

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 918

Before:

Rashid HOSSEN	-	Ag President
Binnodh RAMBURN	-	Member
Masseelamanee GOINDEN	-	Member

In the matter of:-

Mr Luchmeeparsad Fezah

And

Moka Flacq District Council

In the presence of:-

- 1. The Ministry of Local Government**
- 2. The Ministry of Civil Service and Administrative Reforms**

This dispute has been referred by the Minister of Labour, Industrial Relations and Employment for Compulsory Arbitration by virtue of **Section 82 (1) (f) of the Industrial Relations Act 1973**, as amended.

The Applicant is not represented by Counsel.

The Moka Flacq Council and both Ministries are represented by Counsel.

The Terms of Reference read:-

“Whether Mr Luchmeeparsad Fezah is entitled to the refund of the annual subscription fee paid to the Institute of Chartered Secretaries and Administrators (ICSA) as per paragraph 13.20 of the Pay Research Bureau Report 2003”.

The Applicant in its Statement of Case avers that:-

1. He was qualified as a graduate of the Institute of Chartered Secretaries and Administrators on 8 August 1995.
2. The qualification ICSA is recognized as a professional qualification in the Republic of Mauritius.
3. He applied for refund of Annual subscription fee paid by him for the year 2003/2004 on 9 June 2006. (This in fact is to be read as the year 2004).
4. He received a negative reply from the Ministry of Local Government dated 13 August 2004 (which was endorsed by his Employer).
5. He believes that Section 13.20 of the PRB Report, Volume 1 of 2003 should apply.

The Moka Flacq District Council, in its Statement of Case, avers that:-

IN LIMINE LITIS

- (a) Applicant cannot proceed with the present matter inasmuch as Applicant signed the Option Form.
- (b) Applicant does not fall within the ambit of 13.20 of the PRB Report.

ON THE MERITS

1. Mr L Fezah qualified as graduate of the Institute of Chartered Secretaries and Administration on 8 August 1995.
2. Mr L Fezah applied for the refund of Annual subscription fee on 9 June 2004.
3. The Ministry of Local Government turned down the application on 13 August 2004.

The Ministry of Local Government, in its Statement of Case avers as follows:-

1. Paragraph 1 of the Statement of Case of the Applicant is noted.
2. Paragraph 2 of the Statement of Case of the Applicant is admitted.
3. Paragraph 3 of the Statement of Case of the Applicant is admitted.
4. Paragraph 4 of the Statement of Case of the Applicant is admitted.
5. Paragraph 5 of the Statement of Case of the Applicant is noted but the issue of the refund of subscription cannot be solely based on paragraph 13.20 of the PRB Report 2003 but have to be read in conjunction with 13.19.
6. The Applicant joined the Local Government Service in November 1998 as Temporary Assistant Secretary.
7. The recommendation made at paragraph 13.19 of the PRB report 2003, applies to those who by virtue of their Scheme of Service are required to be members of recognized Institutes/Bodies. However, the Scheme of Service for the post of Assistant Secretary of the District Council does not require incumbents to be members of recognized Institutes/Bodies.

8. Paragraph 13.20 of PRB Report 2003 is a derogation of paragraph 13.19 so that even though officers are not required to be members of recognized Institutes/Bodies as per their scheme of service, refund of subscription will be recommended if the officers are considered as professionals and are using the experience gained from the affiliateship in their day to day work.
9. Therefore for the purpose of paragraph 13.20 of PRB Report 2003, a professional may be considered as someone who belongs to a profession and who can work within any institution or on its own, for instance, Doctors, Architects.
10. Thus the Applicant cannot be considered as a professional since as per the Scheme of Service of the Assistant Secretary, the latter cannot work on his own since he has to assist the Secretary and Deputy Secretary.
11. The Applicant does not use his experience gained from the affiliateship with the ICSA in his day to day work at the District Council.
12. It is humbly submitted that for the reasons given above, Applicant cannot be refunded the subscriptions paid to the ICSA and that the application be dismissed.

The contents in the Statement of Case of the Ministry of Civil Service and Administrative Reforms are the same as those of the Ministry of Local Government save the contents at paragraph 6 which do not appear in that of the Ministry of Civil Service and Administrative Reforms.

The Applicant deponed to the effect that:-

1. It is wrong to say that he is assisting the Secretary and the Deputy Secretary as has been averred at paragraph 10 of the Statement of Case of the Ministry of Local Government. In the Scheme of Service for the post of Assistant Secretary prepared by the Ministry of Local Government there are sections A (for the District Council Level and Section B (for the Village

Council Level). He has most of the time been posted in village and nowhere is it written that he has to assist the Secretary and the Deputy Secretary at village level.

Reference is made only to Section A in the Statement of Case of the Ministry of Local Government.

2. He confirms the contents of his Statement of Case. In a very brief cross-examination, the witness testified that:- He qualified as a graduate in the year 1995 and has been appointed as an "Associate" since 2005.

Mr J Beeharry, of Counsel, appearing for the Moka Flacq District Council submits that:-

In Limine Litis

- (a) The Applicant does not fall within the ambit of Section 13.20 of the PRB Report.
- (b) The Applicant has signed the Option Form.

To a question put by the Tribunal, he answers that the Applicant can have a refund only if he has been a member of that professional body for at least two years prior to the claim (Ref. Section 13.20 of the PRB Report).

Mrs N Anadachee, from the State Law Office, appearing for both Ministries, concurs with Mr J Beeharry on the matter.

After considering the testimonial and documentary evidence adduced, the Tribunal notes and finds that:-

1. The Applicant qualified as graduate of the Institute of Chartered Secretaries and Administrators (ICSA) on 8 August 1995 and has been appointed Associate in the year 2005.
2. On 9 June 2004 he applied for the refund of the Annual Subscription fee paid by him to ICSA for the year 2003/2004 but the Ministry of Local Government turned down the application on 13 August 2004.

3. He was not represented by Counsel and as such could not address the Tribunal on matters pertaining to law.
4. The following points averred by the Ministry of Local Government have not been contested by the Applicant:-
 - (a) that the Scheme of Service for the post of Assistant Secretary of the District Council does not require incumbents to be members of recognized Institutes/Bodies.
 - (b) that the Applicant does not use his experience gained from the affiliateship with the ICSA in his day to day work at the District Council.
5. The Applicant does not agree with paragraph 10 in the Statement of Case of the Ministry of Local Government stating that most of the time he has been posted in village (as if Section A of the Scheme of Duties should not apply to him). This argument does not hold water. One does not choose where one is to be posted. The essential point is that he is an Assistant Secretary and has not explained as to why he should be considered as a professional.
6. Consequently, we find no difficulty to agree with the other parties to the fact that

Applicant 's case does not fall within the ambit of Section 13.20 of the PRB Report.

Section 13.20 of the PRB Report is reproduced hereunder:-

"We also recommend that the payment of the annual subscription fee may, subject to the approval of the Ministry of Civil Service Affairs and Administrative Reforms, be extended to professionals who though not required to be members have been affiliated/registered to internationally recognized Institutes/Bodies for a period of at least two years where the experience gained from the affiliateship is being utilized effectively by the organization".

7. The Applicant has signed the Option Form, thus accepting the terms and conditions of service.

8. We view that practically no evidence has been adduced by the Applicant to justify his claim.

For the reasons outlined above, the Tribunal is unable to award in favour of the Applicant.

The matter is therefore set aside.

Rashid HOSSEN
Acting President

Binnodh RAMBURN
Member

Masseelamanee GOINDEN
Member

Date: 28th December 2007