

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 890

BEFORE

Rashid Hossen	- Acting President
B. Ramburn	- Member
M. Goinden	- Member

In the matter of :-

University of Mauritius Academic Staff Association

And

University of Mauritius

The present dispute has been referred for Compulsory Arbitration by the Minister responsible for Labour, Industrial Relations and Employment in accordance with Section 82(1) (f) of the Industrial Relations Act 1973, as amended.

Mr Radhakisson, of Counsel appears for the University of Mauritius Academic Staff Association (UMASA), hereinafter referred as the Union.

Mr. Guy Ollivry Q. C., appears representing the University of Mauritius, hereinafter referred as Management.

The terms of reference read:

“Whether Academics Staff of University of Mauritius should be granted leave without pay for a period not exceeding one year in order to stand as candidate for election or to undertake any related public activity, or otherwise”.

In its Statement of Case, referred to as Statement of Facts, the Union after giving a historical exposé of various decisions of different bodies dealing with the issue in lite, avers that:-

“

1. *Section 16 of the Constitution of the Republic of Mauritius provides the right for all its Citizens to stand as candidates for any elections. Exception to this is mentioned in section 33 whereby **public officers** are not allowed to participate in active politics*
2. *University academics are **not** public officers and hence should not be ruled by the general conditions of service as applied to public officers with regards to leave without pay.*
3. *University academics had the right to participate in active politics since the setting up of the University of Mauritius. This practice is currently observed in most democratic and Commonwealth countries whereby academics can take leave to stand as candidates and may be required to resign, if elected.*
4. *The University has concocted with the PRB in 1987 to deprive academics of this fundamental right without any valid justification. This is clearly mentioned in the Chesworth report of 1989.*
5. *The argument used by the University is that participation in active politics disrupts the proper functioning of the University. Of all the Council minutes consulted since 1976 till 2005, there are no minutes of Council that refer specifically to such disruption.*
6. *There are at least three academics who have been MLAs while simultaneously working at the University even after the prohibition imposed by the PRB in 1987. The issue of disruption has never been associated with these academics.*
7. *Even in the case of D. Gokhool who has retained the right of participation in active politics and who is presently the Secretary General of the Labour Party, the issue of disruption never arose despite the fact that he occupied various positions of responsibility within the Faculty.*
8. *Mr. D. Gokhool currently enjoys the right to be involved in active politics while still working at the University of Mauritius.*

9. *It is clear from the 1995 decisions of Council in favour of Ruhee, Kasenally and Gokhool, whereby Council agreed to pay post PRB salaries to these academics that participation in active politics was not deemed disruptive.*
10. *The decision in favour of Ruhee, Kasenally and Gokhool has thus created two Categories of employees at the University; those who have all the rights and those who have no right with regards to participation in active politics despite both enjoying post PRB salaries.*
11. *UMASA argues that the clause in the contract of employment since 1987 is unfair, illegal and should be declared null and void as it is based on a statement re:disruption of activities of the University, which is unfounded and unjustified.*
12. *During negotiations with Management, Management has made it clear that they would have no problem whatsoever, if the rights of academics to stand as candidates were reinstated by the PRB.*
13. *UMASA believes that the Ministry of Public Service Affairs and the Prime Minister have not looked into the merits of the request and their decision is arbitrary. There was no consultation with UMASA on the matter.*
14. *UMASA believes that all academics of the University should be treated at par. However, in a spirit of compromise UMASA has agreed to the terms of reference submitted to the PAT that is “**whether academics can proceed on leave without pay for a period not exceeding one year, in order to stand as candidates**”.*
15. *As the dates of the General Elections are now known, it is desirable that the award of The PAT be scheduled well before the nomination day.*

In its Statement of Case, Management avers that:-

1. The University of Mauritius ("UOM"), notes that the terms of reference can be split in two:
 - (a) Whether Academics Staff of UOM should be granted leave without pay for a period not exceeding one year in order to stand as candidate for election;
 - (b) Whether Academics Staff of UOM should be granted leave without pay for a period not exceeding one year in order to undertake (i) any related public activity, or (ii) otherwise.
2. The scope of item (b) above is very wide, and being given the very short time-limit to submit this statement of case, UOM cannot at this stage submit on item (b) but reserves the right to do this at a later stage.
3. UOM will therefore submit hereunder on item (a) above.
4. UOM has been guided since 1989 by the PRB Reports on Review of Pay and Grading Structures and Conditions of Service to the effect that "*full-time staff are not allowed to participate in active politics as involvement in such activities disrupts the proper functioning of the University*". There is however one exception, namely Mr. D. Gokool who had retained an acquired right since 1976 when the conditions of service allowed him to do so.
5. This restriction contained in the PRB reports appears as one of the terms and conditions of UOM's standard offer of appointment. In fact, all full-time employees of UOM have, since 1989, entered into contractual obligations with UOM, as their employer, engaging themselves NOT TO PARTICIPATE DIRECTLY OR INDIRECTLY IN ACTIVE POLITICS. All UOM employees are accordingly fully aware that any infringement thereof will be sanctioned and may lead to dismissal.

6. The Council of UOM has no power to amend or to suspend any clause, in isolation, the PRB reports are circulated for implementation after they have been approved *in toto* by the Cabinet and the National Assembly. Only the office of the PRB has the jurisdiction to do so. Actually the Academic Staff Staff Association was advised by UOM to submit its request to the PRB. The reply received from the Ministry of Civil Service Affairs and Administrative Reforms dated 2 March 2003 reads as follows: *“After appropriate consultation, it has been decided that the recommendation made by the PRB in its 2003 report regarding participation of University staff in active politics, cannot be interpreted to mean that staff of the University can take leave without pay to participate in active politics while in office”*.
7. Irrespective of whether or not there is validity in the proposal of the University of Mauritius Staff Association that staff be granted leave without pay to stand as candidates at elections, UOM's stand is that since the conditions of service of staff are governed by PRB recommendations, UOM has to abide by the PRB ruling.
8. UOM therefore has no choice but to pray that the present application be dismissed or or alternatively be set aside.

Dr. Dinesh Kumar Hurreeram, Senior Lecturer at the University of Mauritius and President of the U.M.A.S.A deponed under oath to the effect that when the University was set up in 1968 everyone was free to participate actively and indirectly in active politics. The issue came up in 1976, whereby the University attempted to put some restrictions on academics who wish to stand as candidates for elections. The then Prime Minister appointed a Visitor in the person of Victor Glover to issue a policy decision on that matter, following which a number of recommendations were made. The University was to decide whether they should not at all participate in active politics or allow the academics to do so on the basis of leave without pay. Since 1976 the University adopted a policy that if anyone wishes to stand as candidate he can take paid leave, vacation leave or whatever leave, and if elected he would be given leave without pay for one term of office and which policy was maintained in 1977. The witness further stated that the University looked again at the situation in 1982 before the General Election and the Council agreed to

maintain that policy. He stressed that during the period 1976-1987 there had never been any disruption caused as a result.

The witness further added that in 1987 the PRB came up with a recommendation to remove that practice on the ground that participation in active politics disrupts the proper functioning of the University of Mauritius. The PRB specified that those who wish to continue to serve as Members of Parliament or to participate actively in politics had to retain the pre-PRB salaries in spite of the post-PRB salaries. In 1989 there was the review of the PRB Report by Mr Chesworth who questioned the issue of direct and indirect participation in active politics and he agreed that one academic cannot have one leg in Parliament and another one at the University of Mauritius and those who want to continue in politics would have to forgo their new salaries. Mr Chesworth however added that the situation may be unfair for the academics who are deprived of a right to do so, but they could go to the Supreme Court on this issue as this was beyond his scope of reference. There were eventually a number of academics who were already Members of Parliament. They declared dispute before the Permanent Arbitration Tribunal and were given a choice by the latter. They were to accept either the pre-PRB salaries or the post-PRB salaries on condition that they would stop participating in active politics at the end of their mandate. According to the witness only one Dharam Gokool made a choice in December 1991 to continue politics on a 2/3 teaching and 1/3 off campus. In fact out of three MLAs, two of them did not sign the Option Form. In 1995 the Council and the University of Mauritius, based on submissions made by the MLAs decided that they should get the post-PRB salaries even if they had not exercised any choice with regard to 1991. So the University of Mauritius unilaterally decided the new PRB salaries to be applicable to those members of academic staff who had the right to participate in politics and which situation has created two categories of employees at the University. The witness expatiated on recommendations the Union made before the PRB and even agreed that if someone gets elected, he has to resign from the University.

Mr T. Doomun, Deputy Director of P.R.B. and called by the Union, stated that when a recommendation is made to the P.R.B., the latter hears the Unions, individuals as well as Management. It is on the basis of those representations made from all stakeholders that a recommendation is made. In the case of the University, the P.R.B. in 1987 heard the Union from the University as well as Vice Chancellor and all other parties concerned including the parent ministry. The witness confirmed that in 1987 the P.R.B. put an end to the practice of participating in political activities by academics of the University on the ground that such participation disrupts the proper functioning of the University. This recommendation has been made after hearing representatives of the Union and Management of the University including representative of the Ministry of Education, all the stakeholders concerned and after weighing the pros and cons of their submission. The witness further confirmed that there is disruption of service when these people participated in political activities. He personally came to that conclusion following representations made by different parties. The witness expatiated on the reasons for the Pay Research Bureau to make such a recommendation:-

- (I) If all academics staff apply for leave to participate in politics. Management will be faced with a staff problem;
- (II) these people are being paid by Government;
- (III) they have a contract whereby they signed that whenever they joined service at the University they do not have the right to participate in politics;
- (IV) the University has students on one side and academics on the other. Students are grown-up adults who might be of one party and academics of another and this in itself may be the cause of a clash; and

- (V) there are within the Campus students and teachers who among themselves might be of different parties and this also could lead to a problem. These are the factors which according to the witness may disrupt the work of the University.

The witness further added that the University of Mauritius is under the purview of the Pay Research Bureau.

With regard to the issue of leave without pay, the witness elaborated on how it may disrupt:-

- (1) the grant of leave without pay to allow active participation in politics would be difficult to manage;
- (2) all staff of the same department may ask for such leave and acceding to the request would paralyse the department. Further it would be difficult to discriminate among officers in the grant of leave;
- (3) a number of academics adhering to a political party may give a political colour to the University, which is not warranted;
- (4) partisan's politics on the campus may give rise to tension among staff and students during and even long after the election;
- (5) the academic staffs have to continuously assess students and mark examination papers. Students may fear to voice their opinion through fear of being victimized. It would be difficult to ensure that impartiality and fairness are perceived; and
- (6) Acceding to the request of the University, academics would trigger claim for similar treatment from other tertiary institutions, namely, the University of Technology, MIE, MES and MGI.

The University of Mauritius representative, Mr Chan Wan Chan, who is also the Registrar of that institution, stated the following under oath:-

As far as the University is concerned it is bound by the P.R.B. Report. The academics have in fact accepted the terms of employment except in the case of Mr Gokool who is governed by a different contract. The witness added that the University cannot agree to leave without pay with respect to political activities as this is not provided for in the letter of appointment and which has been signed by the academics. The University is only implementing the conditions recommended by the P.R.B. The witness further added that whilst being at the University although in different capacities, he sometimes heard of cases of disruption although no official complaint has been filed since he is Registrar for the last two years.

We note that at Para 75 of its latest Report, the PRB had this to say, inter alia regarding the University:-

“

75.1 The main objects of the University of Mauritius are to provide facilities for teaching and research, promote the advancement of learning and knowledge and provide a university education responsive to the social, administrative, scientific, agricultural and technological needs of Mauritius. Over the years, the University has moved from sub-degree teaching in Agriculture, Administration and Industrial Technology to offering post graduate training, research and consultancy services in a range of disciplines appropriate to the changing needs of the country. The University also runs a few Bachelor's degree courses with the collaboration of the Mauritius Institute of Education and the Mahatma Gandhi Institute and has collaborative programmes with regional and international universities.

75.2 Besides the Academics, the University is manned by a complement of Administrative, Technical and General Services staff for its different functional units of Teaching, Research, Consultancy, General Administration, Finance, Stores,

Library and Laboratory. Since our 1998 Report, the University of Mauritius has brought about certain changes in its staffing structure by creating new grades and merging others. We are, in this Report, reviewing the salary level of grades in the organisation and Conditions of Service specific to the University. However, for want of information we are not reporting on certain grades, which have either been created or merged by the Institution.”

Political Activities

75.16.1 At present full-time academic staff are not allowed to participate in active politics as involvement in such activities disrupts the proper functioning of the University.

75.17 We recommend that this policy should be maintained.”

The undisputed facts adduced before the Tribunal are as follows:-

- (1) From the time the University was set up, the right to take part in political activities and, if elected, to be a Member of the Legislative Assembly, was part of the academics contract of employment;
- (2) In February 1977, the visitor made certain recommendations regarding this issue;
- (3) In 1987 mention is made in the PRB Report that participation of academics staff in active politics disrupts the proper functioning of the University and hence it is recommended that academics should not be allowed to participate in active politics. Those who wish to retain their right to participate in active politics will have to retain the pre-PRB salaries. Staffs were required to make a choice. Also, the prohibition to participate in active politics is now included as part of the contract of employment of academics joining the University as from the implementation of the report;
- (4) The Salaries Commissioner, Mr Chesworth, OBE, hereinafter referred to as Chesworth, recommended in 1988 that those members of staff who wished to continue participating

actively in politics should retain their salaries and conditions of service as at 30th June, 1987. The relevant part of the report reads as follows:-

- “6.7 Election of staff members to Parliament must indeed create problems for the effective running of the University. In addition to attendance at meetings both of the Assembly and growingly of select committees, an active MLA will have heavy calls on his time. The first call on the time and energies of university staff must be to that institution. I have consequently come to the view that, for the future, full time members of staff should not at one and the same time sit in Parliament. But membership of Parliament is by no means the only remunerated occupation on which staff members might use their time at the expense of University work. For the reasons set out above, I recommend that any major remunerated extra-University work by staff should similarly be prohibited.
- 6.8 There can be no question of requiring members of staff who are now members of Parliament to resign from one or other occupation. Such staff members stood for Parliament in good faith, and consistently with their terms of service at the University. But membership of Parliament is time-consuming – a fact which is recognised in the remuneration pension provision, duty free cars and other benefits accorded to members. The PRB recommends that those members of staff who wish to enjoy the privilege of participating actively in politics should retain their salaries and conditions of service as at 30th June 1987. In view of the claims on time involved in Parliament work, the Commission maintains this recommendation, as far as membership of Parliament is concerned. I suggests, however, that such members of staff be given the choice of remaining on their pre-PRB salaries or of going over to a part-time basis which should be not less than half and not more than two-thirds in their work at the University, the salary being based on a proportion of the rates proposed by the Commission”

It is appropriate here to cite certain sections of the University of Mauritius Act that may be considered relevant for the purpose of this present dispute:

2. “*Interpretation*”

“academic staff” means all persons holding appointments made under section 7 (2) as Professors, Associate Professors, Senior Lectures, Lecturers, or Assistant Lecturers of the University, or holding any other post stipulated by the Senate as an academic staff post.”

4. Objects of the University

The University shall –

- (a) provide facilities for and engage in teaching and research and thereby promote the advancement of learning and knowledge;
- (b) in particular, provide a university education responsive to the social, administrative, scientific, agricultural and technological needs of Mauritius; and
- (c) hold out, on such terms as it thinks fit and within the limits of its resources, to suitable and academically qualified persons who in its opinion are able and willing to benefit from the facilities it offers, the opportunity of acquiring education befitting a university of the highest standing..

6 No discrimination

No discrimination on account of nationality, race, caste, religion, place of origin, political opinion, colour, creed or sex shall be shown against any person in determining whether he or she is to –

- (a) be appointed to the academic or other staff of the University;
- (b) be registered as a student of the University; or
- (c) graduate from, or hold any advantage or privilege of, the University.

15 The Council

- (1) There shall be a Council of the University which shall be the executive body of the University and shall have the custody, control and use of the common seal of the University.
- (2) The Council shall be responsible for the management and administration of the revenue and property of the University, and shall have general control over the conduct of the affairs of the University.
- (3) The constitution and terms of membership of the Council shall be as prescribed by the Statutes.

16 The Senate

- (1) There shall be a Senate of the University which shall be the academic authority of the University and shall, subject, subject to the powers and functions of the Council as prescribed by this Act and the Statutes, be responsible for the academic work of the University both in teaching and in research, the award of degrees, other than honorary degrees, diplomas and other academic distinctions and the regulation and superintendence of the education and discipline of students.
- (2) The constitution and terms of membership of the Senate and its powers and functions shall be as prescribed by the Statutes.

We wish at this stage to dispose of that part in the terms of reference i.e. “to undertake any related public activity” on which no evidence, submission or representation has been made.

The Union’s statement of fact speaks at the very beginning of academics constitutional right to stand as candidate. Although not very much pressed upon by the Union’s Counsel, it is

clear that there is no such constitutional right to stand as candidate. Indeed we find nothing in the Constitution compelling employers to allow employees to come and stand as candidates. True it is that a person may be qualified to be elected to the Legislative Assembly but one would go too far in saying that *vis-à-vis* his employer he has a legal right to do so.

Should academics staff at the University of Mauritius be granted leave in order to participate in political activities? The answer lies in the history of that issue. We are dealing here with those who have acquired rights and those who have not. But are we here to say that those who have acquired rights, those rights must be extended to present employees? Indeed if one looks at it at a different angle, nothing could have prevented Mr Gokool in the past from declaring a dispute in respect of him being deprived of an increase in salary. In other words, one has to look from the angle of the contractual relationship existing at the relevant time. It is a question of contract. *La Convention fait la loi des parties et c'est un lien de contrat de travail régi par le Labour Act.* There may have been different contracts governing different employees within the same institution with each one having its *raison d'être*. Mr Gokool exercises his option and had initially foregone a salary increase in order to benefit the right to participate in political activities, although at a later stage, his salary was re-adjusted, but still with the approval of the Council. The choice he had was a choice offered to one and all. That he exercises his option differently cannot today be the cause of unfairness and discriminatory treatment. It is not uncommon to see in some enterprises such inequalities which are not necessarily without justification. Paragraph (4) of the Contract of Employment of Academics at the University of Mauritius cannot be more explicit:-

“(4) *You have no right to:*

- (I) *private practice;*
- (II) *participation, directly or indirectly, in active politics.”*

Academics who sign contract that includes such a term have clearly and manifestly surrendered their right voluntarily to participate in active politics. They have knowingly exercised an option to which they are bound. We cannot at any moment think that at the level of Lecturers, although layman, they cannot understand such basic knowledge that a contract is a binding document. The Permanent Arbitration Tribunal in a ruling delivered in RN 754 had this to say on the issue of Option:

"We need to address our mind on the issue of Option Form first. True it is that in a few past Awards, the Tribunal held that a dispute may be delivered notwithstanding the signing on an Option Form agreeing on new Terms and Conditions of employment.

This present Tribunal respectfully disagrees with that Obiter Dictum. Adopting such a course would in our view allow employees to having it both ways. The very fact of putting their signatures on the new Terms and Conditions of Employment is an act of finality. To come and say that they disagree over what they agreed can only lead to some sort of absurdity and thus rendering 'caduc' the contract they signed. We are further comforted in our stand by the amendment introduced by the legislature in July 2003 regarding Option Form...

We find therefore that in the light of such recent amendment brought to the Industrial Relations Act in respect of PRB Awards, it is already against Government policy to have matters which have been considered and not agreed upon in the course of negotiations be reconsidered by way of industrial dispute immediately after an agreement has been reached between employers and employees arising out of the same negotiations."

We unhesitatingly hold that by introducing this issue, that is, participation in active politics in the present contract would inevitably lead to a new departure in the terms of the contract. It is our strong view that we are not mandated to go as far as that. The law as it stands, must clearly be taken to mean that, after it is proposed to interfere with the contract of employment of the academics staff, Senate of the University must by law be consulted by Council of that Institution. At the end of the day, the employer remains the University of Mauritius and any change of policy is to be considered in the first place by the employer in consultation with the employees. We cannot vary a substantial term of a contract. To interfere is tantamount to inevitably introducing a new element in the contract of service which cannot be done unilaterally. It must involve the Senate, the Council and the Employees.

It goes without saying that those who wish to stand as candidates, be it for the Nomination Day on Monday next, have no alternative than to resign from the University.

For the reasons stated, the dispute is set aside.

Rashid Hossen
Acting President

B. Ramburn
Member

M. Goinden
Member

This 27th May, 2005