

***Dr. Bedacee A.D. v Higher Education Commission (formerly known as Tertiary Education Commission)***

**2022 IND 25**

**Cause Number 465/16**

**IN THE INDUSTRIAL COURT OF MAURITIUS  
(Civil Side)**

**In the matter of:-**

**Dr. (Miss) Aansa Devi Bedacee**

**Plaintiff**

**v.**

**Higher Education Commission (formerly known as  
Tertiary Education Commission)**

**Defendant**

**Judgment**

In this amended plaint, issues have been narrowed down in the sense that it is no longer disputed that Plaintiff has been unlawfully dismissed by Defendant.

Thus, Defendant agrees to pay the following items claimed by Plaintiff namely –  
(i) her passage benefit: Rs 55, 718.00, (ii) refund of her sick leave (80 x Rs 2,590): Rs 207,200.00, (iii) refund of her vacation leave (75 x Rs 1,899): Rs 142, 425.00 and (iv) agrees to give her a Certificate of Employment.

A last item claimed by Plaintiff is severance allowance which Defendant is agreeable to pay but not in the amount claimed, as Defendant contends that Plaintiff's years of service in its employment should be computed as from the year

2010 while the contention of Plaintiff is that her years of service should be computed as from the year 2004. This is the only disputed issue that this Court has to adjudicate upon.

The relevant averments of the amended plaint are as follows:

Plaintiff is a triple postgraduate and holds a PhD. She joined the Wastewater Management Authority as Public Relations Officer on 9 February 2004 and was confirmed in her post on a permanent and pensionable basis on 9 February 2005. As from 2007, Plaintiff took a leave without pay to work in other organisations.

From 1 September 2009 to 31 August 2010, Plaintiff worked at the Higher Education Commission (formerly known as Tertiary Education Commission) as Research Officer on a contractual basis. Defendant was satisfied with her performance and on 1 October 2010, she was offered the post of Research Officer on a permanent and pensionable position and confirmed on 1 September 2011.

As a result, in 2011, her accumulated years of service on a permanent and pensionable basis in the parastatal sector were transferred from the Waste Water Management Authority to the Higher Education Commission (formerly known as Tertiary Education Commission) and as at 17 October 2015, Plaintiff had a total of 8 years and 350 days of service. Plaintiff was on leave without pay for a total period of around three years and three months during her period of employment.

The Higher Education Commission (formerly known as Tertiary Education Commission) operates in line with the PRB and Plaintiff avers that as at October 2015, she was drawing a basic salary of Rs. 56,980 with Rs. 600 as compensation for year 2015 and travelling/petrol allowance of Rs. 10,200.

Plaintiff has been working for Defendant on a permanent and pensionable basis since 2010 and that there was already an agreement of terms and conditions of service.

Defendant, for its part, in its plea, has averred that Plaintiff has worked with Defendant as Research Officer from the 1 September 2009 to 31 August 2010 on a contractual basis and was confirmed in the post of Research Officer on 1 September 2011.

Plaintiff gave evidence in Court. Plaintiff who was highly qualified joined the Waste Water Management Authority as Public Relations Officer on 9 February 2004

and was confirmed in her post on 9 February 2005 and as such was Head of the Customer Care of the Authority as per Doc. A.

As from the year 2007, she took employment with other parastatal bodies like Enterprise Mauritius and Human Resource Development Council on a contractual basis and joined Defendant whilst still being on leave without pay. She joined Defendant, another parastatal body, on 1 September 2009 as per her letter of appointment dated 14 August 2009 as per Document B which reveals that it was again on a contractual basis for a period of one year.

As regards her years of service and benefits, she was informed that Defendant sent a letter in November 2010 to request the Waste Water Management Authority information about all her accrued benefits and years of service. In March 2011, the Waste Water Management Authority replied to Defendant stating all her accrued benefits and at the same time it was mentioned that she was permanently transferred to Defendant.

One year later, that is, in 2010 after she was recruited, her job became from a contractual to a permanent and pensionable basis. She had a testimonial signed by the representative of Defendant, Mr. Sabir Kasenally, as per Doc. D and at that time Dr. Praveen Mohadeb was the Executive Director of Defendant. It was by a letter dated 16 October 2015 that she was informed about the termination of her employment as per Doc. E with immediate effect.

As at 17 October 2015, starting from the year 2004 when she was working for the Waste Water Management Authority, she reckoned a total of 8 years and 350 days of service. There was a break at the Waste Water Management Authority as she took a leave without pay to work in other parastatal and non-parastatal organisations.

When she received an offer on a permanent and pensionable service from Defendant, it was received by way of a letter dated 1.10.2010 namely Doc. G. That letter reads as follows: “Your appointment will be on a probationary period of one year, after which, you may be confirmed in your post, subject to being favourably reported upon and you will then be placed on the permanent and pensionable establishment.”

She agreed that it was not disputed that a year later, her employment was confirmed by Defendant and her appointment was to be with effect from the date she

assumed duty with Defendant as per the letter viz. Doc. G. There was another letter dated 18 August 2011 wherein she was informed by Defendant and which was signed by Dr. P. Mohadeb in his capacity as Executive Director, that Defendant had confirmed her in her post of Research Officer with effect from 1 September 2011 as per Doc. H. Apart from those two letters namely Docs. G and H, there were no correspondences from Defendant that her employment was deemed to have started in 2009. She worked for Defendant for a period of 5 years and 15 days. She thought that someone from the administration told her that her years of service would be counted as from the year 2004. She agreed that her appointment took effect from the date she assumed duty with Defendant meaning in 2010 as per the letter dated 1.10.2010(vide- Doc. G). Then, she accepted that on the basis of her employment with Defendant meaning for 5 years and 15 days, that her severance allowance which she was entitled to was around the sum of Rs. 1,118,370 but which she did not calculate.

Nevertheless, she said that her total number of years in the parastatal sector was 8 years and 350 days. She hastened to add that when she got the posting with Defendant as Research Officer on a permanent and pensionable basis, at the same time she got the post of Communication Director at the ICTA, but it was on a contractual basis. Given that the number of years of service would be continued at Defendant on a permanent and pensionable basis, she chose to stay with Defendant with a lower salary scale just to allow her continuity of service. She accepted that if she computed the 5 years and 15 days for the purposes of severance allowance to be paid to her would have been around the sum of Rs. 1,118,370. However, she has also stated that she should have been paid severance allowance on the basis of 8 years and 350 days.

Thus, she maintained that she started employment in 2004 and there was continuity of service till she was dismissed in 2015. She was therefore praying the Court to grant her severance allowance in the sum of Rs. 3,117,880.

Mr. Mario Ponen gave evidence in Court in his capacity as Human Resource Manager at the Waste Water Management Authority. Plaintiff started working for the Waste Water Management Authority as from 9 February 2004 and she was confirmed in her employment on 9 February 2005. Then, she took a leave without pay from 8.1.2007 to 7.1.2008, from 8.1.2008 to 7.1.2009, from 8.1.2009 to 7.4.2009, from 1.9. 2009 to 31.8.2010 and finally from 2.9.2010 to 19.9.2010.

From 8.1.2007 to 7.1.2008, she took employment in the private sector. From 8.1. 2008 to 7.1.2009, she took up employment at Human Resource Development Council. From 8.1.2009 to 7.4.2009, her leave without pay was for private purposes. From 1.9.2009 to 31.8.2010 and from 2.9.2010 to 19.9.2010, she took up employment with Defendant and from then on, she was permanently transferred to Defendant as per Doc. K. The leave without pay was approved by the Waste Water Management Authority. It was a transfer so that it was a continuity of service. Then, he stressed that Doc. K did not specifically mention continuity of service just like the other documents produced in that regard namely Docs. J and L.

Dr. Praveen Mohadeb gave evidence in Court in his capacity as Executive Director of Defendant. He was working for Defendant as from 1991 and left in 2013. Plaintiff was working for Defendant in her capacity as Research Officer by way of a letter dated 1.10.2010 as per Doc. G. He agreed that as per a letter dated 18.8.2011 wherein he signed that letter namely Doc. H, Plaintiff was confirmed in her post of Research Officer with effect from 1.9.2011. He confirmed that the letter dated 12.11.2010 sent to the Waste Water Management Authority requested for certain information in relation to Plaintiff's employment as per Doc. J and following which the Waste Water Management Authority replied and it was addressed to him personally as Executive Director of Defendant as per Doc. K. In the latter document mention was made of a permanent transfer which was quite customary for an employee when he or she was transferred from one approved service to another like one statutory body to another to carry forward all the benefits earned during employment at that previous statutory body so that it was called a permanent transfer. By benefits it would mean everything which was accrued benefits to the employee, like pension, passage benefits, vacation leave or sick leave not taken. The years of service were normally counted if there was continuity of service meaning as if there was no break in the employment. The years of service transferred would be in relation to pension purposes. There was continuity of service because Plaintiff was permanently transferred. As per Docs. J and H, Plaintiff was employed on a permanent and pensionable basis which was subject to confirmation as per Doc. H wherein she was confirmed in her post with effect from 1.9.2011. Waste Water Management Authority was deemed to be an approved service. He could not say that apart from pension purposes, the Defendant agreed to take her years of service from Waste Water Management Authority. The date of appointment was the date on which Plaintiff assumed duty and there was nothing as per Docs. J and H, that Plaintiff was deemed to be in employment with Defendant as from the year 2004.

The only witness for Defendant, Mr. Duva Pentiah, gave evidence in Court. In the year 2010, he was the Permanent Secretary at the Ministry of Education. On the 5.8.2010, the Board of Defendant decided to offer employment to Plaintiff. The Board approved that Plaintiff who was under contract be placed on the permanent and pensionable establishment of Defendant as Research Officer. It was not correct to say that Defendant recruited Plaintiff as from 2004. She had joined on contract first for one year from 2009 to 2010 and then after one year, from 2010 up to 2011 when she was confirmed in her position as Research Officer. Had the Board decided to recruit her with effect from 2004, that should have been mentioned. Doc. G, he said was her letter of appointment according to which she was not appointed as from 2004. When the decision was taken to recruit Plaintiff, Dr. P. Mohadeb was the Executive Director of Defendant and who was vested with executive powers to conduct the affairs of Defendant. As regards the conditions of service of Plaintiff, he would not have been aware.

I have given due consideration to all the evidence put forward before me and the submissions of both learned Counsel for Plaintiff and learned Senior Counsel for Defendant.

It has remained unchallenged that there was no documentary evidence emanating from Defendant or the Waste water Management Authority to establish that Plaintiff's employment with Defendant was to be considered to have started as from the year 2004 which lends support to the testimony of the witness for the Defendant namely Mr. Duva Pentiah in his capacity as Permanent Secretary at the Ministry of Education.

Furthermore, Plaintiff has admitted that she did not confine herself to parastatal bodies after having taken a leave without pay at the Waste Water Management Authority as she had also worked in the private sector before joining Defendant as corroborated by her own witness namely Mr. Mario Ponen and supported by Doc. K. It is significant to note that Doc. K clearly specifies that Plaintiff's permanent transfer from the Waste Water Management Authority to Defendant was with effect from 1.10.2010 and not from 9.2.2004.

Moreover, she was fully aware of the fact that while being on leave without pay, if she accepted another job on a contractual basis, her continuity of service would be broken as she herself had stressed that when she obtained the post of Communication Director at the ICTA which was on a contractual basis, because her

number of years of service would be continued at Defendant on a permanent and pensionable basis, she chose Defendant with a lower salary scale to allow the continuation of service. In the same breath, had she wanted to have her years of service as regards her appointment at the Waste Water Management Authority which was on a permanent and pensionable basis, to be computed as from 2004, she ought to have remained in her post as Public Relations Officer there and not to have taken a leave without pay to work on contract for other parastatal bodies including the Defendant which was for a period of one year and for the private sector. It is significant to note that the last parastatal body meaning the Defendant did not have it in writing that Plaintiff was deemed to have been appointed as from 2004 when it was specifically mentioned that her confirmation of appointment with Defendant was to be as from 1.10 2010 meaning the day she assumed duty after having worked on a contractual basis for one year followed by another probationary period of one year as can be gleaned from Docs. B, G, H and K and not before.

Thus, it is worthy of note that it is not automatic to have appointment from one parastatal body to another as each parastatal body has its own specificities and regulatory framework which cannot be interchanged. Had it been the case, there would have been no need for Plaintiff to have taken a leave without pay as it would have been considered to be continuous employment by virtue of a transfer from one parastatal body to another. This indeed explains why as per Doc. K Plaintiff's permanent transfer from the Waste Water Management Authority to Defendant was with effect from 1.10.2010 and not from 9.2.2004 and why she took a leave without pay to work on contract for both parastatal bodies and the private sector before joining Defendant.

Plaintiff's employer viz. Defendant meaning another parastatal body, after having appointed her on a contractual basis of one year only, had further made her cover a probationary period of one year and then she was confirmed on a permanent and pensionable capacity dating back to the date she assumed duty on probation namely on 1.10.2010 after a stop in her employment with the Waste Water Management Authority being on leave without pay as from the year 2007.

Thus, Plaintiff can only claim severance allowance as from her date of confirmation of employment with Defendant which has for effect as from the day she assumed duty on probation with Defendant meaning as from 1.10.2010 and the years of service for the purposes of severance allowance at the Waste Water Management Authority are thus forfeited.

Therefore, Plaintiff can only claim severance allowance as from 1.10. 2010 as rightly submitted by learned Senior Counsel appearing for Defendant for the 5 years and 15 days until she was dismissed on 16.10.2015 as per Doc. E.

For all the reasons given above, I am unable to find that it has been established on a balance of probabilities that Plaintiff is entitled to severance allowance on the basis of 8 years and 350 days in the sum of Rs. 3,117,880.

I, accordingly, order Defendant to pay to Plaintiff the following items giving a sum total of Rs. 1,422,043 viz.

- (i) severance allowance for her 60 months continuous employment (Rs 67,780 x 60/12 x 3): Rs 1,016,700 with interest at the rate of 12% per annum as from the date of dismissal up to the date of payment,
- (ii) her passage benefit: Rs 55, 718.00,
- (iii) refund of her sick leave (80 x Rs 2,590): Rs 207,200.00,
- (iv) refund of her vacation leave (75 x Rs 1,899): Rs 142, 425.00 and
- (v) to give Plaintiff a Certificate of Employment.

With Costs.

**S.D. Bonomally (Mrs.) (Vice President)**

**6.5.22**

