

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 109/13

ERT/RN 110/13

ERT/RN 111/13

Before

Rashid Hossen - President

Vijay Kumar Mohit - Member

Rabin Gungoo - Member

Renganaden Veeramootoo - Member

In the matter of:-

ERT/RN 109/13 - Mrs Hemrowtee Maudhoo (Disputant No 1)
And
Sugar Industry Labour Welfare Fund (Respondent)

ERT/RN 110/13 - Mrs Mudhuree Ramjug (Disputant No 2)
And
Sugar Industry Labour Welfare Fund (Respondent)

ERT/RN 111/13 - Mrs Rookmabaye Rago (Disputant No 3)
And
Sugar Industry Labour Welfare Fund (Respondent)

On 3rd and 6th of June 2013, Mrs Hemrowtee Maudhoo, Mrs Mudhuree Ramjug and Mrs Rookmabaye Rago, respectively reported to the President of the Commission for Conciliation and Mediation, the existence of a labour dispute between themselves (Disputants No1, 2 & 3) and the Sugar Industry Labour

Welfare Fund (Respondent) as per section 64 (1) of the Employment Relations Act 2008 as amended. As no settlement could be reached, the Commission referred singularly the labour disputes to the Tribunal for arbitration in terms of section 69 (7) of the Employment Relations Act 2008 as amended.

The three cases have been consolidated and have a common point in dispute:

Whether the Disputants should be paid one additional increment with effect from 1st July 2003 as they reckon 25 years of service in the same post continuously without promotion with the Committee of Social Welfare Centre/Sugar Industry Labour Welfare Fund.

In their respective Statements of case, the Disputants claimed that they were in employment as Community Support Officer and were working in their respective Social Welfare Centres. As a result of a government's decision on or about August 1987, the Disputants integrated the Sugar Industry Labour Welfare Fund on 13th August 1987. Their main contention is that the Respondent should recognise their length of service with their respective former employers, i.e, the Community of Social Welfare and Community Centres as continuous and thus they would meet the requirement to be eligible for an additional increment. They each aver that a letter was issued to confirm that all employees along with the Disputants shall enjoy continuity of service for all intents and purposes.

They have each deponed with regard to their various averments.

The Respondent denied that the Disputants are eligible for such increment.

Mr Sanjay Gaoneadry, Human Resource Management Officer at Sugar Industry Labour Welfare Fund, explained on behalf of the Respondent, the reasoning for not granting the increment. He referred to paragraphs 1.33 (v) and (vii) of the Pay Research Bureau Report 2003 which provides:-

(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’’.

.....

(vii) ‘‘ Officers mentioned at paragraphs 1.33 (v) and (vi) above would be eligible, subject to satisfactory performance, to move one additional point to be read from the master salary scale once every two years, subject to a maximum of two increments. The first increment under this provision would be due only after an officer has stagnated on the top of his salary for two years as from 1 July 2003’’.

According to the witness, the Disputants would only be entitled to the increment had they been confirmed in an approved service that fall within the ambit of the Pay Research Bureau Report.

After considering the testimonial and documentary evidence adduced the Tribunal finds that:-

- the recommendation of the Pay Research Bureau Report 2003 does not confirm an automatic right to additional increment to a worker claiming to be so entitled. The worker must satisfy the requirements set out therein and in particular that he has been in the service for 25 years in a single grade and has been drawing the top salary scale.

In the course of their depositions the three Disputants have attempted to show that they carried out the same work, i.e, in their own interpretation allegedly holding the same single grade. Whilst the description and implication of their work task with the Sugar Industry Labour Welfare Fund can be confirmed, the Respondent has been unable to answer the period when the Disputants were in the former employment of the Social Welfare Centre. The document produced namely the National Pension Scheme account in an attempt to prove that they were always being paid by the Sugar Industry Labour Welfare Fund despite being in the former employment of the Community Social Welfare Centre, shows the name of their employer until August 1987 to be their respective Social Welfare Centres. A plausible explanation was given by the witness Mr Gaoneadry for the Respondent. He referred to minutes of proceedings of a meeting held on the 14th of August 1987 chaired by a Permanent Secretary with regard to the implementation of the Government's decision for the Sugar Industry Labour Welfare Fund to henceforth be the employer of the staff of the Committee of Social Welfare Centre and which reads:-

“The Chairman explained that following a government's decision, the Ministry would no longer make any grant for payment of salaries to employees of the 13 Government Social Welfare Centres. As the Sugar

Industry Labour Welfare Fund would henceforth be the sole employer, he requested that provision be made for the creation of an item “grant to S.I.L.W.F” in the next budget”.

This supports the contention that whilst the Disputants were under the employment of the Community Social Welfare and Community Centres, they were at all times being paid by the relevant Ministry and not by the Respondent, i.e, the Sugar Industry Labour Welfare Fund.

- regarding the requirement of 25 years to be counted continuously from any previous employment of the Disputants, this should be confirmed employment of any department which falls under the purview of the Pay Research Bureau Report 2003 whereas Section (v) (1) (A) of the Government Social Welfare Centres Act (Act No 67 of 1961) provides:-

“Officers and servants so employed under Section (1) (B) shall be under the administrative control of the Committee and shall not be deemed to be government servants”.

Although there was an agreement between the Union and the Sugar Industry Labour Welfare Fund regarding the length of service of the employees being counted as continuous service for all intents and purposes, the time spent at the Social Welfare Centre cannot therefore be taken into account. Instead and as explained by the witness Mr Gaoneadry, the provision of continuity of service was taken care of by paying the Disputants a severance allowance for the period that

they were employed with their respective Social Welfare Centres, computed at their terminal salary.

- regardless of the issue of eligibility to the additional increment prayed for under the Pay Research Bureau Report 2003, we find it difficult for any calculation to be effected with certainty as the dates of confirmation of the Disputants as workers of their respective Social Welfare Centres appear to be inaccurate and therefore unreliable. It cannot be overstated that the question of eligibility of the Disputants to the additional increment is directly linked to the date of confirmation. Whilst it is not disputed that the Disputants were formerly employed with the Community of Social Welfare and Community Centres and as from the 13th of August 1987 with the Sugar Industry Labour Welfare Fund, we find that the Disputants have not successfully adduced sufficient evidence to show the exact date of employment with their respective Social Welfare Centres. What has been adduced were letters of initial appointment “*on a temporary basis on a period of 3 months*” and “*on a trial basis for 3 months*” respectively with their own Social Welfare Centres, although Mrs Rago put no such document forward. The latter only adduced receipts from the Social Welfare Centre and the contents of which fall short of establishing the confirmation date in her employment. It would be precarious for the Tribunal to venture and conclude on the exact date of confirmation in the circumstances.

For all the reasons stated above the disputes are set aside.

(Sd) Rashid Hossen
President

(Sd) Vijay Kumar Mohit
Member

(Sd) Rabin Gungoo
Member

(Sd) Renganaden Veeramootoo
Member

23rd June 2017