

# PERMANENT ARBITRATION TRIBUNAL

## AWARD

RN 847

Before:-

Rashid Hossen	-	Ag President
Binnodh Ramburn	-	Member
Rajendranath Sumputh	-	Member

In the matter of:-

Mr Lutchmeedass Ramsaha

And

Sugar Industry Labour Welfare Fund

This dispute has been referred by the Ministry of Labour, Industrial Relations and Employment for compulsory arbitration by virtue of **section 82 (1) (f) of the Industrial Relations Act 1973**, as amended.

Mr Luchmeedass Ramsaha is hereinafter referred to as the applicant and the SILWF as the respondent.

Mr. V. Ramchurn of Counsel appears for the Applicant and Mr Y. Varma of Counsel for the Respondent.

The Terms of Reference read:-

- "(1) *Whether Mr Luchmeedass Ramsaha's promotion as Principal Community Development Officer and then as Chief Community Development Officer should have been acceded to so that his pension and retiring benefits could be adjusted accordingly, or otherwise;*
- (2) *Whether the sequence of events and promotional exercises have adversely affected Mr Luchmeedass Ramsaha's promotional prospects, or otherwise."*

In reporting his dispute to the Minister, applicant stated:

- (1) he is vindicating his character for equal opportunity and fair play that has been denied to him in the entire length of his service running 31 years now – nearing his retirement shortly in the next twelve months to come. All his rights have been trampled upon.
- (2) In the Sugar Industry Labour Welfare Fund the Community Development Division Precisely Promotions were determined by qualifications laid down in the Chessworth Report 1974. There are only two categories of post that are governed by qualification bar from the Chessworth Report for matters of promotion.
- (3) The First post is the Chief Community Development Officer which is of a major role and required an experienced graduate and the second one is the post of Community Development Assistant (which is a minor role) requires an appropriate diploma or a diploma in social work.
- (4) The Fund Committee has willingly, deliberately and in bad faith pulled me down to place on his head people who have joined the Department after him by the application of the qualification laid down in the said Chessworth Report.

- (5) By the same time it has violated the qualification for the post of Chief Community Development Officer on two occasions as the people appointed never possessed at any time even the entry requirement to a particular degree course.
- (6) He is therefore claiming all the promotions that become due to him since the date he has joined the service that is on 03 January 1973 on the basis of the same principle of the non application of the qualification mentioned in the Chessworth Report and not used for the promotion of the Chief Development Community Officers.
- (7) The need to read for a diploma in social work became unnecessary after the nomination of six junior officers on his head as getting the said diploma would in no way entitled him to come on top of the six junior officers already appointed.
- (8) The fund refused to release him when he was awarded a scholarship to read for a diploma course in Community Development tenable in Orrisa, India, stating that the said diploma was less than a diploma in social work from University of Mauritius. Yet the Diploma in Community Development was for nine months duration and was definitely greater than the diploma in social leadership from the Coady International Institute which is an Academic and non credit Diploma being termed as a Certificate of Attendance not recognized by the Public Service Commission.
- (9) He is therefore claiming promotion in the grade of Senior Community Development Officer from the date Mr Beenick and others were promoted to restore his seniority and secondly the post of principle community Development Officer from the date Mr Beenick and others became Principle Community Development Officers. He is also claiming the post of Chief Community Development Officer from the date the vacancy occurred because Mr Beenick has joined a month after him.

(10) He takes special note of the fact that all promotions are governed by seniority and where qualifications are applicable the same has been violated by the committee. He quotes in support of his case supreme court judgement on ground of seniority as follows:

1. The case of Justice Ariranga Pillay v/s Bernard Sik Yuen
2. Lomharsen Jadoonundun v/s Boghun
3. Bhimsing v/s the P.S.C.
4. Asha Burrunchowbay v/s P.S.C.

In addition to the above, he added that:

He joined the SILWF on or about 3 January 1973 as Community Development Assistant (CDA) along with two other officers who are no longer in employment. He was holder of 5 subjects at GCE O Level and 2 subjects at GCE A Level. Mr Bheenick joined the SILWF on 1 February 1973 in the same capacity. The department was headed by one Senior Community Development Officer (SCDO) assisted by one Community Development Officer (CDO) and three Community Development Assistants (CDA). However, as the Community Development Division expanded, additional CDAs were recruited.

**DONALD CHESWORTH REPORT:-**

In or about 1976, the then Government appointed Mr D.Chessworth to examine into the conditions of service of employees in Government and Parastatal bodies and to make recommendations.

**RE-STYLING OF POSTS PURSUANT TO CHESWORTH REPORT AND PROMOTION:-**

The post of Senior Community Development Officer was re-styled Chief Development Officer (CCDO) and thereafter SCDO, CDO. The then CDO passed away in 1976 and SCDO Hattea was appointed CCDO. Mr Hattea was holder of three subjects at GCEO level and a Diploma issued by COADY International Institute.

In 1977 Mr Ritu was appointed CDA whilst K. C. Ramgoolam was appointed CDA in 1978/79. However, as from 1989 CDO were recruited and sponsored for the Diploma

Course. After 27 years service Mr Ramsaha was appointed SCDO and so was Mr Ritu promoted to SCDO after four years only.

#### **POST OF PRINCIPAL COMMUNITY DEVELOPMENT OFFICER**

The Fund Committee appointed SCDO Ramgoolam to the above post to the detriment of SCDO Ramsaha who had served in the capacity of CDA for 31 years and 4 years as SCDO.

#### **NATURE OF THE DISPUTE:-**

SCDO Ramsaha is to retire from service in or about October this year and the promotion list approved by the Minister on the recommendation of the Board is as follows:-

Messrs Ragnath, Ramgoolam Jodoa, Beehary and Poorunsing and Mr Ragnath retiring date was 05 February 2003.

- A. Whether SCDO Ramsaha's promotion be acceded to so that his pension be adjusted; and
- B. Whether the sequence of events and promotional exercises have adversely affected SCDO Ramsaha.

In its Statement of Case, the Respondent avers:-

1. The SILWF avers that the Permanent Arbitration Tribunal has no jurisdiction to hear the above-mentioned alleged dispute in as much as Mr. L. Ramsaha is no more an employee of the SILWF and is on retirement since 10<sup>th</sup> June 2004.
2. That matter alleged in dispute has already been dealt with by the Supreme Court which has rejected the arguments put forward by Mr. L. Ramsaha and his claim was dismissed with cost.

The respondent argued that the applicant had already retired from his employment when the matter was referred to the Tribunal in September 2004. Counsel for the respondent submitted that the Tribunal cannot entertain the present matter. He further stated that there was a similar case which the applicant lodged before the Supreme Court and it has been set aside. The applicant was suing the respondent, claiming that he had been deprived of his chances of promotion to the post of Community Development Officer and Senior Community Development Officer respectively. Counsel appearing for the applicant informed the Tribunal that the applicant is no more insisting for a determination with respect to the second dispute:-

*"Whether the sequence of events of promotional exercises have adversely affected Mr Lutchmeedass Ramsaha's promotional prospects, or otherwise."*

He therefore moved to withdraw same.

It is the contention of Counsel for the applicant that with regard to the first and only dispute before the Tribunal, the latter can entertain the present matter. He submitted that this dispute is referred to the Tribunal by virtue of **Section (82) of the Industrial Relations Act**. He made reference to a letter dated 25<sup>th</sup> of August 2004 which is the referral of the dispute by the Minister to the Tribunal. He contended that the employee declared dispute at the time when he was already in employment and this should be a sufficient cause for the Tribunal to entertain the matter. In other words, the jurisdiction starts at the time the referral is made. He then jumped to another line of reasoning to say that the dispute in fact started when the Minister had been seized of it. He submitted that the word employee or worker must be given in relevant circumstances its widest possible definition and it follows therefore that workers who have retired may declare industrial dispute in relation to their contract of employment.

As regard the second point Counsel submitted that the matter lodged before the Supreme Court was of a different nature in that it concerned more the issue of training facilities. We do not propose to address our mind on this issue for reasons that would appear obvious later.

### Tribunal's Considerations

The applicant retired from service in June 2004.

The undisputed date of referral of the dispute as shown by the Tribunal's record is 1<sup>st</sup> September 2004.

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*"Industrial dispute" means a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to –*

- (a) a contract of employment or a procedure agreement.*
- (b) An engagement or non-engagement, or termination or suspension of employment, of an employee or*
- (c) The allocation of work between employees or groups of employees" (the underlining is ours).*

*It is quite clear from such a definition, that, as rightly submitted by Learned Counsel for the applicant, that the industrial dispute for the purpose of the Act can only refer to a dispute between a current employer and his present employees, not former ones who had been in retirement for a long time as is the case with the co-respondents." ( See **The Minister of Labour and Industrial Relations v/s The Permanent Arbitration Tribunal, in presence of M. Serret and Others SCJ no. 169 of 2004**).*

We consider that the applicant not being presently employed and therefore the employer not being the current employer, the dispute initially declared no more satisfies the definition as per the Industrial Relations Act. We need to add that the very purpose of the Industrial Relations Act is the maintaining of good industrial relations between employers and employees. It goes without saying that anyone of them becoming inexistent in the sense that the contractual obligations can no more exist between them, the purpose of good industrial relations no longer stand. The Code of Practice annexed to the Industrial Relations Act clearly shows the very intention of the legislator which is to provide for good and harmonious industrial relations between employers and employees:-

**THIRD SCHEDULE  
(section 52)  
CODE OF PRACTICE**

**PART I – INTRODUCTION**

1. This Code is founded on the following 4 main propositions –
  - (a) the employer and his employees have a common interest in the success of the undertaking;
  - (b) good industrial relations are the joint responsibility of management and employees and the trade unions representing them;
  - (c) collective bargaining, carried out in a reasonable and constructive manner between employees and strong representative trade unions, is the best method of conducting industrial relations;
  - (d) good human relations between employers and employees are essential to good industrial relations.
2. The standards set by this Code are not intended to be exhaustive or to prevent the introduction or recommendation by any person or authority concerned, of any additions or improvements.

**PART II – RESPONSIBILITIES  
MANAGEMENT**

3. While good industrial relations are a joint responsibility, the primary responsibility for their promotion rests with management.

**PART III – EMPLOYMENT POLICIES  
GENERAL**

19. Clear and comprehensive employment policies are essential to good industrial relations. Management shall initiate these policies, but they shall be developed in consultation or negotiation as appropriate with representatives of employees.
20. Employment policies shall include positive policies –
  - (a) To avoid discrimination on grounds of race, place of origin, political opinions, colour or creed; and
  - (b) To promote equal opportunity in employment.

**PART IV – COMMUNICATION AND CONSULTATION  
GENERAL**

37. Management and trade unions shall co-operate in ensuring that effective communication and consultation take place so as to promote efficiency, understanding and the individual employee's sense of satisfaction and involvement in his job.

**PART V – COLLECTIVE BARGAINING  
GENERAL**

50. *Collective bargaining may take place at various levels, ranging from an industry to a group of employees within an establishment. Negotiations for the same group of employees may be conducted at different levels about different subjects.*

**PART VI – EMPLOYEE REPRESENTATION AT THE PLACE OF WORK**

87. *Employees need work-place representatives to put forward their collective views to management and to safeguard their interests. It is also an advantage for management to deal with representatives who can speak for their fellow employees.*



**PART VII – GRIEVANCE AND DISPUTE PROCEDURES**

**GENERAL**

- 99 *.All employees have a right to seek redress for grievances relating to their employment. Each employee must be told how he can do so.*

**PART VIII – DISCIPLINARY PROCEDURES**

109. *Management shall ensure that fair and effective arrangements exist for dealing with disciplinary matters. These shall be agreed with the trade unions concerned and shall provide for full and speedy consideration by management of all the relevant facts. There shall be formal procedure except in very small establishments where there is close personal contact between the employer and his employees."*

Consequently, it is our considered view that the Tribunal cannot entertain the present matter as the applicant is no more in the employment of the respondent. Dispute number (1) is therefore set aside.

The applicant is no more insisting on dispute number (2) and it is also set aside.

(sd) Rashid Hossen  
Ag President

(sd) Binnodh Ramburn  
Member

(sd) Rajendranath Sumputh  
Member

5<sup>th</sup> July, 2007