

PERMANENT ARBITRATION TRIBUNAL

AWARD

Before:

Rashid HOSSEN	-	Ag President
Masseelamane GOINDEN	-	Member
Mr Rajendranath SUMPUTH	-	Member

In the matter of:-

RN 973

Farouk Mamode Rawat

And

Mauritius Housing Company Ltd

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

The point in dispute is the following:-

“Whether the pension payable to Mr Farouk Mamode Rawat on his retirement, should be revised after a Salary Revision at the MHC Ltd”.

In his Statement of Case, the applicant avers:-

1. Farouk Mamode Rawat joined the Mauritius Housing Corporation on 11 October 1976 as Assistant Building Inspector, initially on a temporary basis.
2. The Mauritius Housing Corporation, a Para-Statal Body, is governed by the Mauritius Housing Corporation Act, Act No. 6 of 1974.

In 1989, the Act No. 6 of 1974 was repealed. On 12 December 1989, the Mauritius Housing Corporation (Transfer of Undertaking) Act 1989, Act No. 42 of 1989, was passed by the Legislative Assembly.

Act No. 6 of 1974 was repealed with effect from the appointment day, that is 1st May 1991 as per Government Notice No. 54 of 1991.

3. In the letter offering Farouk Mamode Rawat a job, the Mauritius Housing Corporation specified that the general terms of service normally lined on those of the Civil Service, the Sedgwick and Chesworth reports, subject to the approval of the MHC Board.
4. Farouk Mamode Rawat was confirmed in his appointment as Assistant Building Inspector with effect from 11.10.1978.
5. Farouk Mamode Rawat was promoted Building Inspector with effect from 1st July 1980.

The Mauritius Housing Corporation specified that the appointment will continue to be subject to the MHC Act No. 6 of 1974 and to the regulations governing the Public Services of Mauritius and to such regulations as MHC Board had made and/or may make from time to time.

6. Section 5 – (a) & (b)(i), (ii) and (iii) of the Act No. 42 of 1989 gives MHC Ltd all rights as well as all obligations of the Corporation.

Section 6, 7 and 8 clearly specify that there is no break between the Corporation and the MHC Ltd but there is continuity between one Body and the Other.

7. Section 8 concerns Staff's rights and obligations. Again continuity is maintained. It grants the Corporation's Staff transferred to the MHC Ltd:- "terms and conditions which are not less favourable than those obtained by him before the appointment day"

8. Section 5 –(b) specifies that nothing contained in or authorized by this Act shall –

(iii) Otherwise place the company in a position which is less favourable than the Corporation would have been if this Act had been passed.

9. In a letter dated 15 May 2006 addressed to the MHC Managing Director, a group of employees enquired about Pension Revision of ex-employees of the MHC Ltd .

10. Farouk Mamode Rawat sent a reminder to the Managing Director on 26 July 2006 concerning the letter of 15 May 2006 mentioned in 9 above.

11. The MHC Ltd replied in a letter dated 2nd August 2006 that, given the fact that one of the MHC Pensioners has entered a case in Court on the issue, *it would be more appropriate to wait for the Court's ruling.*

12. Not being satisfied with the MHC reply, Farouk Mamode Rawat wrote another letter on 21 August 2006 putting the question directly:-

“as an employee still in post, I would like to know in case I would go on retirement whether my pension would be revised each time there would be a Salary Revision in the MHC Ltd?”

13. MHC Ltd replied in a letter dated 24th August 2006 that “we are not in a position to statute on the revision of pensions following salary revisions..”
14. Farouk Mamode Rawat made an appeal to the Chairman of the MHC Ltd on 21 May 2007.
15. The Managing Director replied in a letter dated 16th July 2007, maintaining their position, that is to wait for the Court case.
16. Not being satisfied with the MHC Ltd stand on the issue, Farouk Mamode Rawat reported the Dispute to the Minister of Labour, Industrial Relations & Employment on 20th August 2007
17. In accordance with the Industrial Relations Act, Farouk Mamode Rawat submitted a copy of the Dispute to the Managing Director of the MHC Ltd.
18. In a letter dated 23rd August 2007, the Permanent Secretary of the Ministry of Labour, Industrial Relations & Employment convened a preliminary meeting at the Conciliation & Mediation Division to discuss the matter with parties concerned.
19. At the meeting mentioned at 18 above, no settlement was reached. The Minister therefore referred the Dispute to the Permanent Arbitration Tribunal for compulsory arbitration.
20. Revision of pension of Pensioners exists in the Civil Service, in all Para-Statal Bodies and in all Municipalities and other Local Authorities.

This condition existed in the Mauritius Housing Corporation.

This condition was applied in the MHC Ltd following the Salary Revision of 1998.

21. With regard to the Mauritius Housing Corporation (Transfer of Undertaking) Act 1989, this Condition of Service should continue to exist in the MHC Ltd.
22. In all fairness, this Condition of Service should be applicable to Farouk Mamode Rawat on his retirement.

In its Statement of Case, the Respondent avers:-

Paragraphs 1-20 of Applicant's Statement of Case are admitted.

With regard to paragraphs 21 and 22 of Applicant's Statement of Case, Respondent states the following:-

“On 27th December 2007, the Board of Directors of Respondent discussed the issue relating to pension review without any admission of liability.”

It further avers in an amended Statement of Case:-

Paragraphs 1-20 of Applicant's Statement of Case are admitted.

With regard to paragraphs 21 and 22 of Applicant's Statement of Case, Respondent states that at its meeting of 30th January 2008, the Board of Directors of Respondent decided that following salary review, the pensions of those officers who like the Applicant, have joined the Company before 1st May 1991, should be reviewed. This decision excludes those officers who retired under the Mutually Agreeable Retirement Scheme.

Both parties moved for an award in terms of the amended averments contained in the Respondent's Statement of Case which is to the effect that on 30th January 2008, the Board of Directors of Respondent decided that following salary review, the pensions of those officers who like the Applicant, have joined the Company before 1st May 1991, should be reviewed. This decision excludes those officers who retired under the Mutually Agreeable Retirement Scheme.

The Tribunal considers the above to fall squarely within the Terms of Reference and awards accordingly.

Rashid HOSSEN
Ag. President

Masseelamane GOINDEN
Member

Rajendranath SUMPUTH
Member

Date: 4th March 2008