

# EMPLOYMENT RELATIONS TRIBUNAL

## AWARD

Before: -

<b>Shameer Janhangeer</b>	-	<b>Vice-President</b>
<b>Vijay Kumar Mohit</b>	-	<b>Member</b>
<b>Abdool Feroze Acharauz</b>	-	<b>Member</b>
<b>Kevin C. Lukeeram</b>	-	<b>Member</b>

In the matters of: -

**ERT/RN 105/17**

**Mrs Noorjahan CHUTTOO**

*Disputant*

**and**

**Mauritius Mental Health Association**

*Respondent*

**ERT/RN 106/17**

**Mrs Bibi Waheeda JUDOO-EDOO**

*Disputant*

**and**

**Mauritius Mental Health Association**

*Respondent*

**ERT/RN 107/17**

**Mrs Liseby LE VRAI**

*Disputant*

**and**

**Mauritius Mental Health Association**

*Respondent*

**ERT/RN 108/17**

**Mrs Premila RAMJUNUN**

*Disputant*

**and**

**Mauritius Mental Health Association**

*Respondent*

**ERT/RN 109/17**

**Mrs Saradha JOYMANGUL**

*Disputant*

**and**

**Mauritius Mental Health Association**

*Respondent*

**ERT/RN 110/17**

**Mrs Bibi Nazimah Dilailah Sk HEERAH**

*Disputant*

**and**

**Mauritius Mental Health Association**

*Respondent*

**ERT/RN 111/17**

**Mrs Valerie VERLOPPE**

*Disputant*

**and**

**Mauritius Mental Health Association**

*Respondent*

The present matters have been referred to the Tribunal by the Commission for Conciliation and Mediation (“CCM”) pursuant to *section 69 (7) of the Employment Relations Act*. The common Terms of Reference of the disputes read as follows:

*Whether the Mauritius Mental Health Association should increase my basic to not less than Rs 10,250 monthly which is equivalent to the grant provided by the Ministry of Education as a complementary to the wage of each individual Teacher and that all outstanding amount as from July 2016 be refunded.*

The Disputants were assisted by their Trade Union representative Mr R. Chuttoo, Industrial Relations Advisor. Whereas the Respondent was assisted by its representatives, Mrs P. Atchia, Acting President and Mrs N. Coowar, Manager. The Disputants and the Respondents have each respectively submitted their Statements of Case. It must be noted that the seven disputes were consolidated prior to the hearing of the matter.

#### *THE DISPUTANTS' STATEMENT OF CASE*

The Disputants are employed as Teachers at the Mauritius Mental Health Association ("MMHA"). It has been averred that the Grant-In-Aid Formula for Special Education Needs ("SEN") Schools was last revised in 2016 and is applicable as from July 2016. The MMHA receives Grant-In-Aid from the Ministry of Education according to the declared job titles of its employees. The MMHA has systematically refused to increase the basic wage of the Disputants by at least the minimum contribution made by the Ministry of Education (the "Ministry"). The Disputants, through their trade union, informed the Ministry that the MMHA is not complying with the Grant-In-Aid Formula 2016 and a letter dated 7 December 2016 (annexed to the Statement of Case) was addressed to the MMHA requesting them to issue payment with arrears.

It has been averred that the management of the MMHA was conveyed to a meeting under the Chair of the Senior Chief Executive of the Ministry on 27 December 2016 where it was stated that staff members of the MMHA should derive a minimum salary not less than the corresponding quantum provided as per the Grant-In-Aid Formula. A letter dated 6 February 2017 from the Ministry is annexed to this effect. Several meetings were also held at the CCM. The MMHA is still resisting and maintains that the salary will not be increased to at least the minimum grant for Teachers in accordance with the Grant-In-Aid Formula 2016 for SEN schools. The Disputants are subject to a lower basic wage than the grant from the Ministry.

It has also been averred that the MMHA is claiming Grant-In-Aid for Teachers using the names of the Disputants and not remitting them their dues. The Ministry has increased the grant for SEN Schools twice in 2014 and 2016. Since 2014, the MMHA has requested Grant-In-Aid for ten Teachers. There is no condition in the Grant-In-Aid from the Ministry that the employee should have any academic qualification. There is no justification for the MMHA to

use the Disputants' names as Teachers to claim Grant-In-Aid and not remit the fund to them. The Disputants pray that the Tribunal awards accordingly.

#### *THE RESPONDENT'S STATEMENT OF REPLY*

The MMHA has set its position in relation to the disputes made against it. It has been averred that the Association can only pay what it receives as grants and cannot find additional money to pay other claims. Workers with the same qualifications and same job descriptions must be paid on the same scale. The Government grant does not cover NPF or NSF contributions, transport or compulsory Government salary increases each year and in any case, the employer can hardly provide the basic salary according to the grant. Nine staff members are claiming that their salary is inadequate according to the Grant-In-Aid Formula and at the same time, twelve other staff members, due to long years of service, are receiving a substantial increase on the salary allocated to them by the same grant; this is proof that the grant is being properly distributed among all staff members. All staff at the Centre do essentially the same work, but only three of them are recognised as qualified Teachers by the Mauritius Institute of Education. The Administration is no longer authorised to register unqualified persons as Teachers, but has accepted the grant as a contribution towards salaries, which is redistributed equitably each month among the entire staff.

The Respondent has also averred that the entire sector needs to be reorganised on a rational basis, with a clear salary framework, which incorporates practical experience on the job, and training courses for those interested in upgrading their status. The coming Special Education Needs Authority will have the task of doing this.

#### *THE EVIDENCE OF WITNESSES*

Mrs Bibi Nazimah Dilailah Sk Heerah was called to adduce evidence on behalf of the Disputants. She works as a Teacher at the MMHA. The school selected her as a Teacher in a batch of seven. Three of the seven were not qualified for the post of Teacher and are now Assistant Teacher. The work of Teacher and Assistant Teacher is not the same. The three were replaced by Mrs Waheeda Judoo-Edoo, Mrs Liseby Le Vrai and Mrs Valerie Verloppe. In 2015,

there was an increase in the Grant-In-Aid from the Ministry. She produced a letter dated 7 April 2015 from the Ministry (Document A) addressed to the Manager of the MMHA. The MMHA did not agree to pay them Rs 8,230 despite that they were selected as Teachers, stating that they are not qualified. The Association requests for the Grant-In-Aid according to the names of the Teachers and then receives the money. For them to receive their money, they had to come before the CCM and the Tribunal. There was an agreement recognising them as Teachers and arrears were also paid.

The witness also stated that according to Annex B of their Statement of Case, the Grant-In-Aid from the Ministry is Rs 10,250. They reported a dispute to obtain the Grant-In-Aid of Rs 10,250 in 2017. According to a letter from the Ministry dated 7 December 2016 (Annex C to the Disputant's Statement of Case), the Teachers should receive Rs 10,250. Despite this letter, they have not received their money as the Association says that they are not qualified to receive the money as Teachers. She produced a bundle of pay slips (Document B). They had meetings with the Ministry who stated that they had to be paid accordingly. Despite this, they were not paid. There are ten Teachers in all of which three draw different salaries. She believes that she deserves the money received from the Ministry as she is performing the work.

Upon questions from the representative of the MMHA, Mrs Heerah notably stated that her only problem with the administration is that of salary. The Carers work in Day Care and do not do the same work as Teachers. Others do other work, the Teachers have their time table and work with the children. She works well with the children at the Centre.

In re-examination, Mrs Heerah further stated that the Day Care Centre is managed by the Ministry of Social Security and Ministry of Health and they work under the Ministry of Education in the SEN School. The Day Care Centre and the SEN School are separate. The Grant-In-Aid is determined by the Ministry of Education. The Ministry does not demand any qualification to give the money. Their qualifications have not been questioned by the Ministry of Education and they have not had any reproach regarding their work either from the MMHA or the Ministry.

Mr Yasdev Kistomohun, Assistant Permanent Secretary at the Ministry of Education and Human Resources, Tertiary Education and Scientific Research, was called to depose. He referred to a letter dated 7 December 2016 (produced as Document C) according to which the salary should be adjusted at least by the amount granted by the Ministry. At the time, the

contribution towards the salary of Teacher was Rs 10,250. He did not have the records of the month the amount has been increased. The Grant-In-Aid was revised in 2014 and again in 2017. The MMHA have been requested to pay according to the Grant-In-Aid Formula by letter on 7 April 2015 and 27 September 2017.

Following questions from the representative of the Respondent, Mr Kistomohun notably stated that the Grant-In-Aid is a contribution and is the minimum that should be paid to the staff of the Association. The Association has been requested to abide to the Grant-In-Aid Formula in several meetings. He is not saying that the funds are being misused. The Association is not paying in accordance with the Grant-In-Aid Formula. Three letters have been issued to the MMHA requesting that it pays at least the minimum that is being granted by the Ministry. It is clear that the Association should pay the minimum that has been contributed by the Ministry. The Ministry cannot take any action against the MMHA as it is established under an Act of Parliament.

In reply to questions from the Tribunal, Mr Kistomohun notably stated that the Ministry has drafted a Grant-In-Aid Formula for the running of SEN Schools and produced a copy of the Grant-In-Aid Formula of 2017 (Document D). He identified the Grant-In-Aid for 2016 as Annex A to the Disputants' Statement of Case. It is expected that the NGO pays at least the contribution being made by the Ministry.

Mrs Naddy Coowar, Manager at the MMHA, choose not to adduce any evidence but instead submitted a written statement made on behalf of the MMHA. She also stated that the Grant-in-Aid that they receive is a contribution referring a report of the CCM at Annex 3 of the written statement. If they are given in writing that they have to pay in *toto* the Grant-In-Aid, then they will do so. They have promoted people with no qualifications, recognising their years of experience. Some are earning more than what the contribution is. Everybody receives a salary. The Grant-In-Aid does not account for the Government increase. The money is being shared, everybody is being paid.

#### *THE MERITS OF THE DISPUTE*

In the present matter, the Terms of Reference of the dispute is asking the Tribunal to enquire into whether the MMHA should increase the basic of the Disputants to not less than Rs 10,250 monthly which is the amount equivalent to the grant provided by the Ministry of Education as a complementary to the wage of each individual Teacher; and that all outstanding amount as from July 2016 be refunded.

The Disputants are Teachers at the MMHA working in the SEN School. They earn a basic salary of Rs 8,036 per month as per the bundle of payslips produced. The MMHA receives Grant-In-Aid from the Ministry of Education for the running of its SEN School. For the grade of Teachers, the MMHA receives a grant of Rs 10,250 for each individual Teacher.

The MMHA is a statutory body set up pursuant to the *Mauritius Mental Health Association Act (Act 8 of 1974)*. It has among its objects to promote and manage a school for educationally subnormal children.

The Disputants in the present matter want the MMHA to pay them at least the amount that is being received as a Grant-In-Aid from the Ministry of Education for Teachers, which is the sum of Rs 10,250. Mrs Heerah, in her evidence on behalf of the Disputants, has clearly stated that the Grant-In-Aid from the Ministry for Teachers is Rs 10,250 and referred to a letter dated 7 December 2016 in contending that they should receive the amount of Rs 10,250.

The evidence of Mr Kistomohun from the Ministry of Education is also relevant to the present matter. The witness has clearly stated that the salary of the Teachers should be adjusted by at least the amount granted by the Ministry. He also stated that the Grant-In-Aid is a contribution and that it is the minimum which should be paid to the staff of the MMHA. He highlighted that the MMHA should pay according to the Grant-In-Aid Formula. He repeated that it is expected that the Association pays at least the contribution being made by the Ministry.

Mr Kistomohun identified the Grant-In-Aid Formula of 2016 attached as Annex A to the Disputants' Statement of Case. The document is dated 19 October 2016 and it has clearly set out the amount for the item of Teachers as Rs 10,250 per month. The amount for other items of the Grant-In-Aid is also listed in the aforesaid document.

Reference has also been made a letter dated 7 December 2016 (Document C) from the Ministry of Education addressed to the Manager of the MMHA. The following may be noted from the contents of this letter:

*In this context, you are requested to:*

- a) stand guided by the new GIA formula regarding contribution towards salary of staff, that is, they should be paid at least the minimum contribution made by this Ministry through the Grant-in-aid; and*
- b) communicate to this Ministry, the date on which all adjustments/arrears would be paid.*

(The underlining is ours)

From the evidence that has been adduced before the Tribunal, it is clear that the MMHA receives a grant from the Ministry of Education under the Grant-In-Aid Formula for the salary of their staff, which includes the Disputants. The evidence has also borne out that the Ministry expects that the Association pays its staff at least the minimum amount of the contribution it receives.

The MMHA has, in its written statement, stated that the Grant-In-Aid is a contribution seeking support from a report of the CCM dated 28 June 2010. Therein, it has been reported that the representative of the Ministry of Education stated that *'the Ministry gives grant to the Association for its operation and contribution to salary. But it does not have any imposition as to what proportion of the grant should be attributed to staff salary. It is up to the school or association to decide upon any salary increase to be given to its employees.'*

It must be noted that the CCM report dates back to 2010 and is concerned with a dispute between the Private Enterprises Employees Union and the MMHA with its own points in dispute. Whereas, we are presently dealing with an individual dispute which *inter alia* concerns the applicability of the Grant-In-Aid Formula of 2016. The Grant-In-Aid Formula which was operating at the time of the dispute of the CCM report cannot be said to be similar to the present Grant-In-Aid Formula 2016 nor is there any evidence to this effect. The aforementioned contents of the report cannot therefore be taken as binding in the present matter.



Furthermore, the representative of the Ministry in the present matter has not denied that the grant is a contribution. He has, however, emphasised that it is the minimum that should be paid as salary to the staff of the Association.

The MMHA has also raised the issue that if it were to pay the contribution from the Grant-In-Aid in *toto*, it may have to deduct from the salary of the staff who are earning more than the contribution of the Grant-In-Aid. Having noted that Mrs Coowar has recognised that this would be unlawful, the Tribunal would wish to remind that parties that it is here to enquire into the dispute at hand and give its award in relation thereto. The Tribunal cannot enquire into any new matter which is not within the Terms of Reference of the current dispute.

Indeed, the following may be noted from what was stated by the Supreme Court in *Air Mauritius v Employment Relations Tribunal* [2016 SCJ 103] in relation to the duty of the Tribunal upon the referral of a dispute:

*Under section 70 (1) the Tribunal is required to enquire into the substance of the dispute that is referred to it and to make an award thereon and it is not empowered to enquire into any new matter that is not within the terms of reference of the dispute.*

The Tribunal, having considered the evidence of the witnesses before it as well as the letter dated 7 December 2016, therefore finds that the basic salary of the Disputants should be increased to not less than Rs 10,250 monthly which is equivalent to the grant provided by the Ministry under the Grant-In-Aid Formula 2016 for Teachers.

The Terms of Reference of the dispute is also asking that all outstanding amount as from July 2016 be refunded. The Tribunal has however noted that no evidence has been adduced on this aspect of the Terms of Reference in the present matter. The Disputant despite having stated that she should be paid Rs 10,250 did not ask for any outstanding amount to be refunded and as from what date. Nor has the representative of the Ministry adduced any evidence to this effect. The Tribunal cannot thus make any pronouncement on this aspect of the dispute.

The Tribunal can only therefore award that the MMHA should increase the basic of the Disputants to not less than Rs 10,250 monthly which is equivalent to the grant provided by the Ministry of Education as a complementary to the wage of each individual Teacher.

The Tribunal awards accordingly.

**SD Shameer Janhangeer**  
**(Vice-President)**

**SD Vijay Kumar Mohit**  
**(Member)**

**SD Abdool Feroze Acharauz**  
**(Member)**

**SD Kevin C. Lukeeram**  
**(Member)**

**Date: 17<sup>th</sup> November 2017**