

EMPLOYMENT RELATIONS TRIBUNAL

RULING

ERT/ RN 156/23

Before

Indiren Sivaramen	Acting President
A.Parsooram Ramasawmy	Member
Chetanand K. Bundhoo	Member
Ghianeswar Gokhool	Member

In the matter of:-

Dr Pradeep Mahesh Kumar Soonarane (Disputant)

And

**State of Mauritius as represented by the Ministry of Energy
and Public Utilities (Respondent)**

The above case has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (hereinafter referred to as “the Act”). The terms of reference of the point in dispute read as follows:

“The Respondent having conferred the tasks and duties of the Director General upon the Disputant, without a proper assignment of duties despite official requests were made, has entrusted additional works upon the Disputant for which additional wages ought to have been paid, and which is now due and demandable from the Respondent.”

Both parties were assisted by Counsel and the Respondent has taken a preliminary objection in law which reads as follows:

Preliminary Objection in law

Respondent is advised that the present matter is time barred since it has been reported more than three years after the alleged act or omission giving rise to the dispute and, in any event, the claim for July 2020 till 2 October 2020 is time barred.

The Tribunal proceeded to hear arguments from both counsel on the preliminary objection in law taken on behalf of Respondent. Counsel for Respondent referred to Article 2219-1 and Articles 2268 to 2271 of the 'Code Civil Mauricien', and more particularly Article 2271 of the said Code. Reference was also made to the definition of "labour dispute" under section 2 of the Act and more particularly part (c) of the definition. Counsel referred to section 70(1) of the Act and argued that it is only where a "labour dispute" is referred to the Tribunal, that the Tribunal has jurisdiction to enquire into the dispute. Counsel suggested that the wording used in part (c) of the definition of "labour dispute" is clear, and that just like under the Civil Code, the legislator had not expressly provided for a cause of action which is continuous. He submitted that what matters is "*le point de depart*" or "*le jour où le droit d'action a pris naissance*". He suggested that if the act was to be continuous, this would have been expressly provided for in the Act. He referred to the Supreme Court judgments of **Ramphul S. v The Accountant-General & Ors 2021 SCJ 335**, **Mungroo C. & Ors v The State of Mauritius 2007 SCJ 326** and **Ramnarain S. v Ministry of Health and Quality of Life & The State of Mauritius 2017 SCJ 320**. Counsel for Respondent went further and suggested before this Tribunal that the Supreme Court judgment in the case of **D. Ramyeed-Banymandhub v The Employment Relations Tribunal 2018 SCJ 252** was incorrect. Counsel referred to paragraphs 8 and 26 of the Statement of Case of the Disputant and the date on which the matter was reported to the President of the Commission for Conciliation and Mediation, that is, on 2 October 2023 (as per the letter of referral of the present dispute). He argued that the dispute was time barred and that the Tribunal thus had no jurisdiction to adjudicate on the matter on the merits. He also referred to Article 2247 of the Code Civil Mauricien in relation to the effect of the withdrawals of previous disputes.

Counsel for Disputant argued that to some extent the provisions and reference made by Counsel for Respondent would in fact be his own submissions and reference but that to the majority of the extent he will disagree. His main concern was that the Tribunal, which has quasi-judicial powers was being asked to make a finding that a judgment of the Supreme Court, in the case of **D. Ramyeed-Banymandhub** (see above), should not be applied when the very same judgment of the Supreme Court adjudicates on the powers of the Tribunal. He argued that the Supreme Court judgments cited by Counsel for Respondent were cases under the Public Officers' Protection Act which would have no bearing and no relevance whatsoever on the Employment Relations Act. Counsel for Disputant argued that the point taken cannot be canvassed *in limine litis* and that at least some evidence will have to be heard by the Tribunal. He suggested that in the light of the judgment in the case of **D. Ramyeed-Banymandhub** (see above), the Tribunal has to ascertain whether there was a continuous omission. He argued that in the present case the cause of action kept arising continuously. He also suggested that previous cases were withdrawn for specific reasons and that the intention of the

Disputant was to submit to the Tribunal a case which fits the jurisdiction of the Tribunal. Counsel for Disputant added that this is not a case where the Disputant has sat on his rights.

Counsel for Respondent replied that it was always open for the Disputant to call whatever evidence he deemed fit for the purpose of the “arguments”. He stressed on Article 2247 of the Code Civil Mauricien and argued that with the withdrawals of previous cases, it was as if no disputes had been reported.

The Tribunal has examined the arguments offered by both Counsel. For the purpose of the preliminary objection in law, the Tribunal will proceed on the basis that the averments made by the Disputant in his Statement of Case are deemed to be admitted on behalf of the Respondent. The Tribunal for obvious reasons cannot consider the arguments offered by Counsel for Respondent in relation to the Supreme Court judgment of **D. Ramyeed-Banymandhub** (see above). Indeed, this judgment was in relation to the same part (c) of the definition of “labour dispute” under section 2 of the Act. The Supreme Court judgment of **D. Ramyeed-Banymandhub** (see above) is binding on the Tribunal. Thus, in the case of **D. Ramyeed-Banymandhub** (see above), the Supreme Court stated the following:

“The simplistic approach adopted by the Tribunal was further confirmed by the fact that it considered that since the averments set out in the applicant’s statement of case made reference to “*the last decade*” or “*the last 13 years*”, the time for the dispute arose in 2001. When read in their proper context however, these words connote that the applicant was referring to the injustice caused to her over a prolonged and continuous period, especially since these averments also mention that the co-respondent was “*still refusing*” to give consideration to her post and was “*still causing*” her prejudice as at the date of her statement of case i.e., on the 24th March 2015.

The respondent therefore failed to consider the possibility that the co-respondent’s alleged omission could have been continuous, thereby seriously affecting the whole basis of the Tribunal’s computations whilst determining the objections related to time limits.”

The Tribunal thus has to consider the possibility that the Respondent’s alleged omission could have been continuous. The Disputant in his Statement of Case has made the following averments:

8. *Disputant avers that since the retirement of the DG in July 2020, he has been performing the duties of the DG, without properly being assigned the duties to the post, and that he has not been remunerated for same.*

18. *Therefore, the Respondent, through the Ministry, has consistently entrusted the Disputant with additional works, falling strictly within the purview of the DG of the MEPU, without a proper assignment of duties and for which additional remuneration in terms of allowance is usually paid when a proper assignment of duties is done. (Underlining is ours)*
25. *The absence of the assignment of duties by the Respondent has caused considerable prejudice to the Disputant and great frustration inasmuch as the fundamentals of fair employment have not been followed, leading to the State of Mauritius, as the employer of the Disputant, to flout the very employment principles that it was bound to respect.*
26. *Materially, the Disputant has been prejudiced in the amount of MUR 207,857/- being the difference in wages between the post of DTS and DG for the period of 22 July 2020 to 19 April 2022. (...)*

In the present case, as per the above paragraphs of the Statement of Case of Disputant, the Tribunal finds that the act or omission which gave rise to the present dispute was the alleged absence of assignment of duties to the post of Director General (Public Utilities) (hereinafter referred to as 'DG') to the Disputant though the latter would have allegedly performed the duties of DG since the retirement of the DG in July 2020. It is also averred that until his retirement on 20 April 2022 (paragraphs 1 and 15 of the Statement of Case of Disputant), the Disputant was frequently called upon to shoulder the responsibility of the DG. Similar to the case of **D. Ramyeed-Banymandhub** (see above), there are averments such as prejudice and frustration which the alleged continuous absence of assignment of duties would have caused to the Disputant.

Based on the judgment in the case of **D. Ramyeed-Banymandhub** (see above), the Tribunal cannot discard the possibility that the alleged act or omission which gave rise to the dispute could have been continuous. The Tribunal thus finds that it would be unsafe at this stage of the proceedings, without hearing evidence, to find that the dispute is time barred as per the definition of "labour dispute" (more particularly part (c) of the definition) in section 2 of the Act which reads as follows:

"labour dispute" -

(a) ...

(c) *does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute.*

The Tribunal will also refer to the Supreme Court judgment in the case of **Joyadeep Beeharry v 1.The State of Mauritius and others 2023 SCJ 154**, where the learned Judge distinguished the case of **Joyadeep Beeharry** from the case of **D. Ramyead-Banymandhub** (see above) and stated the following:

*20. Notwithstanding the preceding conclusions, and after hearing the arguments of all counsel, I have also chosen to consider the caselaw referred to. In **Ramyead-Banymandhub D v The Employment Relations Tribunal [2018 SCJ 252]**, the time-bar issue was determined on the basis of terms of reference which specifically mentioned the words “since 2001 or otherwise”, and it was argued that the omission giving rise to the dispute was continuous, so that the time-bar issue could not prevail.*

21. It was held in that case that the respondent Tribunal had been “inexplicably selective” when considering the purport of its terms of reference, especially with regard to the words “or otherwise” and, for that reason, the court concluded that the respondent had failed to at least consider the possibility that the alleged omission was continuous and had consequently also failed to properly adjudicate on the substance of the dispute. The facts and nature of the omission in the present matter are clearly different.

The Tribunal does not propose to consider, at this stage, the effect of Article 2247 of the Civil Code Mauricien on the ‘limitation period’ of ‘3 years after the act or omission that gave rise to the dispute’. For all the reasons given above and based on the Supreme Court judgment in the case of **D. Ramyead-Banymandhub** (see above), the Tribunal finds that it cannot, without hearing some evidence, discard the possibility that the act or omission in the present case was a continuous one. The Tribunal notes that the Respondent in his preliminary objection also referred to “*and, in any event, the claim for July 2020 till 2 October 2020 is time barred.*” This is based on the assumption that part of the dispute is a labour dispute.

For all the reasons given above, the Tribunal finds that the preliminary objection as taken cannot stand and is premature, and the Tribunal shall proceed to hear the case on its merits.

SD Indiren Sivaramen

Acting President

SD A.Parsooram Ramasawmy

Member

SD Chetanand K. Bundhoo

Member

SD Ghianeswar Gokhool

Member

30 April 2024