

# EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 142/17

## AWARD

Before: -

<b>Shameer Janhangeer</b>	-	<b>Vice-President</b>
<b>Marie Désirée Lily Lactive (Ms)</b>	-	<b>Member</b>
<b>Rabin Gungoo</b>	-	<b>Member</b>
<b>Ghianeswar Gokhool</b>	-	<b>Member</b>

In the matter of: -

**Mrs Sonia CHOWREEMOOTOO**

*Disputant*

and

**Mauritius Mental Health Association**

*Respondent*

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

*Whether the job title of Sonia Chowreemootoo be renamed as Daycare Supervisor.*

The Disputant was assisted by Mr Reez Chuttoo, Industrial Relations Advisor. Whereas the Respondent was assisted by its representative and Manager Mrs Naddy Coowar. The Disputant and the Respondent have each respectively submitted a Statement of Case in the matter.

### *THE DISPUTANT'S STATEMENT OF CASE*

It has been averred that the Disputant has been employed as Carer at the Mauritius Mental Health Institute (the "MMHA") as from 1 July 1996. In August 2014, she was promoted to Daycare Supervisor. In January 2016, the MMHA unilaterally decided to change her job title from Daycare Supervisor to Carer justifying that she was not qualified for the job of Daycare Supervisor. However, her scheme of duties remained same as that of Daycare Supervisor. In August 2016, the matter was referred to Rose Hill Labour Office but no settlement was reached between the parties. The matter was then referred to the CCM as an individual trade dispute on 22 September 2017. Before the CCM, the MMHA refused to accede to her request and proposed her the post of Assistant Teacher in the Daycare Centre, which she did not accept. The Disputant avers that she is performing the job and responsibilities of Daycare Supervisor and there is no justification for her job title not to be changed to that of Daycare Supervisor.

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

It has been averred that the Disputant was a Carer at the Daycare Centre in 2008 when Mrs P. Atchia, now Acting President of the MMHA, was invited to look into the working of the Centre. It was decided to offer the Disputant "additional responsibility for the running of the Daycare section" with a small increase in salary. Since 2008, her salary has risen yearly though she has not upgraded her qualifications.

It has also been averred that prior to June 2014, the job title was not disclosed in the employees' payslip. In June 2014, the MMHA started to record the job title which was wrongly entered, by Ms Helene de Cazanove, as Supervisor on the Disputant's payslip. It was only in July 2015 that it was noted that Disputant has mistakenly been referred to as Supervisor and remedial steps were taken to rectify this mistake. The Disputant was informed of the error, which she duly accepted. The Disputant did not lodge any grievance complaint to either the Manager of the Centre or Mrs Atchia. In August 2016, a summons was issued for a representative of the MMHA to present at the Rose Hill Labour Office.

The Disputant has recently been offered the post of Assistant Teacher. The Disputant does not appear to have any formal qualifications which will justify awarding her the post or title of Supervisor. Mrs Atchia is prepared to consider her for this post if she could upgrade herself in some way. Annexed to the Respondent's Statement of Case is a donation list (Annex 1) and a contract of employment (Annex 2).

### *THE EVIDENCE OF WITNESSES*

The Disputant, Mrs Sonia Chowreemootoo, was called to adduce evidence. She works at the MMHA since 1996 having joined as a Leather Craft Teacher. She is before the Tribunal as she works in the Daycare Centre as Supervisor, post which she obtained in 2014, and management has removed her title labelling her as Carer. She explained that she was called to replace Sister Lizzy as Supervisor by Mrs Atchia and Miss de Cazanove for which she received an allowance of Rs 500 and would receive another Rs 500 after 3 or 6 months. The nature of her work changed as she prepares the weekly report, the money report, time table and activities for the adults aged above 20 years in the Daycare Centre. She refused the post of Assistant Teacher as this post does not exist in the Daycare Centre. Her title of Supervisor was changed to Carer in 2016, however her work has remained same as that of Supervisor. She maintains that she should regain her title of Daycare Supervisor. She also related that she sees the Manager asking for what work to do and also teaches dancing and tenders to activities without any gratification.

Upon questions from the representative of the Respondent, Mrs Chowreemootoo notably stated that since 2014, her title was Supervisor on her payslip. She produced a table of employees titled "MMHA 2014 GOVT. INCREMENT" together with an official payslip (Documents A and A<sub>1</sub>). She received no official letter naming her as Supervisor, she was simply called by Mrs Atchia and Miss Helene de Cazanove telling her what activities to do in the Daycare Centre. She explained what goes on in the Daycare Centre during the day. She works in the Daycare Centre as Supervisor but she also performs activities at the School. She also stated that she is forged for the job and has 20 years' experience.

Following questions from the Tribunal, Mrs Chowreemootoo identified her contract of employment as Annex 2 to the Respondent's Statement of Case. She received same in 2012 and it shows her job title to be Care Giver, which is more associated with the work she had to do. In 2012, at the time of the contract dated 20 April 2012, she was performing activities as Supervisor in the Daycare Centre but her title was Carer. She also explained that she reports to her Manager on the work she has done and she is told what activities to do and also proposes work. When there is a problem in the Daycare Centre, the Carers come to her and she tries to deal with the problem and if she can't, she goes to the Manager Mrs Coowar.

Miss Helene de Cazanove, ex-Education Director at the MMHA, was called as a witness on behalf of the Disputant. She notably stated that Sister Lizzy worked in the Daycare Centre as Supervisor and then left to join her mission in Bangalore, India; as Mrs Chowreemootoo was her right hand person, it was natural that she would take the position of Sister Lizzy. She prepared the timetable and gave the activities, educational programmes and living skills programmes to Sonia (Chowreemootoo), who assured that the staff puts all in place. She recognised Sonia's authority over the staff as Supervisor and the staff acknowledged Sonia's authority as Supervisor. She was the Education Director at the MMHA. In response to the fact that it is stated that the title of Supervisor was wrongly given to Mrs Chowreemootoo in the Respondent's Statement of Case, she stated that she cannot understand how a title can be given by error when the person is doing the work of Supervisor. She was administering the school and could see that Sonia was doing her work of Supervisor. She no longer works at the MMHA since 16 July 2016.

Miss de Cazanove was questioned by the representative of the MMHA. She notably stated that there has never been any letter stating that Sonia had the title of Supervisor as there was no letter stating that one has been appointed to a post at the time. According to her, Sister Lizzy was Supervisor of the Daycare Centre. The title of Sonia was not changed, she remained Supervisor in the Daycare Centre. She recognised that in the Daycare Centre, there has always been a post of Supervisor.

Mrs Nicole Beeharee, Carer, was called to depose. She has worked 24 years at the MMHA as Carer in the Daycare Centre. Mrs Chowreemootoo is the Supervisor; she goes to see the Manager for work and comes to tell them what to do. Mrs Chowreemootoo supervises them. Under cross-examination, the witness notably stated that Sonia goes to see the Manager

every morning and gives them their work and activities. Each Carer has her own responsibility. The timetable is adhered to every day. They come to work and Sonia tells them what to do.

Mrs Sahib Bibi Sk Heerah was also called to depose. She works since 17 years at the MMHA as a Carer in the Daycare Centre with Sonia as her Supervisor. Sonia gives them orders on what to do and before they do something, they must tell her. They do several activities. She was not cross-examined by the representative of the MMHA.

The representative of the MMHA did not adduce any evidence nor call any witnesses. Mrs Coowar made a statement to the Tribunal notably stating that the position of Supervisor does not exist at the MMHA. The Disputant is the only person at the MMHA who supports her. The Disputant was put on the list of the Ministry of Education to protect her, for her security and to look after her best interests. There has never been any letter and the MMHA needs proof. The Disputant is very dedicated towards the children. If the Disputant is insisting on the title of Supervisor, that is the call of the Tribunal as she cannot justify it. Being offered the post of Assistant Teacher does not mean that the Disputant will be out of the Daycare Centre, which is not separate from the MMHA; the MMHA is one. They have created boundaries within themselves and she is trying to break those boundaries. She is trying to make the MMHA something recognisable, a jewel in Mauritius. They should be fighting for funds and not things like this. This is not for the benefit of the children.

#### *THE MERITS OF THE DISPUTE*

The Tribunal, in the present matter, is being asked to enquire into whether the job title of the Disputant Mrs Sonia Chowreemootoo should be renamed to Daycare Supervisor.

The Disputant has been working at the MMHA since 1996 having joined as a Leather Craft Teacher. According to her, in 2014, she was promoted to Supervisor in the Daycare Centre by the Acting President of the MMHA Mrs P. Atchia together with the then Education Director Miss H. de Cazanove. The duties she performed changed accordingly. However, her title of Supervisor was changed to that of Carer in 2016, although her work has remained the same as Supervisor. The Disputant is therefore asking for her job title to be renamed as Daycare Supervisor.

The Disputant, as may be noted from her evidence, has maintained that she is the Daycare Supervisor and has been performing as such in the Daycare Centre at the MMHA. Despite, that there is no letter to demonstrate that she was appointed as Daycare Supervisor at the MMHA, the Disputant has explained that she was called by Mrs Atchia and Miss de Cazanove telling her what activities to do in the Daycare Centre. Her version on this issue is supported by Miss de Cazanove, who also confirmed that there was no letter appointing the Disputant as Daycare Supervisor.

The Disputant has also produced two documents in support of her contention to be renamed as Daycare Supervisor. The first is a table of employees headed "MMHA 2014 GOVT. INCREMENT" which shows her "Current Job Title" to be "Supervisor Daycare" on the list. The second document produced is a payslip, bearing the seal of the MMHA, for the period May 2015 which shows that her title was "Daycare Supervisor".

The Disputant was also shown a contract of employment, as annexed to the Respondent's Statement of Case. The aforesaid contract, which is dated 20 April 2012, shows that she is being employed as Care Giver as from 1 May 2012. It is also mentioned in handwriting "special responsibility for the running of the Daycare Centre". It must be noted that the contract dates to before her promotion to the post of Daycare Supervisor in 2014.

The evidence of Miss Helene de Cazanove has also been supportive of the Disputant's cause. The witness clearly explained in what circumstances the Disputant came to be made Supervisor at the MMHA with the departure of Sister Lizzy, the former Supervisor. In the mind of the witness, there is no doubt that the Disputant is the Daycare Supervisor and she confirmed that the Disputant was working as same while she was administering the MMHA. Miss de Cazanove has even denied that the Disputant was wrongly given the title of Supervisor.

Moreover, the evidence adduced by Miss de Cazanove has contradicted the averment of the Respondent in its Statement of Case to the effect that she wrongly entered the job title of Supervisor on the Disputant's payslip. It may also be noted that no questions were directly put to her by the representative of the MMHA on this issue.

The evidence of the two Carers called on behalf of the Disputant cannot be left unnoticed. Both have stated that the Disputant is their Supervisor and they explained the

working custom at the Daycare Centre of the MMHA as well as the role of the Disputant as their Supervisor.

The Respondent on the other hand has chosen not to adduce any evidence in relation to the dispute, with its representative opting to make a statement before the Tribunal. It may be noted from the statement that Mrs Coowar holds the Disputant in high regard and recognises the support and effort she provides in the running of the MMHA. It would also be pertinent to note that the representative chose not to call any witness in support of its case.

The Tribunal, having duly considered the evidence on record, has found that the Disputant was called upon to become the Supervisor of the Daycare Centre in 2014 and as the title was removed from her in 2016, she has brought the present dispute against the MMHA. The Disputant has worked and is still working as Daycare Supervisor at the MMHA as per her own unshaken evidence as well as that of Miss de Cazanove and the other witnesses.

Although, the representative of the MMHA has stated that the position of Supervisor does not exist at the MMHA, no sworn evidence has been adduced to this effect nor has this been averred in the Respondent's Statement of Case. In fact, it has been averred in the Respondent's Statement of Case that the Acting President of the MMHA would be prepared to consider Disputant for the post of Supervisor if she would upgrade herself in some way. It must also be noted that the job title of "Daycare Supervisor" has been clearly mentioned in the two documents produced by the Disputant. The Tribunal can only therefore find that the job title of the Disputant be renamed as Daycare Supervisor in accordance with the Terms of Reference of the dispute.

The Tribunal therefore awards accordingly.

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

**SD Marie Désirée Lily Lactive (Ms)  
(Member)**

**SD Rabin Gungoo  
(Member)**

**SD Ghianeswar Gokhool  
(Member)**

**Date: 22<sup>nd</sup> February 2018**