

## PUBLIC BODIES APPEAL TRIBUNAL

No. R/04 of 2017

In the matter of:-

**Ghumanand HEERAMUN**

**Appellant**

(PBAT/PSC/816, PBAT/PSC/821, PBAT/PSC/827,  
PBAT/PSC/904 and PBAT/PSC/908)

**v/s**

**Public Service Commission**

**Respondent**

**and**

1. Prateema GHURA
2. Rassoollolah JUNGAL
3. Marie Roseline Dherdje BONNE
4. Harry Narain NAGESHAR
5. Deywanand Sharma CHENGEE
6. Saroda THANCANAMOOTOO
7. Haymawtee RAMGUTTY
8. Veena SOOKRAM
9. Farhaad TEGALLY
10. Bhoomeeka NAIK
11. Anand Mohun HEERASING
12. Marie Sylvie Norma THOMAS
13. Dharamdev PITTEA
14. Raymond Benjamin DAHOO

**Co-Respondents**

### **RULING**

The Appellant has lodged five appeals against the Public Service Commission concerning the appointment of several Co-Respondents to the post of Senior Educator (Secondary).

Originally he submitted the same Grounds of Appeal which he had used in a previous Appeal (PBAT/PSC/764), concerning the same post, and which the Tribunal had set aside.

The Respondent had raised Grounds of Objection in all the cases as follows;

*“The Respondent moves that the appeal should be dismissed in as much as –*

*(a) the “grounds of appeal” do not amount to proper grounds of appeal as they are vague and Appellant has not specified why Co-Respondent should not have been appointed;*

*(b) the appeal is vexatious and amounts to an abuse of process given that the Appellant is challenging a selection exercise in relation to which there is already a determination of the Tribunal (vide D/03 of 2017) and the grounds of appeal in the present matter are similar to the grounds of appeal raised in the case PBAT/PSC/764)”*

When these Grounds of Objection were explained to Appellant, he said that he would not go ahead with the same Grounds of Appeal on which the Tribunal had already pronounced itself. However he wanted to maintain the issue of *sub-judice* for all five appeals. He also maintained the fact that using the merit list after one year was unreasonable.

The issue of the merit list was raised in case Cause Number PBAT/PSC/904, PBAT/PSC/908. The Appellant stated that the Representative of Respondent had declared in case PBAT/PSC/764 that the merit list was only valid for one year.

Counsel for the Respondent replied that under Section 89 of the Constitution it is the Respondent which had the prerogative of appointing public officers. The Responsible Officer of a Ministry can only make a recommendation under Regulation 19(1) (a) of Public Service Commission Regulations.

As regards the use of the merit list, Counsel for Respondent stated that again it was the prerogative of Respondent to use a merit list or carry out a new selection exercise. However, a merit list would not hold after too long a period of time.

In order to clarify matters, Respondent was requested to provide the following information:

*“(i) Whether the appointment made in cases PBAT/PSC/904 and PBAT/PSC/908 was done from the Merit List;*

- (ii) *To confirm what were the recommendations of the Responsible Officer in these cases;*
- (iii) *To confirm that the merit list lasts for one year;*
- (iv) *Has there been any change recently concerning (iii) above.”*

The Respondent provided that information confidentially. The Tribunal refers only to the salient points which are highly relevant to the appeals concerned.

Respondent confirmed that the appointments concerned in PBAT/PSC/904 and PBAT/PSC/908 were made from the merit list following the recommendations of the Responsible Officer and the practice of having recourse to the merit list is resorted to when there has been a significant number of candidates. The Tribunal notes, however, that the Respondent has not been consistent at hearings before this Tribunal regarding the duration of the validity of the merit list. Sometimes Respondent's Representatives say it is valid for one year and sometimes they say it is for two years. This has created confusion to Appellants before this Tribunal and to the Tribunal.

However, the decision of the Respondent cannot be contested. The Regulation 17(1) of the Public Service Commission Regulations says that *“the Commission shall determine the procedure to be followed in dealing with applications for appointment to the public service. Including the proceedings of the Selection Board appointed by the Commission to interview candidates”* (emphasis ours).

The Respondent would be fairer to candidates for posts in the civil service if it decided once and for all the term or validity of the merit list.

On the issue of *sub-judice*, the Tribunal has had the occasion to state in several appeals previously that section 89 of the Constitution indeed gives the Respondent exclusive power to appoint public officers. Further, the fact that there is a case pending before the Tribunal, or indeed even before the Supreme Court, concerning the same appointment exercise, does not preclude Respondent from exercising its powers of appointment. In that respect, the Tribunal referred Appellant to the Judgement of Brunet v Public Service Commission 1993 SCJ 330 in which SPJ Lallah wrote *“what the applicant is seeking to achieve is that a particular*

*administration should come to a standstill for several years until the dispute is resolved and that the PSC should be prevented as from now from performing its undoubted constitutional functions”.*

Although the case of Brunet refers to an interim order before the Judge in Chambers, the principle remains the same.

The Tribunal therefore quashes the five appeals.

**S. Aumeeruddy-Cziffra (Mrs)**  
Chairperson

**G. Wong So**  
Member

**S. Vithilingem**  
Member

**Date:** .....

**Note:** This case is not being treated confidentially as there has been a motion for Judicial Review before the Supreme Court by the Appellant. All information relating to the case was made public as the Supreme Court, unlike the PBAT, does not deal with such motions in camera. The Supreme Court upheld the Determination of the Tribunal which has now become final.