

## **REDUNDANCY BOARD**

**RB/RN/07/2022**

### **ORDER**

**Before:**

Rashid Hossen	- President
Christ Paddia	- Member
Saveetah Deerpaul (Ms.)	- Member
Yashwinee Chooraman (Ms.)	- Member
Shirine Jeetoo (Mrs)	- Member
Feroze Acharauz	- Member

**Miss Nishma Sawoky**

**and**

**Soondur Munrakhun College**

Miss Nishma Sawoky, hereinafter referred to as the Applicant, is seeking for an order directing Soondur Munrakhun College, hereinafter referred to as the Respondent, to pay to the Applicant severance allowance at the rate of 3 months remuneration per year of service.

Applicant stood *inops concilii*. Mr Arvin Luchmun, of Counsel, represented the Respondent.

Applicant avers in her statement of case that:-

- a) she was in the continuous employment of Respondent since January 2020 and was last employed as educator;
- b) she was working on a 5 day week basis;
- c) she was last remunerated at monthly intervals at the basic rate of Rs 25,525 per month;
- d) by way of a verbal notice dated January 2021, Respondent terminated her employment in March 2021 with immediate effect on economic grounds;

- e) she was therefore in the continuous employment of the Respondent for 14 months;
- f) as at the date of termination of her employment, Respondent was employing not less than 15 workers in its undertaking;
- g) Respondent has contravened Section 72 (1A) (a) of the Workers' Rights Act by terminating her employment during the prescribed period;
- h) Under Section 72 (7) of the Workers' Rights Act, the termination of her employment is deemed to be unjustified as Respondent has acted in breach of Section 72 (1A) (a) of the Workers' Rights Act and
- i) in accordance with Section 72 (8) of the Workers' Rights Act, she is therefore applying to the Redundancy Board for an order directing the Respondent to pay her severance allowance at the rate specified in Section 72 (1) of the Workers' Rights Act, i.e. 3 months remuneration per year of service amounting to Rs 89,337.49 (Rs 25,525 x 3 x 14/12 years).

In reply to the above Statement of Case, Respondent avers the following:-

- a) Respondent admits that Applicant was employed as Educator but denies that she was in continuous employment and states that Applicant was employed under fixed term contracts as follows:
  - 1. Contract starting from 28<sup>th</sup> January 2020-to 31<sup>st</sup> October 2020
  - 2. Contract starting from 1<sup>st</sup> November 2020 ending on 30<sup>th</sup> November 2020
  - 3. Contract starting from 7<sup>th</sup> January 2021 ending on 26<sup>th</sup> March 2021.
- b) Respondent admits that Applicant was working on a 5 day week basis.
- c) Respondent is unaware that Applicant was last remunerated at monthly intervals at the basic rate of Rs 25,525 per month as salary is paid by PSEA.
- d) Respondent denies that by way of a verbal notice dated January 2021, Respondent terminated Applicant's employment in March 2021 with immediate effect on economic grounds and submits that a new contract was signed by Applicant in January which was to end on 26<sup>th</sup> March 2021.
- e) Respondent denies that Applicant was in continuous employment of the Respondent for 14 months and repeats the content of Part (a) of Respondent reply to Statement of Case, as stated above.
- f) Respondent admits that as at the date of termination of Applicant's employment, Respondent was employing not less than 15 workers in its undertaking.

- g) Respondent denies that it has contravened Section 72 (1A) (a) of the Workers' Rights Act by terminating Applicant employment during the prescribed period and submits that Applicant was employed on a fixed term contract ended as per agreement signed. Respondent denies being in breach of S 72 (1A) of The Workers' Rights Act and submits that S 72 (7) of The Workers' Rights Act does not apply, as Applicant was employed on a fixed term contract. As such no payment is due to the Applicant upon termination of contract.
- h) Respondent therefore prays to the Redundancy Board to set aside the application for severance allowance.

The Applicant confirms the averments of her statement of case before the Board. She stated that she was working at Respondent's college, Long Mountain, since January 2020 as 'Educator' on a 5 day week basis and her last monthly basic salary was Rs 25,525. In January 2021, she was verbally and in writing informed of her termination of her employment contract on an economic ground.

The employer put an end to the employee's contract during the prescribed period whereby the employer was not allowed to do so.

Mrs. Marie Shirley Farla, a labour officer at the Ministry of Labour, stated that she recorded a statement from Applicant on 24<sup>th</sup> of May 2021, whereby Applicant considered her termination of her contract to be unjustified.

The representatives of the employer also gave a statement on 13<sup>th</sup> of August 2021, to the effect that Applicant's contract being of a determinate nature, came to an end on its due date. Two documents were produced to that effect. (Documents A and B).

Mr. Georges Bellombre, administrative assistant at PSEA, could not confirm the number of students at Respondent in 2020 given that the statistics are still being finalized. He confirmed that it is not the PSEA that recruits 'Educators'. The PSEA is only the paying agent whereas the college is the employer.

The representative of the Respondent, Mr Hurrydeo Hoolash, Senior Educator at the college also deposed and maintained that the Applicant was employed on a fixed term contract. The first contract was from 28<sup>th</sup> of February 2020 to 31<sup>st</sup> of October 2020. The second one was from 1<sup>st</sup> of November 2020 and ended on 30<sup>th</sup> of November 2020. The third and last contract

was from 7<sup>th</sup> of January 2021 and it ended on 26<sup>th</sup> of March 2021. The three contracts marked C, D and E respectively were produced and they were all signed by the Applicant.

According to the witness, the contention that Applicant was dismissed on economic grounds does not arise since the college receives grant from the PSEA and there was no problem regarding payment of salary. None of these contracts mentioned termination on economic grounds.

Mr. A. Luchmun submitted that the Applicant has failed to sustain that she has been dismissed on economic grounds and that the Application is to be dismissed. He added that the lapse of time between the second and third contract exceeds 28 days and therefore it cannot be said that the Applicant was in continuous employment for a period of 14 months.

The Applicant was allowed to address the Board on a final note. She drew our attention to the fact that she was attending the college during the month of December 2020 and for which she was paid.

### **BOARD'S CONSIDERATIONS**

**Section 72 (1A) (a) of the Workers' Rights Act 2019** as amended reads:

*(1A) (a) Subject to paragraph (b), an employer shall, during such period as may be prescribed, not reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers or close down his enterprise.*

**The Workers' Rights (Prescribed Period Regulation 2020)** is hereby reproduced:

***Government Notice No. 183 of 2020***

### ***THE WORKERS' RIGHTS ACT 2019***

*Regulations made by the Minister under section 124 of the Workers' Rights Act 2019*

*1. These regulations may be cited as the Workers' Rights*

*(Prescribed Period) Regulations 2020.*

2. In these regulations –

“Act” means the Workers’ Rights Act 2019.

3. For the purpose of section 72(1A) of the Act, an employer shall, during the period starting on 1 June 2020 and ending on 31 December 2020, not reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers.

4. These regulations shall be deemed to have come into operation on 1 June 2020.

*Made by the Minister on 14 August 2020.*

**Government Notice No. 312 of 2020**

**THE WORKERS’ RIGHTS ACT 2019**

*Regulations made by the Minister under section 124 of the Workers’ Rights Act 2019*

1. These regulations may be cited as the Workers’ Rights

*(Prescribed Period) (Amendment) Regulations 2020.*

2. In these regulations –

“principal regulations” means the Workers’ Rights (Prescribed Period) Regulations 2020.

3. Regulation 3 of the principal regulations is amended by deleting the words “31 December 2020” and replacing them by the words “30 June 2021”.

*Made by the Minister on 21 December 2020.*

**Section 69** of the **Workers’ Rights Act 2019** as amended stipulates:

*69. Payment of severance allowance*

*(1) Subject to subsections (2) and (3A), an employer shall pay severance allowance to a worker at the rate specified in section 70 where the worker has been in continuous*

employment for a period of not less than 12 continuous months with the employer –  
(Emphasis is ours)

(a) on a contract of indeterminate duration and that employer terminates his agreement in circumstances specified in section 70(1); or

(b) under one or more fixed-term contract with the same employer and the employer terminates his agreement in circumstances specified in section 70(1);

(2) No severance allowance shall be payable to a migrant worker or a non-citizen employed under one or more contracts of fixed duration at the expiry of his contracts.

(3) No severance allowance shall, unless otherwise agreed by the parties, be payable where a worker and an employer enter into an agreement under section 13(1) and the agreement comes to an end.

(3A) (a) Where a worker whose basic wage or salary exceeds 600,000 rupees in a year is paid, at the end of every period of 12 months or at the end of each contract of employment of a determinate duration, a gratuity, compensation or such other payment, by whatever name called, in lieu of pension or in respect of his length of service, the worker shall not be entitled to the payment of any severance allowance on the expiry of each contract or the last contract.

(b) Notwithstanding any provision to the contrary to this Act, a worker referred to in paragraph (a) shall not be considered to be in continuous employment where he is employed successively under one or more contracts of a determinate duration.

(4) Where a worker claims severance allowance under subsection (1), the supervising officer shall enquire into the matter with a view to promoting a settlement.

(5) Where the matter under subsection (4) does not result in being satisfactorily settled, the supervising officer may enter proceedings before the Court if he is of the opinion that the worker has a bona fide case.

The relevant provision of the three distinct written contracts signed by both parties unambiguously state that the first contract “shall take effect as from 28/01/20 and shall terminate on 31/10/20”. The second contract “shall take effect as from 01.11.2020 and shall

terminate on 30.11.2020”. The third contract “shall take effect as from 07/01/2021 and shall terminate on 26/03/2021”.

The only bone of contention is whether the contract is of a determinate or indeterminate nature. There is indeed a lapse of time of more than 28 days between the second and third contract and such break clearly indicates that the final contract is to be classified as determinate.

The Applicant claims that she has been working with the same employer during the month of December 2020 and was paid accordingly. That was a statement that was thrown in during the course of her submission. At no time, under oath was any evidence adduced to that effect, the more so, as it was incumbent upon her to adduce such evidence.

**Article 1156** of the **Civil Code** Mauricien states that:

*1156. “On doit dans les conventions recherché quelle a été la commune intention des parties contractantes, plutôt que de s’arrêter au sens littéral des termes”.*

In the case of **Bahemia M.H & Partner Ltd v Production Menuiseries Industrielles Ltd [2016 SCJ 66]**, the court stated that “*it is incumbent upon the trial Judge to interpret the contents and the extent of any agreement and should not restrict ‘itself to a literal interpretation of the contract but rather ascertain the common intention (volonté commune) of the parties bearing in mind in which the contract was drawn up (le context de l’acte) as well as the surrounding circumstances “les circonstances de la cause”*”.

If the Respondent intended the Applicant to be in employment during the month of December 2020, the third contract should have been backdated so that the month of December 2020 would have become inclusive. By all means, even if the Applicant received payment during the month of December, the paying agent remains the PSEA and not the employer.

In the present matter, everything points towards the last contract to be that of a determinate nature and which had come to an end by the effluxion of time.

In the case of **DABEE-BUNJUN P. v INDEPENDENT COMMISSION AGAINST CORRUPTION [2010 SCJ 266]**, the Supreme Court held: “*The Applicant’s one-year contract had come to an end by effluxion of time and the respondent had opted not to renew it, as it was perfectly entitled to do*”.

Applicant in the present matter contended that it was an economic dismissal since the employer recruited other workers after terminating her contract. Needless to emphasize that the Respondent recruiting other workers following expiry of Applicant's contract remains the inherent power of an employer.

The various written contracts of the Applicant cannot be considered as employment contracts of indeterminate nature. The Applicant is therefore not entitled to severance allowance.

The application is set aside.



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Mr Rashid Hossen  
(*President*)

*SD*

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Mr Christ Paddia  
(*Member*)

*SD*

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Ms. Saveetah Deerpaul  
(*Member*)

*SD*

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Ms. Yashwinee Chooraman  
(*Member*)

*SD*

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Mrs. Shirine Jeetoo  
(*Member*)

*SD*

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Mr Feroze Acharauz  
(*Member*)

**Date: 02<sup>nd</sup> June 2022**