

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

Before: -

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

In the matters of: -

ERT/RN 112/17

Mrs Vimasing SK HEERAH

Disputant

and

Mauritius Mental Health Association

Respondent

ERT/RN 113/17

Mrs Praveena PARSAD

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 wage to not less than Rs 6850 monthly which is equivalent to the grant provided by the Ministry of Education as a complementary to the wage of each individual Assistant 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 representative Mrs N. Coowar, Manager. The Disputants and the Respondents have each respectively submitted their Statements of Case. It must be noted that the two disputes were consolidated prior the hearing of the matter.

THE DISPUTANTS' STATEMENT OF CASE

The Disputants are employed as Assistant 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 (Annex A to the Statement of Case). 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 Assistant 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 Assistant 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 Assistant 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 Assistant 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 Vimasing SK Heerah, Assistant Teacher at the MMHA, was called to adduced evidence on behalf of the Disputants. She is an Assistant Teacher in the nursery which forms part of the School having 14 years' service. Her work is not the same as that of Teacher. She earns Rs 6,495. She is before the Tribunal as she is aware that the Ministry of Education provides a grant for them, however they are not receiving this money. She wishes to receive this money together with arrears. As an Assistant Teacher, she follows her time table and looks after the children. Her work is complementary with that of the Teacher. She wishes her salary to be Rs 6,850 and is asking for arrears. The Disputant was not questioned by the representative of the Respondent.

Mr Yasdev Kistomohun, Assistant Permanent Secretary at the Ministry of Education and Human Resources, Tertiary Education and Scientific Research, was called as a witness by the Disputants. He stated that according to the Grant-In-Aid Formula for 2016, the grant for Assistant Teachers is Rs 6,850. The Ministry has communicated to the MMHA that they should abide to the Grant-In-Aid Formula as regards every staff. All staff should be paid as per the Grant-In-Aid Formula, not less than the contribution of the Ministry. Three letters have been issued and regular meetings have been held with the management of the Association.

Upon questions from the representative of the Respondent, Mr Kistomohun notably stated that the Ministry cannot recommend to the Association the salary to be paid to its employees. The minimum that is expected for an NGO is that they pay what is provided by the Ministry. The Grant-In-Aid is a contribution to salary. He referred to a letter dated 7 April 2015 addressed to the Manager of the MMHA (produced as Document A) wherein the Association is being told to abide to the Grant-In-Aid Formula. The MMHA can pay higher but not lesser than what is provided in the Grant-In-Aid. The Grant-In-Aid is a contribution to salaries and the minimum expected from NGOs is that the contribution by the Ministry is the benchmark at which the NGO should pay. It is the minimum and they can add to it because it is a contribution. The use of the Grant-In-Aid should be according to the Grant-In-Aid Formula.

Upon questions from the Tribunal, Mr Kistomohun identified the Grant-In-Aid Formula for 2016 as Annex A to the Disputants' Statement of Case. He also confirmed that he sent a letter dated 7 December 2016 to the MMHA which is at Annex C of the Disputants' Statement of Case.

Mrs Naddy Coowar, Manager of the MMHA, choose not to adduce any evidence. She however submitted a written statement made on behalf of the MMHA by its Acting President Mrs P. Atchia.

THE MERITS OF THE DISPUTE

The Disputants in the present matter are, as per the Terms of Reference of the dispute, asking that MMHA increase their basic wage to not less than Rs 6,850 which is equivalent to the grant provided by the Ministry of Education as a complementary to the wage of each individual Assistant Teacher. The Disputants are also asking that the outstanding amount as from July 2016 be refunded.

The Disputants are Assistant Teachers at the MMHA. They receive a salary of Rs 6,495 monthly. The MMHA receives money as Grant-In-Aid from the Ministry of Education for the running of its SEN School. As per the Grant-In-Aid Formula of 2016, the amount for Assistant Teachers is Rs 6,850 per month. The Disputants are therefore asking that they receive this amount as their basic wage and for arrears as applicable.

Mrs Vimasing SK Heerah has clearly deposed to the effect that she is an Assistant Teacher at the School of the MMHA and earns Rs 6,495 per month. She is aware that the Ministry of Education contributes a grant for Assistant Teachers, however they are not receiving this money. She therefore wishes to be paid Rs 6,850 which is the contribution being paid by the Ministry of Education for Assistant Teachers.

The evidence of Mr Y. Kistomohun of the Ministry of Education is very relevant to the present dispute. He confirmed that the contribution of the Ministry for Assistant Teachers is Rs 6,850 according to the Grant-In-Aid Formula for 2016. He has also clearly stated that the staff should be paid according to the Grant-In-Aid Formula and not less than the contribution being made by the Ministry. It should also be noted that Mr Kistomohun has strongly maintained that an NGO should pay what is provided by the Ministry. He also stated that the MMHA can pay higher but not lower than what is provided by the Grant-In-Aid Formula.

Moreover, the following may be noted from a letter dated 7 December 2016 from the Ministry to the Manager of the MMHA on the application of the Grant-In-Aid Formula:

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)

The MMHA has, in the written statement submitted, notably stated that the Grant-In-Aid received should be considered as a contribution towards costs and not a salary for the persons. In support, reference has been made to an annexed report of the CCM dated 28 June 2010 in relation to a dispute between the Private Enterprises Employees Union and the MMHA. Therein, the representative of the Ministry is reported as stating that the Ministry gives grants to the Association for its operation and contribution to salary and that it does not have any imposition as to what proportion of the grant should be attributed to staff salary.

The aforementioned contents of this CCM report should be taken in its proper context. The report relates to a different dispute as to the present matter. Furthermore, in the present case, the issue concerns, *inter alia*, the applicability of the Grant-In-Aid Formula of 2016, which is different to the Grant-In-Aid which may have existed at the time of the report of the CCM in 2010. The aforementioned contents of the CCM report cannot therefore be taken as binding in the present dispute.

It may also be noted that Mr Kistomohun has stated that the Grant-In-Aid paid by the Ministry is a contribution to salary. However, this must not be taken in isolation as he has clearly explained that the minimum expected from NGOs is that the contribution by the Ministry is the benchmark at which the NGO should pay and that they can add to it as it is a contribution. He also stated that Grant-In-Aid should be used according to the Grant-In-Aid Formula.

The Tribunal has also noted, from the written statement of the Respondent, that it may have to reduce the salaries of other staff members if it were to pay the grant as salaries in *toto* to the Disputants. It should be borne in mind that the Tribunal is bound by the Terms of Reference of the dispute and cannot enquire and pronounce on another matter which does not form part of the Terms of Reference of the dispute. The Tribunal's award can only therefore be in accordance with the Terms of Reference before it and relate to the parties concerned by same.

In view of the evidence of the Disputant, of Mr Kistomohun on the use of the contribution of the Ministry to the MMHA under the Grant-In-Aid Formula and the letter dated 7 December 2016, the Tribunal therefore finds that the MMHA should increase the basic wage of the Disputants to the amount of not less than Rs 6,850 monthly. This amount being the equivalent of the grant being provided by the Ministry of Education for Assistant Teachers under the Grant-In-Aid Formula of 2016.

As regards the issue of whether all outstanding amount as from July 2016 be refunded, the Tribunal has not been satisfied from the evidence on record as to the applicability of the arrears that the Disputants are asking for. Although the Disputant has stated that she wishes to receive the money together with arrears, there is no evidence to suggest from which date arrears are due and what is the outstanding amount she is asking for as arrears. The Tribunal thus cannot pronounce itself on this aspect of the Terms of Reference of the dispute.

In the circumstances, the Tribunal awards that the MMHA should increase the basic wage of the Disputants to not less than Rs 6,850 monthly which is equivalent to the grant provided by the Ministry of Education as a complementary to the wage of each individual Assistant Teacher.

The Tribunal therefore awards accordingly.

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

**SD Vijay Kumar Mohit
(Member)**

**SD Abdool Feroze Acharauz
(Member)**

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

Date: 17th November 2017