunal awards accordingly.

(sd) Rashid Hossen
President

(sd) Vijay Kumar Mohit
Member

(sd) Jay Komarduth Hurry
Member

(sd) Khalad Oochotoya
Member

16 March 2017