

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 146/17

Before

Rashid Hossen	-	President
Marie Désirée Lily Lactive (Ms)	-	Member
Abdool Feroze Acharauz	-	Member
Teenah Jutton-Seeburrun (Mrs)	-	Member

In the matter of:-

ERT/RN 146 /17 – Miss Marie Florence François (Disputant)

And

Rodrigues Regional Assembly (Respondent)

In the presence of:-

Ministry of Civil Service & Administrative Reforms (Co-Respondent)

On 27th July 2017, Miss Marie Florence François, residing at Citronelle, Rodrigues reported to the Rodrigues Commission for Conciliation and Mediation the existence of a labour dispute between herself and the Rodrigues Regional Assembly as per Section 64(1) of the Employment Relations Act 2008, as amended. Conciliation meetings were held at the Commission. As no settlement could be reached, the Commission referred the labour dispute to the Tribunal for

arbitration in terms of Section 69(7) of the Employment Relations Act 2008, as amended.

Miss Marie Florence François is hereinafter referred to as the Disputant and the Rodrigues Regional Assembly as the Respondent. The hearing took place on 13th January 2018 in the District Court of Rodrigues in the presence of the Ministry of Civil Service & Administrative Reforms.

Mr Ajay Daby, of Counsel, instructed by Mr Hemend Kumar Fulena, Attorney, appeared for the Disputant. Mr Isnoo Vijay Cooshna, of Counsel, instructed by Mr Anwar Abbasakoor, Attorney, appeared for the Respondent. The Co-Respondent was not legally represented.

The point in dispute is,

“Whether in accordance with recommendation EOAC 316 paragraph 39.38 of the EOAC report PRB 2013, my grade as Higher Executive Officer should have merged with the grade of Office Management Executive and be restyled Office Management Executive as has been the case for my counterpart in Mauritius”.

In her Statement of Case, Disputant avers in substance:

- She joined the service as Extra Teaching Assistant on 27th April 1979. She was appointed as Clerical Assistant on 21st January 1981, Executive Office on 25th August 2003 and promoted Higher Executive Officer on 19th July 2010.

- The Errors, Omissions and Anomalies Committee Report (EOAC) – PRB 2013 Recommendation EOAC 316 paragraph 39.38 stipulates that:

“The Committee recommends that the grade of Higher Executive Officer be merged with the grade of Office Management Executive and be restyled Office Management Executive. However, this merger should apply to those Higher Executive Officers in post as at 31 December 2012.”

Same was not mentioned in the EOAC Report PRB 2013 for the Rodrigues Regional Assembly for the Higher Executive Officers of the Island of Rodrigues.

- However, Recommendation 7 paragraph 23 (d) of the above report stipulates:

“that subject to the approval of the Ministry of Civil Service and Administrative Reforms, revised conditions in respect of grades of the Island of Mauritius would, in principle, be applicable to similar grades of the Rodrigues Regional Assembly.”

- The restyling of post from Higher Executive Officer to Office Management Executive has already been effected for her counterparts in Mauritius who have opted for same since 2013.

- Representations were made on 14th April 2015, 10th June 2016 and 31 May 2017 to the Island Chief Executive of the Rodrigues Regional Assembly requesting for the merging of the post of the grade of Higher Executive Officer be merged with the grade of Office

Management Executive and be restyled Office Management Executive. No reply was received.

- On 27th July 2017, Disputant reported a dispute to the Rodrigues Commission for Conciliation and Mediation.
- The Rodrigues Commission for Conciliation and Mediation has organized meetings for both parties on 10th August and 11 September 2017.
- As no settlement could be reached, on 25th October 2017, the Rodrigues Commission for Conciliation and Mediation referred the case to the Employment Relations Tribunal.
- The Pay Review Report 2016 for the RRA recommended the following at paragraph 2.1.3:

“Higher Executive Officer (Rodrigues) presently, appointment to the grade of Higher Executive Officer (Rodrigues) is made by promotion of Executive Officers (Rodrigues) reckoning at least two years’ service in a substantive capacity. Given that all the officers in the latter grade have already joined the grade of Office Management Assistant formerly General Services Executive, recruitment to the grade of Higher Executive Officer (Rodrigues) would, henceforth, no longer be made. Besides, the RRA has in 2013 PRB Report, already been provided with a new level structure for general services. As the need for the level of Higher Executive Officer (Rodrigues) is no longer warranted, we are making the grade evanescent.”

- Recommendation 4 paragraph 2.1.13 stipulates that:

“We recommend that the grade of Higher Executive Officer (Rodrigues), be made evanescent. Personal salaries are being provided for incumbents.”

- Disputant did not have the opportunity to opt or not for the grade as Higher Executive Officer should have merged with the grade of Office Management Executive and be restyled Office Management Executive as has been the case for her counterparts in Mauritius.
- Taking into consideration that the Report PRB 2013 (RRA), Miscellaneous, Recommendation 7 paragraph 23 (d) of the report and where same has been replicated in each report of the RRA:

“that subject to the approval of the Ministry of Civil Service and Administrative Reforms, revised conditions in respect of grades of the Island of Mauritius would, in principle, be applicable to similar grades of the Rodrigues Regional Assembly”, two letters were referred to the Island Chief Executive of the RRA on 10th June 2016 and 31 May 2017. There was no reply.

- Disputant firmly contends that it was the responsibility of the Island Chief Executive of the RRA to address the issue since 2013 as it has been the case for the other grades such the Higher Clerical Officer to General Service Officer which is now Management Support Officer, Executive Officer to General Services Executive which is now Office Management Assistant and the Word Processing Operators whose Scheme of Service has been amended to enable them to join the Grade of Management Support Officer.

- It is important to note that the appointment to the grade of Higher Executive Officer was done by promotion from Executive Office (Now) Office Management Assistant. The same Office Management Assistant is now drawing salary in a scale of – Rs 21950 x 625 – 23200 x 775 – 32500 x 925 – 37125 x 1225 – 39575 whereas the grade of Higher Executive Officer (Rodrigues) (Personal) is drawing salary in a scale of Rs 22575x625 – 32000 x 775 – 32500x 925 – 37125 x 1225 – 38350. (Pay Review Report 2016)

- The Disputant is advised and firmly believes that as a citizen of the Republic of Mauritius:
 - She is eligible for the grade of Higher Executive Officer to be merged with the grade of Office Management Executive and be restyled Office Management Executive as it has been the case for her counterparts in Mauritius because Disputant was promoted on 19 July 2010.

 - Disputant was deprived of the opportunity to opt or not for the grade as Higher Executive Officer which should have merged with the grade of Office Management Executive and be restyled Office Management Executive as has been the case for her counterparts in Mauritius.

 - The grade of Higher Executive Officer has been made evanescent for the Rodrigues Regional Assembly as per Recommendation 4 of the Pay Review 2016 as it has been the case for her counterparts in Mauritius who did not opt to join.

- Her constitutional rights have not been protected against discrimination because she has been born in Rodrigues.
- This situation has caused prejudice to her since 2013.

In its Statement of Case, Respondent made the following averments, amongst others:

- Creation of posts in the civil service are established under the Civil Establishment Act.
- Respondent can only appoint through delegated power by the Public Service Commission which is empowered to make appointments.
- The Errors, Omissions and Anomalies Committee (EOAC) set up in the wake of the publication of the PRB 2013 had recommended at paragraph 39.38 that **“the grade of Higher Executive Officer for officers in post as at 31 December 2012 be merged with the grade of Office Management Executive and be restyled Office Management Executive”**.
- However, the abovementioned recommendation was not reproduced by the EOAC in its Report as regards the Higher Executive Officers on the establishment of the Rodrigues Regional Assembly but has instead recommended at paragraph 2.1.43 A for:
 - **“the creation of a grade of Office Management Executive. Appointment thereto should be made by selection from among Senior Executive Officers, Higher Executive Officers and**

Executive Officers (Personal) reckoning at least 15 years service in a substantive capacity in the Executive Cadre and (...) and

- **the grade of Office Superintendent should be made evanescent”**
- At paragraph 2.1.43C of its Report, the EOAC also recommended that **“the incumbent in the grade of Office Superintendent be given the option to join the new grade of Office Management Executive and be granted one increment on joining the grade”**.
- Thereafter, the Respondent made necessary arrangement with the Ministry of Civil Service and Administrative Reforms and the post of Office Management Executive was created by the Civil Establishment (Rodrigues Regional Assembly) Order 2013.
- The Scheme of Service for the new post of Office Management Executive (OME) was prescribed on the 22 April 2014 and the only Office Superintendent in post was appointed OME on 07 August 2014.
- It is worth mentioning that the structure of the General Service/Executive Cadre on the establishment of Mauritius and Rodrigues is not the same in that a grade of Senior Executive Officer (SEO), promotional from officers in the grade of Higher Executive Officer (HEO) exists on the establishment of the Respondent whereas this is not the case for the establishment in Mauritius.
- During the pre PRB 2016 consultations, Higher Executive Officers in post on the establishment of the Respondent made representations to the PRB for the creation of additional posts of OME. Management and employees unions, on their part, made joint representations to the PRB for the merging

of the grades of SEO and HEO into the grade of OME. The PRB in its Report in 2016 made no recommendations as such.

- Further representations were made by the Disputant to the Respondent in connection with the present dispute.
- Respondent has on the 24 August 2017 written to the Senior Chief Executive of the Ministry of Civil Service and Administrative Reforms to look into representations made by the Higher Executive Officers to remedy the anomaly.
- Reply of Ministry of Civil Service and Administrative Reforms is awaited.
- The Respondent has taken all necessary actions that would be reasonably expected of such a responsible institution in response to representations made by the Disputant.

In a document dated 4th January 2018, the Co-Respondent avers the following:-

- The new grade of Office Management Executive (OME) was created following the recommendation 15.19 of the Pay Research Report (PRB) Report 2008 on the Mauritian establishment but there was no such recommendation for the creation of that grade for the Rodrigues Regional Assembly (RRA) in that report.
- The grade of Office Management Executive (OME) on the establishment of the RRA was only created on the Errors, Omissions and Anomalies Committee (EOAC) Report 2013 in pursuance of paragraph 2.1.43 A thereof. Appointment to the grade was to be made by selection from among Senior Executive Officers (Rodrigues), Higher Executive Officers

(Rodrigues), General Services Executive (RRA) and Executive Officers (Rodrigues) (Personal).

- On the other hand, in the same EOAC Report 2013, at paragraph 39.38, it is recommended that the grade of Higher Executive Officer (HEO) in the Mauritian establishment be merged with the grade of Office Management Executive and be restyled Office Management Executive. However, this merger should apply only to those HEOs in post as at 31 December 2012.
- As there are no specific recommendations in the PRB Report 2016 regarding the grades of OME's on the establishment of the RRA and the Ministry of Civil Service and Administrative Reforms (MCSAR), the recommendations of the EOAC Report 2013 still stand good.
- It should be noted that on the establishment of the RRA, there still exists a grade of Senior Executive Officer (Rodrigues) which, on the other hand, has been abolished on the establishment of the MCSAR. This grade provides an avenue for promotion for HEOs on the RRA.
- The recommendation in the EOAC Report 2013 that appointment to the grade was to be made by selection from among Senior Executive Officers (Rodrigues), Higher Executive Officers (Rodrigues), General Services Executive (RRA) and Executive Officers (Rodrigues) (Personal) still prevails and the MCSAR has no authority to change that recommendation and merge the grade of HEO (Rodrigues) with that of OME.

The Disputant deponed before the Tribunal and solemnly affirmed to the truthfulness of the contents of her Statement of Case. Being aware of the stand of

the Co-Respondent in relation to the issue of implementation of the PRB Report, she stated that this goes in line with her prayer. She produced the various correspondences between herself and the Respondent in relation to the present issue. She signed the option form in relation to the PRB Report 2016 in which she agreed to the Terms and Conditions laid out in that report. It has been her belief that despite the signing of the option form, management would in the meantime look into the case of Higher Executive Officers. She understands that the final approval does not emanate from the Respondent, but rather from the Co-Respondent.

The Respondent's representative, Ms Marie Louise May Perrine, Assistant Manager HR, stated that she is the leading person at the office of the Island Chief Executive to channel matters regarding conditions of service to the Co-Respondent. Following representations made by the Disputant and others in the same grade on the 24th August 2017, the Island Chief Executive wrote to the Co-Respondent regarding the merging of the post of Higher Executive Officers into that of Office Management Executive (OME). She added that the role of Island Chief Executive is to implement the recommendation of the PRB Report and to address representations from employees.

Mr Shin King Wan Ah Fat, Assistant Manager HR, deponed on behalf of the Co-Respondent. His stand is that the grade of OME was created in the PRB Report 2008 in the civil service excluding Rodrigues. It was only after the Errors, Omissions and Anomalies Committee (EOAC) Report 2013 that it was created for Rodrigues. According to the witness, it was clear in that report that the grade of OME was by appointment, by selection from Higher Executive Officer and other grades. This was a specific recommendation for the Rodrigues Regional

Assembly, whereas on the Civil Service Mauritian establishment (excluding Rodrigues), it was a merger of Office Management Executive with Higher Executive Officer. As a result of the recommendation of EOAC, a Scheme of Service was prescribed. The witness stressed that the Co-Respondent only complies with approved recommendations.

Counsel for the Respondent submitted that by virtue of Section 3(2) of the Rodrigues Regional Assembly Act 2001, the Rodrigues Regional Assembly is a body corporate and the exercise of its functions is regarded as done on behalf of the Government of the Republic of Mauritius. The 4th schedule to the Act provides a list of areas of responsibilities to be exercised by the Rodrigues Regional Assembly and according to Counsel, Civil Service affairs are not included. He referred to section 66(3) of the Act that provides:

“The Staff of the Regional Assembly shall be under the administrative control of the Island Chief Executive.”

The latter, he submitted, is therefore the best person to assess the qualities and weaknesses of his officers and make proper recommendations to the Public Service Commission in cases of in-house appointment or promotion. As far as the Rodrigues Regional Assembly is concerned, it has no authority regarding appointment, promotion, creation and merging of posts. The issue of appointment and promotion is the sole responsibility of the Public Service Commission (*G.Appadu v The Public Service Commission and Mr Harish Bundhoo SCJ 29 of 2003*). Reference has also been made to the case of *Mrs S.Hurry v the Government of Mauritius SCJ 51 of 1996*), where it was stated that the duty to prepare Schemes of Service rests on the responsible officer but, that these must obtain the sanction

of the Head of the Civil Service and agreed to by the Public Service Commission and which application before the Court could not succeed as one of the main parties was not before it. Counsel submitted that in the present case, the Public Service Commission was not made a party to it.

On the issue of the creation of posts, Counsel referred to the case of *N.Dyall v J.Beegoo and the P.S, Ministry of Education, Arts and Culture [1998 SCJ 317]*:-

“Now, the power to establish posts in the public service is conferred on the President (vide section 74 of the Constitution). When exercising his power the latter is required to act in accordance with the advice of the Minister for Civil Service Affairs (vide section 64 of the Constitution) and also in accordance with section 3 of the Civil Establishment Act. However, the power to appoint officers in the public service rests on the Public Service Commission (vide section 89 of the constitution). (See (1) [1987 MR 88]; (2) [1987 MR 109].”

He also cited the case of *Rodrigues Government Employees Association & Others v/s the Government of Mauritius (2000 SCJ 375)*:-

“It is perhaps appropriate that we state at the outset that the public service draws its source from section 74 of the Constitution and that the President acting in accordance with the advice of the Minister responsible for the Civil Service and in accordance with the provisions of the Civil Establishment Act constitutes officers or establishes posts for the State of Mauritius. The Civil Establishment Order made under the Civil Establishment Act.... sets out the offices created under the various Ministries or Government Departments.

All public officers whether they originate from the Island of Mauritius or Rodrigues or any other island within the State of Mauritius are governed by the Public Service Commission Regulations 1967.”

In short, he submitted that the Rodrigues Regional Assembly as a body corporate depends wholly on the Ministry of Civil Service Affairs for creation of posts, whereas for appointment and promotion, it is up to the Public Service Commission. His ending address was that the employer is always the Government of Mauritius.

Counsel for the Disputant submitted that it is established on facts that the Disputant deserves the attention of the employer. According to him, the Respondent accepted in its averments that it is the employer and that the latter cannot discriminate.

We will first deal with the legal issues raised. It has been strenuously argued that the present dispute should not have been directed against the Rodrigues Regional Assembly inasmuch as it is the Government of Mauritius which is the employer. We agree that neither a Minister nor a Ministry is an employer with regard to matters pertaining to a particular Ministry and that it is the State that carries the status of employer. With regard to the present case, reference should be made to the definition of the ‘employer’ in Section 2 of the Employment Relations Act 2008, as amended.

Section 2 provides:-

‘Employer’ includes a person, an enterprise, the State, a statutory corporation, a body of persons employing a worker, or a group of employees or a trade union of employers.

The Rodrigues Regional Assembly Act 2002, as amended, clearly and unambiguously stipulates:-

Section 3 (2):

“The Regional Assembly shall be a body corporate and the exercise of its functions shall be regarded as done on behalf of the Government of the Republic of Mauritius.” (Underlining is ours).

We therefore conclude that the Rodrigues Regional Assembly being an agent of its principal, the Government of Mauritius, can only act on its behalf. This dispute should then have been directed against the Government of Mauritius and not the Rodrigues Regional Assembly. (*D.Bagha and Ministry of Education, Culture & Human Resources [CSAT Award R/N 1023]*). We reiterate, *en passant*, what the Supreme Court had to say in *Morris J. V Merville Beach Hotel & others (SCJ 414 of 2009)*:-

“....If a party does not know who his defendant is, his legal advisers should ascertain it for him. He should go to Court to determine his rights and not to find out who his defendant is....It is not the function of the courts to undertake an investigation as to who a claimant in any particular case should sue...”

The Respondent in its Statement of Reply averred that the dispute cannot be considered in the absence of all interested parties and its Counsel expatiated lengthily on the absence of the Public Service Commission as a party to the present dispute. Yet, in the end, he plainly stated: *“I did not say it should have been a party.”*

Indeed, Section 118 (4) of the Constitution of Mauritius provides:-

“Subject to Section 91 A, in the exercise of its functions under this Constitution, no such Commission shall be subject to the direction or control of any other person or authority.”

The exceptions would be the Public Bodies Appeal Tribunal and a Court of Law. The latter’s power to adjudicate over the decision of such commission is provided in Section 119 of the Constitution:-

“No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question, whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.”

The above section was canvassed in *Devanand Bagha v Ministry of Education, Culture and Human Resources and Ministry of Civil Service & Administrative Reforms* (RN 1023 of 2009). Quoting the *Mauritius Senior Civil Servants*

Association and Ministry of Health and of Quality of Life, in presence of Public Service Commission (Civil Service Arbitration Tribunal Award RN 963 of 2009), the Tribunal stated:-

“.....However, we do not share the view that the present matter cannot be entertained in presence of the Public Service Commission. We refer here to what we stated in a Ruling delivered in RN 963 (**Mauritius Senior Civil Servants Association & Ministry of Health and Quality of Life in presence of Public Service Commission**):

The Tribunal considers that Section 118 (4) of the Constitution should not be looked at in isolation:-

“In the exercise of its function under this Constitution, no such Commission shall be subject to the direction or control of any person or authority.”

Indeed, we read the following in **Section 119 of the Constitution**:-

“Saving for jurisdiction of courts

No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question, whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.”

The Legislator clearly intended that there should be an exception when it comes to the jurisdiction of Courts. We may anticipate Counsel arguing that our present forum is not as such a Court of law but a Tribunal. We find conflicting views emanating from our Supreme Court on that issue and that renders the state of our law on this issue incomprehensible. The Supreme Court of Mauritius sought to answer the question in **Mauritius Breweries Ltd v Commissioner of Income Tax and six other cases (MR 1997)** at page 3.

“It is clear that counsel on all sides have raised interesting issues which may resolved if we can provide answers to the following pertinent questions-

- (1) Are the Tribunal and the MCCB Tribunal administrative tribunals or Courts of law?*
- (2) What is the rationale, behind administrative tribunals and are they Compatible with framework of our Constitution?*
- (3) Is Hinds applicable to the Tribunal and the MCCB Tribunal?*
- (4) Is an appeal on points of law really restrictive in practice and does it cover much the same ground as the Supreme Court’s powers of review?*
- (5) Are the Tribunal and the MCCB Tribunal, by reason of their membership, independent and impartial?*

- (6) *Is a right of appeal on points of law only from the Tribunal to the Supreme Court repugnant to our Constitution?*

*With regard to the first question, we have no difficulty in holding that, in the light especially of the powers, functions duties entrusted to the Tribunal and the MCCB Tribunal by the Legislator, both tribunals are essentially administrative tribunals and not Courts of law established “to exercise the judicial power of the State”. In relation to the Tribunal, there is the additional argument that it is inconceivable that the Legislator would entrust judicial power to two members who are laymen without any legal training who may, contrary to the views of the Chairman, decide the outcome of the Tribunal’s decision – see **Banana and Ramie Products Co Ltd v Ministry of Lands and Natural Resources (1991) LRC 728** which makes an exhaustive analysis of the main case on this issue.*

*Moreover, applying the test laid down by Sankey LC in **Shell Company of Australia Ltd v Federal Commissioner of Taxation [1931] AC 275** at page 297, we consider that the Tribunal and the MCCB Tribunal are not Courts of law although (a) they give final decisions, (b) may hear witness on oath, (c) two or more contending parties appear before them between whom they have to decide, (d) they give decisions which affect the rights of parties, (e) there is an appeal against their decisions to a Court of law and (f) they are bodies to which a matter is referred. In other words, the Tribunal and the MCCB Tribunal do not cease to be administrative tribunals in spite of the fact that they act and are bound to act judicially and follow substantially the procedure of Court of law.*

*We turn now to our second question. In Wade on **Administrative Law** (6th edition), the learned author at pages to 897 to 900, makes the following points -*

- a) The system of tribunals is an essential part of the machinery of government as it offers speedier, cheaper and more accessible justice in specialized fields while the process of the Courts of law is elaborate, slow and costly;*
- b) There is a close relationship between the supplementary network of adjudicating bodies, like tribunals and Courts of law, since in the majority of cases Parliament has provided a right of appeal from the tribunals to the Courts on question of law;*
- c) The term “administrative tribunals” is a misnomer since (i) they are independent and are insulated from administrative interference in their decision-making, (ii) their power to determine legal questions is entrusted by statutes, (iii) their decisions are, in essence judicial. Rather than administrative in that they ascertain the facts and apply legal rules to them impartially, without regard to executive policy;*
- d) The tribunals are administrative only in so far as they are part of an administrative set-up for which a Minister is answerable to Parliament and there exist administrative reasons for preferring them to Courts of law.*

So much for the ‘raison d’être’ of administrative tribunals, like the Tribunal and the MCCB Tribunal. But how do those two tribunals fit in within the framework of our Constitution? The Constitution does not make specific mention of administrative tribunals but their existence is acknowledged in our opinion, in section 10(8) to (10) thereof. When our Constitution speaks of “any

*court or **other authority** required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial”, (the emphasis is ours), it has in mind administrative tribunals, like the Tribunal and the MCCB Tribunal and countless others.*

*We may usefully refer to **Akonaay and Anor v Attorney-General (1994) LRC 399**, which was quoted to us by learned Counsel for the appellants in the sixth case, where at page 410 Nyalall CJ had this to say –*

*We agree that the Constitution allows the establishment of quasi-judicial bodies, such as the Land Tribunal. What we do not agree is that the Constitution allows the Courts to be ousted of jurisdiction by conferring **exclusive** jurisdiction on such quasi-judicial bodies. It is the basic structure of a democratic constitution that state power is divided and distributed between three state pillars. These are the Executive, vested with executive power, the Legislature vested with legislative power and the judicature vested with judicial powers. This is clearly so stated under article 4 of the Constitution. This basic structure is essential to any democratic constitution and cannot be changed or abridged while retaining the democratic nature of the constitution: It follows therefore that wherever the constitution establishes or permits the establishment of any other institution or body with executive or legislative or judicial power, such institution or body is meant to function not in lieu of or in derogation of these three central pillars of the state, but only in aid of, and subordinate to those pillars (the emphasis is ours).*

His Lordship went on to observe that any purported ouster of the jurisdiction of the ordinary Courts over a justiciable dispute would therefore have been

constitutional “but adjudicative powers could properly be conferred on bodies other than Courts provided that final adjudication by way of review or appeal was reserved for the High Court or Court of Appeal.”

Yet a year later our Supreme Court asked again the same question in Chadraduth Sooknah v. The Central Water Authority SCJ 115 of 1998:-

“The question that needs to be asked here is whether the Permanent Arbitration Tribunal can be equated to a Court. The answer is to be found in the following passage at page 319 in Phipson op. cit.:

“A court includes not only the regular superior courts of judicature but also inferior courts and tribunals, even domestic tribunals, provided they have jurisdiction either by the law or by the parties consenting to submit their affairs to adjudication by such tribunals. Thus the principle of conclusiveness has been held to be applicable to decisions of courts-martial, arbitrators and domestic tribunals such as the General Medical Council. In the present context, the awards of any such tribunal, however lowly, “are as conclusive and unimpeachable (unless and until set aside in any of the recognized grounds) as the decisions of any of the constituted courts of the realm.”

Reference can also be made to Encyclopédie Dalloz v Chose Jugée:

12. L'autorité de la chose jugée s'attache également aux sentences arbitrales (Cass. Civ. 26 août 1873, DP 74.1.475 ; Cass. Req. 31 mai 1902, DP 1902.1.352) même si les arbitres ont la qualité d'amiables compositeurs (Cass. Civ. 21 juin 1852, DP 53.1.109 ; 18 nov. 1884, DP 85.1.317). Ainsi, l'une des

parties ne peut pas recommencer le procès devant une autre juridiction, ni devant d'autres arbitres (Cass. Civ. 21 juin 1852, 18 nov. 1884, préc. ; 28 déc. 1927, DH 1928.51).''

We take the view that had the Legislator intended to exclude administrative tribunals from the saving jurisdiction clause, it would have explicitly and expressly said so. We also find in **paragraph 6 (2) (d) (ii) of the second Schedule** annexed to the **Industrial Relations Act 1973 as amended** that the Tribunal may in relation to any dispute or other matter before it order any person to be joined as a party to the proceedings who, in the opinion of the Tribunal ought in the interests of justice to be joined as a party and to do so on such terms and conditions as the Tribunal may decide. We stress that the PSC in the present matter is not being put into cause as a Respondent but upon whose presence the matter is being called. We are not here to exercise any control or give directives to the PSC. We simply consider that it can enlighten us with respect to the dispute that we are called upon to adjudicate.”

On the merits of the dispute, likewise we find no reason to intervene in favour of the Disputant. After considering both the testimonial and documentary evidence and in particular, after perusing the Scheme of Service of the various posts concerned, we find the following:-

The Pay Research Bureau Report 2007 at paragraph 15.19 recommended the creation of the new grade of Office Management Executive (OME) on the Mauritian establishment without recommending same for the Rodrigues Regional Assembly. It was the Errors, Omissions and Anomalies Committee (EOAC) Report 2013 in its paragraph 2.1.43 A that created the

grade of Office Management Executive on the establishment of the Rodrigues Regional Assembly. It is noted that appointment to that grade was to be made by selection from among Senior Executive Officers (Rodrigues), Higher Executive Officers (Rodrigues), General Services Executive (Rodrigues Regional Assembly) and Executive officers (Rodrigues) (Personal). At paragraph 39.38 of the EOAC Report 2013, it is recommended that the grade of Higher Executive Officer in the Mauritian establishment be merged with the grade of Office Management Executive and be restyled Office Management Executive. The proviso here is that this merger should apply only to those Higher Executive Officers in post as at 31st December 2012.

Higher Executive Officers on the establishment on the Rodrigues Regional Assembly have two avenues on the promotion:-

- a) Promotion to the grade of Senior Executive Officer on the basis of experience and merit (see Scheme of Service of Senior Executive Officer, Rodrigues);

and

- b) Appointment by selection to the grade of Office Management Executive (see Scheme of Service of Office Management Executive [Rodrigues Regional Assembly]).

We need to highlight that Higher Executive Officers in the establishment of Ministry of Civil Service and Administrative Reforms who were promoted from Executive Officers after 2013, do not, currently have any avenue of

promotion. The grade of Senior Executive Officer does no longer exist on its establishment and appointment to the grade of Office Management Executive on the establishment of Ministry of Civil Service and Administrative Reforms is made by promotion from Office Management Assistants.

Indeed, if we were to accede to the demand of the Disputant with regard to the merging of the Office Management Executive grade with that of the Higher Executive Officer, then the latter will be placed at a higher level than that of Senior Executive Officer who is at an intermediate level between Higher Executive Officer and Office Management Executive and this would be creating an anomalous situation. We note also that the grade of Higher Executive Officer is personal to the holder of the post.

Evidence has been adduced showing that the Disputant has opted to accept the revised emoluments and conditions of service as set out in the Pay Research Bureau Reports of 2013 and 2016.

It has been ushered that the different procedural appointments exercised between Mauritius and Rodrigues lead to discrimination. We may here conveniently quote part of the Judgment delivered by the Law Lords in the matter of *Matadeen and Others v. M.G.C. Pointu and Others (Mauritius)* [1998] UKPC 9 (18th February, 1998):-

“Democracy and equality.

As a formulation of principle of equality, the Court cited Rault J. in Police v. Rose [1976] M.R. 79,81:-

“Equality before the law requires that persons should be uniformly treated, unless there is some valid reason to treat them differently.”

Their Lordships do not doubt that such a principle is one of the building blocks of democracy and necessarily permeates any democratic constitution. Indeed, their Lordships would go further and say that treating like cases alike and unlike cases differently is a general axiom of rational behaviour. It is, for example, frequently invoked by the courts in proceedings for judicial review as a ground for holding some administrative act to have been irrational: see Professor Jeffrey Jowell Q.C., Is Equality a Constitutional Principle? [1994] Current Legal Problems 1, 12-14 and De Smith, Woolf and Jowell, Judicial Review of Administrative Action, paras. 13-036 to 13-045.

But the very banality of the principle must suggest a doubt as to whether merely to state it can provide an answer to the kind of problem which arises in this case. Of course persons should be uniformly treated, unless there is some valid reason to treat them differently.”

We hold that in the present matter, any difference in the merging of posts *in lite* cannot be considered to be discriminatory.

Lastly, the Tribunal observes that the issue of whether the dispute is a labour dispute has not been taken and the Tribunal will leave open the question whether the dispute was reported more than three years after the act or omission that gave rise to the dispute.

For all the reasons stated above, the dispute is set aside.

SD Rashid Hossen

President

SD Marie Désirée Lily Lactive (Ms)

Member

SD Abdool Feroze Acharauz

Member

SD Teenah Jutton-Seeburrin (Mrs)

Member

28th March 2018