

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 126/2023

Before: -

Shameer Janhangeer	-	Vice-President
Atchanah P. Ramasawmy	-	Member
Dr Sunita Ballah-Bheeka	-	Member
Ghianeswar Gokhool	-	Member

In the matter of: -

Mrs Parveena Kanchana GUKHOOL-DOONGOOR

Disputant

and

**THE STATE OF MAURITIUS AS REPRESENTED BY THE MINISTRY OF FINANCE,
ECONOMIC PLANNING AND DEVELOPMENT**

Respondent

The present matter has been referred to the Tribunal for arbitration by the Commission for Conciliation and Mediation pursuant to *section 69 (9)(b)* of the *Employment Relations Act*. The Terms of Reference of the dispute read as follows:

Whether the Respondent has denied and is continuously denying the Disputant promotion to the grade of Assistant Manager Internal Control (“AMIC”) by wrongly interpreting and applying the requirements of the Scheme of Service for the grade of AMIC, despite the Disputant holding the appropriate qualifications provided.

Both parties were assisted by Counsel. Mr Y. Bhujun appeared for the Disputant, whereas Ms B. H. Maherally, Principal State Counsel appeared for the Respondent instructed by Mrs S. D. Gujadhur, State Attorney. Each party has submitted its Statement of Case in the present matter.

THE DISPUTANT'S STATEMENT OF CASE

The Disputant has averred that she has been in employment with the Respondent since 2002 and was appointed Internal Control Officer/Senior Internal Control Officer in the Ministry of Finance, Economic Development and Planning (the "Ministry") within the Internal Control Cadre. She currently holds the post of Principal Internal Control Officer ("PICO") since 5 May 2017. She has a Bachelor of Commerce from the University of Delhi and is also holder of a Level 2 Fundamentals qualification from the Association of Chartered Certified Accountants (ACCA). As per the composition the Internal Control Cadre as per the Pay Research Bureau ("PRB") Report 2021, the Disputant, based on her experience, qualification and merit, should be entitled to the position of Assistant Manager Internal Control ("AMIC") in the event of vacancy.

It has been averred that a vacancy occurred for the post of AMIC since 2 May 2020 and the Disputant, being the senior most PICO, was considered for promotion. By letter dated 13 July 2021, she was assigned duties of AMIC for six months as from 1 July 2021. This was extended, by letter dated 26 January 2022, for a further six months. According to the scheme of service for the post of AMIC, the position is filled by promotion on the basis of experience and merit from the grade of PICO holding required academic or professional qualifications. The scheme of service of AMIC was amended in September 2019 to include the requirements of *"a degree in Financial Management with specialisation in Public Finance or Public Sector Financial Management or Accountancy or Finance or Mathematics or Statistics or an equivalent qualification acceptable to the Public Service Commission"*. Prior to the amendment in 2019, she was eligible for direct promotion to AMIC in view of her ACCA qualifications. She was contacted by the Human Resource Section of the Ministry in August 2011 regarding prospective promotion to the post of AMIC and was requested to submit documentary evidence of her qualifications.

The Disputant thereafter sought equivalence of her qualifications from the Higher Education Commission ("HEC") and as per a reply dated 18 November 2021 from the HEC, the Fundamental Level ACCA qualification was found to be equivalent to a BSc (Hons) in Accounting with Finance as awarded by the University of Technology, Mauritius and pitched at Level 8* on

the National Qualifications Framework. This reply was communicated to the Respondent. By letter dated 14 February 2022, she wrote to the Financial Secretary regarding her promotion. By a reply dated 24 February 2022, she was informed that she was not eligible for promotion. She then sought the intervention of the Conciliation service of the Ministry of Public Service, Administrative & Institutional Reforms. The Ministry, by letter dated 17 May 2022, informed her that the HEC was requested to advise on the equivalence of her qualifications to the BSc (Hons) Financial Management with specialisation in Public Finance and it was found that the qualifications of the Disputant taken together are not equivalent to the aforementioned qualification.

The Disputant made further representations to the Financial Secretary on 15 September 2022 and obtained a reply dated 5 October 2022 which reiterated the letter dated 24 February 2022. On 13 October 2022, she reported a labour dispute at the CCM, which was referred to the Tribunal on 20 April 2023. She also made representations to the Secretary for Public Service as per letter 24 November 2022. She further applied to the HEC, by an email dated 24 April 2023, to seek equivalence for a degree in accountancy and received a reply dated 5 May 2023. The dispute referred to the Tribunal was eventually withdrawn for proper parties to be put into cause. The present dispute has been referred to the Tribunal on 13 October 2023.

It has moreover been averred that despite the Public Service Commission (“PSC”) being the competent body for appointment and promotion of public officers, the Ministry is mandated, for a promotion exercise, to ensure that an officer satisfies the requirements of that office pursuant to *Regulation 19 (3)(a)* of the *PSC Regulations*. The decision of the Ministry denying her promotion is wholly based on the exercise carried out at the level of the Human Resources Section and/or with the Responsible Officer tasked to carry out the assessment whether the Disputant held the necessary qualifications for promotion.

The aforementioned decision regarding the Disputant’s qualification is manifestly unreasonable inasmuch as the letter dated 5 October 2022 from the Financial Secretary clearly specifies a full list of required qualifications accepted or equivalence thereof comprising seven distinct degree level qualifications which includes a degree in accountancy; the decision not to promote the Disputant as per letter dated 17 May 2022 is based on the premise of an equivalence sought only in regard to the BSc (Hons) Financial Management with specialisation in Public Finance; the Disputant obtained the equivalence of her qualifications amounting to a BSc Accounting with Finance (Hons) degree, which satisfies the scheme of service for AMIC; the term

“accountancy” is an umbrella term just like other prescribed qualifications in the scheme of service for AMIC; the Respondent failed to consider that the HEC had established the equivalence of Disputant’s qualification in comparison to what was available in a public higher education institution; the ignorance of the Respondent that a BSc (Hons) Accounting with Finance degree could not be equated to a degree in accountancy is in defiance of logic and indicates that the Respondent since 2021 has been denying her promotion for which she is duly qualified; and the Respondent has also failed to give due consideration to the Circular E/339/FIN/01/IC V2 issued by the Ministry of Civil Service and Administrative Reforms dated 20 March 2008 that ACCA Fundamentals is of an accredited Accounting degree level.

It has further been averred that several staff of the Internal Control Cadre holding the post of AMIC and above possess only an ACCA Fundamental Skill & Knowledge as opposed to full membership. Despite the dispute, the PSC proceeded with the promotion of four PICOs to the post of AMIC on 30 June 2023 despite the Disputant being more senior to the promoted officers. The acts and doing of the Respondent have caused considerable prejudice to her having been denied promotion since 2021 based on erroneous and partial interpretation of her qualifications as well as imposing onerous conditions for promotion.

THE RESPONDENT’S STATEMENT OF REPLY

The Respondent has raised a preliminary objection in law in its reply as follows:

The Tribunal has no jurisdiction to hear the present matter in as much as the terms of reference, as couched, do not constitute a “Labour Dispute” as defined in section 2 of the Employment Relations Act, in particular –

- a) in paragraph (a)(i) on the said definition of labour dispute; or*
- b) in the alternative, in paragraph (c) of the said definition of labour dispute.*

Respondent moves that this matter be set aside.

On the merits of the dispute, the Respondent has notably averred that the scheme of service for the post of AMIC was prescribed on 26 September 2019 providing for the post to be filled by promotion, on the basis of experience and merit, of officers in the grade of PICO who possess the qualifications laid down in the scheme of service. It is admitted that the Disputant was senior most PICO within the internal control cadre and it is averred that the Disputant does not possess the qualifications prescribed in the scheme of service for the post of AMIC and is therefore not eligible for the post. The assignment given to the Disputant is admitted but assignment of duties in any higher post does not give any claim for permanent appointment in that post. It is denied that the Disputant was eligible for direct promotion to the post of AMIC prior to the scheme of service being amended.

The Disputant was requested by Respondent to provide information to be submitted to the HEC regarding the equivalence of qualifications held by her. By letter dated 10 May 2022, the HEC informed the Respondent that the qualifications held by the Disputant, both taken together, are not equivalent to the BSc (Hons) Financial Management and Specialisation in Public Finance awarded by the University of Technology, Mauritius. The Disputant had also applied for equivalence to the HEC and by letter dated 18 November 2021, was informed that her ACCA qualification is equivalent to the BSc (Hons) in Accounting with Finance awarded by the University of Technology, Mauritius. The Respondent admits sending the letter dated 17 May 2022 to the Disputant but denies that the letter refers to equivalence being sought to only the first qualification prescribed for AMIC. *Regulation 19 (3)(a)* of the *PSC Regulations* sets out the procedure for making recommendations in respect of vacancies to be filled by way of promotion. All appointments in the public service are made in accordance with the qualifications set out in the relevant scheme of service for the relevant grade and the final decision rests with the PSC.

The Respondent has also pointed out that as far back as 2014, it had set up a training scheme whereby officers in the Internal Control Cadre were sponsored for the BSc in Financial Management with specialisation in Public Finance at the University of Technology, Mauritius to enable them to be qualified for the post of AMIC. The Disputant was offered sponsorship for the first batch in 2014 but declined. She was again offered sponsorship to follow the degree course in 2022 but again declined the offer. She was offered the opportunity for sponsorship for a third time in April 2023, which she initially accepted and subsequently verbally informed the Respondent that she would not do so. Her colleagues who have followed the course have been appointed or will be eligible for appointment vice any existing or future vacancies. At present, the Disputant is not eligible to be appointed to the post. The Disputant did appeal to the Public

Bodies Appeal Tribunal against officers appointed to the post of AMIC but eventually chose to withdraw her case before the matter was determined.

THE EVIDENCE OF WITNESSES

Mrs Madhavi Ramdin-Clark, Head of ACCA (Mauritius), was called out of turn as a witness on behalf of the Disputant. She notably stated that the ACCA qualification bears three levels being Applied Knowledge and Strategic Professional. The Disputant's Fundamental Level certificate would correspond to ACCA Applied Skills. The ACCA, being a professional body, issues professional qualifications and not academic certifications or degrees and their qualifications are benchmarked in line with the British Educational Framework; and according to this, the level of Applied Skills is equivalent to a Bachelor's degree, though not specifically in accounting. As a certifying body, the term '*accountancy*' would relate to all the elements that make up knowledge around the accounting profession and would could include standards, ethics, elements of management. All the various aspects are included in the syllabus defined by the ACCA.

Mrs Ramdin-Clark could not reply whether a degree in accountancy could be any degree in accounting since the ACCA does not issue degrees. The Disputant's Fundamental Level qualification does not include any module in ethics as per her certificate. The witness produced a table of equivalence (Document A) and an email dated 22 March 2024 (Document A₁) addressed to her. When questioned by Principal State Counsel for the Respondent, the witness notably stated that the ACCA is not the authority in Mauritius to give equivalence for academic qualifications in Mauritius. They are a certifying body for ACCA and request from local authorities in every country for ACCA to be benchmarked according to the Local National Education Framework, which is the HEC over here.

The Disputant was called to adduce evidence. She confirmed as to the truth of her Statement of Case and its annexes. In the eventuality of a promotion, she is supposed to occupy the post of AMIC. She was acting AMIC from July 2021 to January 2022 and was still Officer-in-Charge at the Ministry up to June 2023. Mr Ramphul retired in 2020 as AMIC and being the senior most PICO, she was considered for actingship. She expected to be promoted as AMIC and the Ministry started the procedures and asked for her mark sheets for the HEC to give its equivalence in 2021. She holds a Bachelor in Commerce from the University of Delhi and an ACCA Fundamentals Level. The Ministry stated that she is not eligible as they did not receive the

equivalence asked for. She then went to the HEC regarding her ACCA Fundamental Level and the HEC stated that this is equivalent to the BSc Accounting with Finance awarded by the University of Technology, Mauritius as per letter dated 18 November 2021 (*vide* Annex 9a to her Statement of Case). She submitted same to the Ministry but received a negative reply that she not eligible for promotion (*vide* letter dated 24 February 2022 at Annex 12 of her Statement of Case).

The Disputant also stated that there was no absence of documentary evidence regarding the letter dated 24 February 2022 from the Ministry. As per the said letter, it is the Ministry which takes decision regarding promotion. She received the documents from the University of Delhi and submitted same but was still met with a negative response regarding her BCom degree. She then reported a case with the Conciliation Service of the Ministry of Public Service, Administrative and Institutional Reforms, where a solution was not found. She then received a letter dated 17 May 2022 from the Ministry whereby the latter has matched her qualification with a BSc Financial Management. As per the letter, it is clear that the Ministry has asked for equivalence for only one qualification when there are several qualifications mentioned in the scheme of service. The Ministry was supposed to ask for all the other qualifications mentioned. She made representations to the Financial Secretary and received a reply dated 5 October 2022. She believes that a degree in accountancy is applicable for her in relation to the qualifications listed in the scheme of service.

The Disputant also stated that the term '*accounting*' is an umbrella term which covers all the degrees in accounting and based on the qualifications submitted to the Ministry, this should fall under a degree in accountancy. However, she was still refused promotion. She approached the Secretary for Public Service for a solution but did not receive a positive response. She then went to the HEC for equivalence of a degree in accountancy but was refused (*vide* letter dated 5 May 2023 at Annex 20 of her Statement of Case) stating that no tertiary institutions in Mauritius offer a degree in accountancy. She has been denied promotion in the letter of February 2022 as her qualification is not word to word as per the scheme of service. She is before the Tribunal as a BSc Accounting with Finance is not a degree in accountancy. She is continuously being denied promotion as there were two promotion exercises in June 2023 and 24 January 2024 where her junior colleagues have superseded her. She referred to a Circular from the Ministry of Civil Service in 2008 (*vide* Annex 22 of her Statement of Case) and according to this, her qualification is at an accredited accounting degree level which fits with the degree in accountancy requirement of the scheme of service. Other colleagues have been appointed AMIC with ACCA Fundamentals. She is asking to be considered as eligible for promotion as AMIC and that the Ministry is misinterpreting and wrongly applying the requirements for the scheme of service for AMIC.

Upon questions from Principal State Counsel for the Respondent, the Disputant notably agreed that promotion is made by the PSC not the Ministry. She agreed that she was assigned higher duties, not actingship, and that she received an 80% responsibility allowance. This assignment did not give her any claim for permanent appointment as AMIC. She received 80% as allowance as she was not fully qualified for the post. She agreed that it is the concerned officer's responsibility to ask for equivalence from the HEC. She agreed that BSc Accounting with Finance is not in the scheme of service of AMIC. She agreed that there is nothing word to word to show that her ACCA qualification is equivalent to the degrees listed in the scheme of service. No equivalence was found for her qualification from India. She agreed that HEC replied negatively when the Ministry sought the equivalence of her two qualifications together.

The Disputant also agreed that without any clear equivalence, there can be no promotion. She trusts the HEC when it gives a qualification and agrees with what the HEC has given. The Ministry does not understand that a degree BSc Accounting with Finance is the same as a degree in accountancy. She was given the opportunity to follow a course for her to be qualified, at least thrice, but did not follow same. HEC did not find her Indian qualification to be equivalent to the qualifications in the scheme of service. She agreed that she does not have the degrees listed in the scheme of service for AMIC. She agreed that she was not qualified for the post of AMIC and that it cannot be said that the scheme of service is being misinterpreted or misapplied.

Mrs Bhimla Devi Nundloll, Human Resource Manager at the Ministry of Public Service, was called as a witness of behalf of the Disputant. She produced a Circular dated 20 March 2008 (Document B) from the Ministry of Civil Service and Administrative Reforms, which is still in force. According to same, if a person possesses an ACCA Fundamental Level, the person is deemed to be of an accredited accounting degree level. She stated that for the sake of promotion, the binding document is the scheme of service wherein provisions have been made regarding qualifications required for the post. The Circular explains changes occurred following ACCA exams as previously it was ACCA Level 1, 2 and 3 but is now Fundamentals and ACCA Professional. The completion of the ACCA would be at Master's degree level.

The witness also produced a certified copy of the scheme of service for the post of AMIC (Document C). Her Ministry is responsible for the prescription of the scheme of service and for all procedures laid in the manual from the start to its prescription. The onus to amend or to draft

a scheme of service rests upon the Responsible Officer of a particular Ministry. The concerned Ministry drafts the first proposal and it is usually based on PRB recommendations. When questioned by Principal State Counsel for the Respondent, she notably stated that the Circular is not a document which shows equivalence and is meant to show that there has been a change in the ACCA scheme. She also agreed that the legal basis for the scheme of service is to be found in the *PSC Regulations*.

Dr T. Beeharry, Ag. Quality Assurance and Accreditation Officer at the HEC, was also called as witness on behalf of the Disputant. He confirmed that the Disputant sought equivalence for her ACCA Fundamental Level qualification in 2021 and the HEC replied by letter dated 18 November 2021 (Annex 9a to the Disputant's Statement of Case). In determining how equivalence is determined, he explained that the applicant has to make an application to the HEC stating which qualification they wish to establish equivalence and this qualification must be offered locally by a publicly funded tertiary institution. The HEC sends this to the publicly funded institution, where their equivalence committee will establish equivalence based on the qualification, syllabus and transcripts submitted to map it with the qualification to which equivalence is sought. This then goes to the panel on recognition and equivalence at the HEC and is approved by the Board of the HEC. A letter is then issued to the applicant. This procedure was respected regarding the letter dated 18 November 2021.

Regarding the letter dated 5 May 2023 (Annex 20 of the Disputant's Statement of Case), Dr Beeharry stated that this is because the Disputant requested the HEC a confirmation that the degree of accountancy is not being run by the University of Mauritius and they issued the letter. The letter from the Disputant is dated 24 April 2023 (Annex 19 of the Disputant's Statement of Case). It is not within his mandate to state whether a degree in accountancy is the same as a BSc (Hons) in Accounting with Finance. When applying, there has to be a minimum of 75% commonality in terms of content between the two programmes for the University to give equivalence. As per the HEC's letter dated 10 May 2022, which is a reply to the Ministry of Finance, the request was to establish equivalence to the BSc Financial Management with Specialisation in Public Finance and the request was not as regards other degrees. The qualifications sought to be compared was the Bachelor in Commerce degree from the University of Delhi and the ACCA Fundamental Level.

Dr T. Beeharry was questioned by Principal State Counsel for the Respondent. Regarding the letter dated 25 January 2022 from the Ministry, they requested the latter to provide the

detailed syllabus. The Ministry informed the HEC that they have asked the Disputant to provide the information. They are not involved with the scheme of service and don't look at it at all. The reply as per the letter dated 18 November 2021 was that the ACCA Fundamental (F1 – F9 papers) is equivalent to BSc (Hons) in Accounting with Finance awarded by the University of Technology, Mauritius. The request made by the Disputant was in relation to Accounting with Finance. He produced the application from the Disputant dated 16 November 2021 (Document D). Under re-examination, the witness notably stated that the Respondent's request to the HEC was only as regards the BSc (Hons) Financial Management with Specialisation in Public Finance.

At the close of the Disputant's case, the Respondent choose not to adduce any evidence and did not insist on the plea *in limine* raised in its Statement in Reply.

THE SUBMISSIONS OF COUNSEL

Learned Counsel for the Disputant has notably submitted that there are two approaches to this case: restrictive, by seeing the Disputant's case in isolation; and general, whereby the matter is much deeper and concerns all public officers. He stated that what first needs to be determined is how promotion is done within the public service to know that there is a denial of promotion; secondly, what are the considerations to be taken on board in order to consider a public officer for promotion; thirdly, how the requirements of the scheme of service are applied *quoad* a person; and fourthly, which is the main crux of the issue, how the requirements of qualifications are interpreted so that it satisfies the last part of the Terms of Reference.

Counsel submitted that the Disputant holds two qualifications and her ACCA Fundamentals has been found by the HEC to be equivalent to a BSc Accounting with Finance degree. ACCA Mauritius has confirmed the qualifications of the Disputant as per Documents A and A₁, the ACCA Applied Skills being recognised as a Bachelor's degree in the UK. A Circular has been produced by the Ministry of Public Service stating that the level of the ACCA Fundamental as being as an accredited accounting degree. This indicates that the Disputant has a Bachelor's degree or at least a degree level qualification in accountancy. As per the HEC, an equivalent was obtained and there was a request from the Disputant to know whether a degree in accountancy exists. The degree in accountancy is not even available locally and this prompts the question that is the scheme of service, correct?

Counsel further stated that the scheme of service is not a document that is set in stone that its requirements must be applied word to word. When a person has a degree in accountancy, any variation of those degrees should be admissible. It is the submission of the Disputant that she holds a qualification that would fall squarely within what is called a degree in accountancy. Counsel prayed in terms of the Terms of Reference and invited the Tribunal to consider the issue of the inadequacy or phrasing of the scheme of service which impacts on promotion.

Learned Principal State Counsel for the Respondent, on the other hand, notably submitted that each dispute is individual to the person and is between the employee and the employer; it is not a collective dispute. The scheme of service is made under the *PSC Regulations*, which sets out how schemes of service are to be made as described in *Regulation 15* of the *PSC Regulations*. The HEC has never stated that the Disputant holds a degree which is found in the relevant scheme of service, there is no equivalence to the degrees required in the scheme of service and she thus does not hold any qualification required by the scheme. When assigned duties, the Disputant was paid an acting allowance of 80% and when cross-examined, she admitted everything that was put to her.

On the issue of promotion in the public service, Principal State Counsel submitted on the judgment of *Ortoo & Ors v Ministry of Health & Quality of Life and Anor* [2016 SCJ 504] stating that the PSC is responsible for promotion in the public service and is not a party before the Tribunal. The case of *Hurry v The Government of Mauritius* [1996 SCJ 51] was also relied upon where it was held that the application cannot succeed as one of the main parties, namely the PSC, was not before the court and that schemes of service are best left to the appropriate authority. It was also submitted that the court can only intervene where there has been departure from established rules and procedures but cannot direct Ministries or Departments on how schemes of service should be prepared. The Disputant is disputing the equivalence and what the competent authorities have given in terms of equivalence.

In reply to the Respondent's submissions, Learned Counsel for the Disputant notably stated that the employer is the State of Mauritius and the PSC has delegated powers to Responsible Officers of Ministries concerned with the promotion exercise. It was also stated that this is not a disguised challenge to the scheme of service but a genuine issue as to how the Ministry is dealing with a promoting exercise which has not yet reached the PSC and is only at the level of the Ministry.

THE MERITS OF THE DISPUTE

As per the Terms of Reference of the dispute, the Disputant is asking the Tribunal to determine whether the Respondent has denied and is continuously denying the Disputant promotion to the grade of AMIC by wrongly interpreting and applying the requirements of the scheme of service for the grade of AMIC, despite the Disputant holding the appropriate qualifications provided.

The Disputant currently holds the post of PICO at the Ministry. She was at some point acting AMIC following the retirement of the incumbent of the post. She holds as qualifications a Bachelor in Commerce (BCom) degree from the University of Delhi and an ACCA Fundamental Level. She has not been promoted to the post of AMIC as the Ministry has not received the equivalence of her degrees to the qualifications laid down in the scheme of service for the post of AMIC. The HEC did find that her ACCA qualification is equivalent to the BSc Accounting with Finance awarded by the University of Technology, Mauritius as per its letter dated 18 November 2021. Despite this, she was not found to be eligible for promotion.

In relation to the qualifications listed in the scheme of service for AMIC, the Disputant believes that a degree in accountancy is applicable to her contending that the term '*accounting*' is an umbrella term which covers all degrees in accounting and that this should fall under the degree in accounting as listed in the scheme of service. She has continuously been denied promotion as there were two promotion exercises in June 2023 and January 2024 whereby her junior colleagues have superseded her.

The main contention of the Disputant is that she holds the appropriate qualifications provided inasmuch as her ACCA Fundamental Level has been found to be equivalent to a BSc Accounting with Finance awarded by the University of Technology, Mauritius. Although this equivalence of her ACCA qualification has not been disputed, it is clear that the degree of BSc Accounting with Finance is not listed among the degrees required for promotion for the post of AMIC as per its scheme of service. Indeed, the following extract regarding qualifications can be noted from the scheme of service for the post of AMIC:

Qualifications:

By promotion, on the basis of experience and merit, of officers in the grade of Principal Internal Control Officer who –

- (i) (a) possess a degree in Financial Management with specialisation in Public Finance or Public Sector Financial Management or Accountancy or Finance or Mathematics or Statistics or an equivalent qualification acceptable to the Public Service Commission*

The Disputant has moreover admitted that there is nothing to show that her ACCA qualification ‘word to word’ is equivalent to the listed degrees in the scheme of service for the post of AMIC when questioned by Counsel for the Respondent. What the Disputant is, however, attempting to demonstrate is that accountancy is an umbrella term which covers a variety of degrees in accountancy and that her ACCA qualification, having been found to be equivalent to a BSC Accounting with Finance, would be equivalent to a degree in accountancy.

The Disputant has notably relied on the evidence of the representative from ACCA Mauritius in relation to her ACCA Fundamental Level qualification. The ACCA representative notably stated that the ACCA qualification corresponds to ACCA Applied Skills and is equivalent to a Bachelor’s degree, though not specifically in accounting. It was also emphasised that the ACCA does not issue degrees and issues professional qualifications. Moreover, the representative confirmed that the ACCA is not the authority in Mauritius to give equivalence for academic qualifications. From the tenor of this evidence, it is clear that although the aforesaid qualification is at the level of a Bachelor’s degree, this is not specifically in accounting.

The Disputant also sought support from a Circular dated 20 March 2008 (Document B) from the Ministry of Civil Service and Administrative Reforms. According to this Circular, the ACCA Fundamental Level is of an accredited accounting degree level. However, the representative of the Ministry of Public Service, who produced the Circular, clearly stated that for the sake of promotion the binding document is the scheme of service which provides for qualifications required for the post. She also stated that the Circular explains changes made to ACCA exams. It must be noted that when cross-examined, the witness notably stated that the Circular is not a document which shows equivalence.

Thus, in light of the evidence of Mrs Nundloll, it is clear that the Circular cannot be relied upon to show that the Disputant's ACCA Fundamental Level is equivalent to the qualifications listed in the scheme of service for AMIC bearing in mind that the Circular was meant to show changes brought to ACCA exams. Moreover, the Circular does not mention that the ACCA Fundamentals is a degree in accountancy but states that it is '*of an accredited accounting degree level*' bearing in mind that the said document is not meant to show equivalence.

The evidence of the Disputant is also very pertinent in the present matter. When cross-examined by Counsel for the Respondent, the Disputant agreed that promotion is made by the PSC and not the Ministry; she received 80% acting allowance as she was not fully qualified for the post of AMIC when assigned higher duties; she agreed that it is the officer concern's responsibility to ask for equivalence; she agreed that BSc Accounting with Finance is not in the scheme of service for AMIC; she agreed that she does not have the degrees listed in the scheme of service for AMIC; more importantly, the Disputant agreed that she is not qualified for the post of AMIC and that it cannot be said that the scheme of service is being misinterpreted or misapplied.

In view of the above, and bearing in mind the admissions of the Disputant, the Tribunal cannot see how the Disputant's qualifications, particularly the ACCA Fundamental equivalent to a BSc Accounting with Finance, can be found to be equivalent to a degree in accountancy which is required under the scheme of service for the post of AMIC for promotion to the aforesaid post. The Disputant cannot therefore be said to hold the appropriate qualification as is required in the scheme of service for the post of AMIC.

As per the Terms of Reference, it has been averred that the scheme of service is being wrongly interpreted and applied. It should however be noted that the Disputant did concede that the scheme of service is not being misinterpreted or misapplied. Moreover, it is clear that none of her qualifications falls within the listed degrees of the scheme of service for AMIC. She has also conceded that BSc Accounting with Finance is not found in the scheme of service for AMIC. Thus, it is not proper to say that that the Respondent is wrongly interpreting or applying the scheme of service for the post of AMIC.

Counsel for the Disputant has, in his submissions, questioned the correctness of the scheme of service for AMIC in view of the fact that a degree in accountancy is not offered locally in Mauritius as per the letter from the HEC dated 5 May 2023. It is apposite to note that schemes of service are to be considered and agreed by the PSC before their prescription as per *Regulation 15 of the PSC Regulations*. The PSC, which is established under *section 88 of the Constitution*, derives its powers from the *Constitution* and the *PSC Regulations 1967*; and it is also governed by the *Public Service Commission Act*. As such, the PSC, being a constitutional body, cannot be subject to the direction or control of the Tribunal (*vide section 118 (4) of the Constitution*).

Indeed, the following may also be noted from what was stated in the matter of *Khedun-Sewgobind v The Public Service Commission* [2010 SCJ 6(a); 2010 MR 100]:

Now, pursuant to section 89 of the Constitution, the power to appoint persons to hold or act in any offices in the public service vests in the respondent which in terms of section 118(4) is not, in the exercise of its functions, subject to the direction or control of any person or authority. Moreover, pursuant to section 118(1), the respondent has by regulations made provision for regulating and facilitating the performance of its constitutional functions.

(The underlining is ours.)

Thus, it has been rightly submitted by Principal State Counsel for the Respondent that the Tribunal cannot substitute its views regarding the scheme of service in citing the case of *Hurry v The Government of Mauritius* [supra], where the following was held:

It is not for this Court to substitute itself for Ministries and tell them how to run their departments. The Court can only intervene when there has been a departure from established legal rules and procedures, but it is certainly not the function of the Court to direct Ministries or government departments how schemes of service should be prepared or amended to suit the changing needs of society.

...

In Planche v. (1) Conservatoire de Musique François Mitterrand Trust Fund ; (2) The Permanent Secretary, Ministry of Education and Science [1994 SCJ 129], the Court held that it could not, on an application for judicial review, substitute its own views on schemes of service.

(The underlining is ours.)

As per the Terms of Reference of the dispute, the Disputant contends that she is being denied promotion to the grade of AMIC by the Respondent. It is well settled that matters of promotion and appointment of officers in the public service lie within the province of the PSC. As per *section 89* of the *Constitution*, the power to appoint persons in any office in the public service vests with the PSC. It has been moreover been agreed by the Disputant herself that promotion is made by the PSC and not the Ministry.

The following can be noted from the Judicial Committee of the Privy Council in *Fakeemeeah & Anor v Essouf & Ors* [1993 PVR 43] in relation to *section 89* of the *Constitution*:

Section 89 of the Constitution is in their Lordships' view the overriding provision in relation to appointments to offices in the public service and should be given a broad interpretation. It is only when offices are specifically excluded, as they are in subsections (3)(a) to (h) or under section 112 that section 89 does not apply.

It is clear that the PSC is not a party in the present matter. Although, the Disputant has argued that the matter has not yet reached the PSC and was still at the level of the Ministry, it must be noted that the scheme of service for AMIC does contain the phrase '*... acceptable to the Public Service Commission*' under the caption of '*Qualifications*'. It has also been argued that the PSC can delegate its powers. Though this power of delegation does exist in law, no evidence has been adduced in the present matter to show that the PSC has delegated its powers to the Responsible Officer of the Ministry in relation to promotion to the grade of AMIC. Thus, given that the dispute relates to promotion in the public service, the PSC should have at least been made a party in the present matter as submitted by the Respondent.

After having duly considered the evidence on record as well as the submissions of both parties, the Tribunal cannot find that the Respondent has denied and is continuously denying the Disputant promotion to the grade of AMIC by wrongly interpreting and applying the requirements of the scheme of service for the aforesaid grade as it is being asked to do in the Terms of Reference of the dispute.

The dispute is therefore set aside.

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(SD) Shameer Janhangeer
(Vice-President)

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(SD) Atchanah P. Ramasawmy
(Member)

.....
(SD) Dr Sunita Ballah-Bheeka
(Member)

.....
(SD) Ghianeswar Gokhool
(Member)

Date: 30th September 2024