

**IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF
THE REPUBLIC OF TRINIDAD AND TOBAGO**

BETWEEN

SERVOL LIMITED

Appellant

AND

EARLY CHILDHOOD TEACHERS TRADE UNION

Respondent

STATEMENT OF FACTS AND ISSUES

References to the Record are in the format (Electronic Bundle page number/paragraph or line number, where applicable: EB/XXX/YY). A chronology of key dates and events is appended for assistance.

Introduction

1. The Appeal concerns the proper invocation and exercise of the Industrial Court's power under section 10 (3) of the Industrial Relations Act in the absence of terms and conditions for terminal benefits/pensions for the affected workers upon their retirement and to award damages.

Background Facts

2. The Appellant is Service Volunteered for All or SERVOL Limited (“Servol”), a voluntary community focused service Not-for-Profit organization that has provided since 1970 and continues to provide services to the underprivileged in the community. Servol’s focus is on the young hence it has trained teachers employed with its 63 Early Childhood Care And Education (“ECCE”) Centres nationwide. **EB/Vol I/205-206]**

3. Servol’s teaching staff cares for children between the ages of 3 and 5. **[EB/133]** Servol relies heavily on government subventions for its existence and for the sustenance of its operations. **[EB/187-194]** Servol is also funded by donations received from a number of local businesses, international foundations as well as its own productive efforts to run its centres. **[EB Vol 1/327]**

4. The Respondent, the Early Childhood Teachers’ Trade Union, is a registered Trade Union in Trinidad and Tobago (‘the Union’) that represents the ECCE teachers in the employ of Servol who attained or were about to attain the stipulated retirement age of 60. **[EB Vol 1/139 & 338]**

5. The Union claimed that the termination of the teacher on the basis of a non-existent policy of retirement at age 60 was harsh and oppressive and that Servol as the employer had refused to provide workers with their terms and conditions of employment.

6. The Union also claimed damages for wrongful/harsh and oppressive termination, and retirement benefits for the teachers and loss of earnings from date of termination to date of judgment.

7. This led to unresolved Trade Disputes between the parties being referred to the Industrial Court for their resolution.

Summary - Particular Facts of Civil Appeal No. P264 of 2023/ Industrial Court TD 288 of 2018 - Kamanee Jassant- Somai

8. Servol employed Kamanee Jassant- Somai as an ECCE teacher in 1988. By letter dated 1st March 2018 Servol gave her notice to proceed on retirement and thus terminated her employment a few months after she had turned age sixty. **[EB/338] [EB/Vol 1/338]**
9. The Union contended that the process used to terminate the worker; and the reliance on a policy of retirement at sixty years which did not actually exist, was contrary to the rules of natural justice and good industrial relations practices; and that it was harsh, oppressive and unjust.
10. Servol contended that the worker's termination was due to the effluxion of time. **[EB/339]** The Union initially advanced the issue as to the correct age of retirement.
11. The Union also raised the issue of lack of terms and condition of employment dealing with terminal benefits for the Workers were not in keeping with good industrial relations practices and sought damages.

Summary - Particular Facts of Civil Appeal. No. P317 of 2023/ Industrial Court TD 201 of 2019 Magdalene Stanislaus- Marshall

12. Servol employed Magdalene Stanislaus-Marshall as an Early Childhood Care and Education Teacher in 1988. By letter dated 14th January 2019 Servol informed her that having attained the age of sixty (60) years, her last working day would be 28th February 2019 and that she would proceed on retirement on 1st March 2019. **[EB/Vol 1/239]**

13. The Union submitted that the worker had an excellent work record and that the employer's refusal to provide a retirement policy which precludes a worker from any retirement benefits was against the principles of fairness and good industrial relations practices. **[EB/Vol 1/237]**
14. Servol contended that the worker's end of employment was based on the "effluxion of time and relied upon the signed and binding Memorandum of Understanding between the Employer and the Ministry of Education that deals with retirement age. **[EB/Vol 1/241]**
15. Servol did not have any written policy dealing with or terms and condition of employment that deal with terminal benefit and/or compensation for the Workers upon retirement. **[EB/Vol 1/241]**.

Summary Particular Facts of Civil Appeal. No. P318 of 2023/ Industrial Court TD 202 of 2019 Hyacinth Rampersadsingh

16. Servol employed Hyacinth Rampersadsingh as a trained ECCE Teacher in 1974 and upon attaining the age of sixty, she was informed by her employer that she had come to her age for retirement, effective 1st March, 2019. **[EB/Vol 1/272]**
17. The Union submitted that the worker had an excellent work record and that Servol's refusal to provide a retirement policy for the worker to peruse in her private time or to seek advice was against the principles of fairness and good industrial relations practices. The Union also claimed that Servol did not offer the worker any retirement benefit(s) after issuing the retirement letter. **[EB/Vol 1/310]** The Union claimed that in the circumstances, the process which Servol used to terminate the worker and to use a non-existent policy of retirement was contrary to the rules of natural justice and good industrial relations practice and

was harsh and oppressive. The Union claimed damages for harsh and oppressive termination and retirement benefit/compensation for the workers 34 years of service.

18. Servol contended that the basis for the Worker's termination was due to the "effluxion of time and that it was guided by the signed memorandum of Understanding between Servol and the Ministry of Education and the policy of the Ministry of Education dealing with retirement age. **[EB/Vol 1/314]**
19. Servol contended that the absence of terms and condition of employment dealing with terminal benefit upon retirement did not create a right to same.

Industrial Court Proceedings

20. All of the Workers in this matter had attained the age of retirement (60) years at the time of termination.
21. Servol argued that
 - a. the termination of these employees was as a direct result of effluxion of time and not a dismissal;
 - b. there were no written terms and conditions of employment that treats with terminal benefits for the employees/workers; and
 - c. each of the workers were not terminated in circumstances that were harsh or oppressive.

22. The Appellant and Respondent in all three cases, by consent agreed with the Industrial Court to resolve the issues by way of written submissions supported by the filed evidence and arguments.

Issues before the Industrial Court

23. The Industrial Court acknowledged that there was no provision in the terms and conditions of employment of the workers treating with terminal benefits.
24. The Industrial Court had to determine: **[EB/73]**
- a. Whether the teachers were entitled to any terminal benefits;
 - b. Whether it was contrary to the principles of good industrial relations practice to deny the workers terminal benefits; and
 - c. Whether the Industrial Court had jurisdiction to do so (that is, to order the payment of terminal benefits).
25. The factual matrix and issues flowing from all three disputes/cases are similar, and as such, in all three judgments the Industrial court made similar findings of fact and relied upon the same principles from previously decided cases and invoked its discretionary powers under section 10 (3) of the Industrial Relations Act Chapter 88:01 to make an award in all three disputes.
26. In all three cases the Industrial Court accepted that there was no basis for payment of retirement benefits under their contracts. Neither was there any collective agreement in existence nor any statute upon which it relied. However, the Industrial Court made awards to the employees in the total sum of \$473,000.00 in respect of retirement or terminal benefits which it characterized as damages.

27. The Industrial Court's reasoning was that it was entitled to do so by virtue of section 10 (3) of the Industrial Relations Act which it claimed permitted it the jurisdiction to do so notwithstanding anything in the Act or in any other rule of law to the contrary.
28. The Industrial Court further referred specifically to its authorization and jurisdiction to do so as being affirmed by the decision of the Court of Appeal in **Carib Brewery Limited v National Union of Government and Federated Workers** (Civil Appeal No. P213 of 2015). **[EB/Vol1/78-81]**
29. The Industrial Court further reasoned as follows:

"The instant matter deals with termination on the ground of age, namely, retirement and not misconduct. The termination on the grounds of retirement appears to have a greater entitlement to terminal benefits or damages than the dismissal on the grounds of misconduct.

It is therefore in the application and administration of S 10 (3) in which the answer to the question lies as well as the determination of this dispute.

Undoubtedly, such a payment would be in the worker's interest but it will also be in the interest of the Employer whose employees would be satisfied knowing that their service would be recognised and rewarded and by extension be incentivized to work hereto. In return, they will be more productive in their dealings with the Employer and be more committed to their working relationship.

As members of the community, the employees being satisfied by their Employer's action would eventuate in the interest of the community and the Employer as a good corporate citizen.

Moreover, the Employer admitted that it is a teaching institution whose remit is geared towards community development and nation building. In that setting, satisfied employees/workers are sine qua non in discharging its remit and they can only redound to the interest of the community, in the short, medium and long run.

Accordingly, the answer is in the affirmative that is, that it is contrary to the principle of good industrial relations practice to deny the worker terminal benefits of retirement and as such, the worker is entitled to the payment of terminal benefits.”

...

“On the basis of the facts outlined hereinabove, and the weight accorded thereto, the Court opined that it has acted within the parameters conferred in the statutory jurisdiction under Section 10 (3). The Court is of the view that the worker is entitled to a payment in respect of her service. The Court consequently, makes this award in relation to the dispute before it as it considers it fair and just, having regard to the interests of the persons immediately concerned and the community as a whole.” [EB/Vol1/81]

...

“The Court also noted as well that the Employer is a voluntary service organization.”

Appeal to the Court of Appeal

30. On 27th October 2023, the Appellant appealed to the Court of Appeal against each of the three (3) decisions. On 23rd February 2024 N. Bereaux J.A.directed the consolidation of the three appeals. **[EB/Vol 11/556-558]**
31. On 2nd December 2024, the Court of Appeal (R. Boodoosingh & G. Henderson JJA; & P. Rajkumar, dissenting,) heard the Consolidated Appeals and on 21st March 2025 delivered Judgement. **[EB/Vol III/1132-1193]**

32. The issues before the Court of Appeal were as follows:

i) Whether jurisdiction under section 10 (3) of the Industrial Relations Act was lawfully assumed, invoked and /or exercised;

ii) Whether a sufficient right to be heard was afforded to the parties before the invocation of jurisdiction under section 10 (3) of the Industrial Relations Act; and

iii) Whether the decision of the Industrial Court improperly devised a wholly new cause of action or ground of substantive liability. **[EB/Vol III/ 1134]**

33. On 21st March 2025 the Majority (R. Boodoosingh & G. Henderson JJA) allowed the Appeal **in part and** ordered that the matter be remitted back to the Industrial Court for re-examination of the issue of quantum only -see paragraphs 185 to 188 .

34. The Minority P. Rajkumar, allowed the appeal and set aside the decisions below in all three cases, finding that the Industrial Court assumption and exercise of its powers under section 10 (3) (a)-(b) was flawed.

Majority Reasoning

35. Ronnie Boodoosingh, JA (as the Chief Justice then was) delivered the Majority Judgement and reasoned that:

a. The Industrial Court's jurisdiction was exercised under section 10 (3) of the Industrial Relations Act which was a "*residual discretion*" to "*make*

such order or award” in a dispute before it that it considers “*fair and just*” having regard to the parties before it and the “*interests of the community as a whole*”. In doing so the Industrial Court must act in accordance with equity, good conscience, the substantial merits of the case before it, and having regard to the principles and practices of good industrial relations; **[EB/Vol III/1178]** para 140

- b. The Industrial Court had before it an unresolved dispute and it was exercising a jurisdiction conferred by section 10 (3) Industrial Relations Act to make an order or award; **[EB/Vol III/1178]** para 140
- c. The dispute as to whether the absence of provision of retirement benefits was contrary to good industrial relations practice was squarely before the court. The dispute as to whether the workers were entitled to terminal benefits and what these might be were therefore issues before the Industrial Court. Servol raised both entitlement to benefits and jurisdiction of the Court to entertain the issue; **[EB/Vol III/1178]** para 142
- d. The parties to the dispute left it to the Industrial Court to decide the issue without providing any additional written submissions on the law to assist the Industrial Court; **[EB/Vol III/1180]** para 147
- e. In consequence, Servol the Appellant cannot complain on appeal that they were not given an opportunity to address the issue of whether the failure to provide for a retirement benefit constituted a breach of good industrial relations practices for which an award was justifiable; **[EB/Vol III/1180]** para 147
- f. In Servol’s Evidence and Arguments and its witness statement Servol referred to it being a voluntary, not for profit, organisation and that it received a government subvention. However, no specific evidence was put before the Industrial Court as to the effect payment of retirement benefits would have on its operations. Nor was there any specific

evidence about any hardship or impact payment of a retirement benefit would have on the Company; **[EB/Vol III/1180]** para 148

- g. The majority rejected Servol's argument that the absence of a stipulated provision for retirement benefits meant that the Industrial Court had no jurisdiction to decide the issue. The Industrial Court had to decide whether the teacher's termination was harsh or oppressive and in keeping with good industrial relations, which was exclusively a matter for the Court; **[EB/Vol III/1181-1182]** para 155
- h. Servol was not questioning the finding of what constituted good industrial relations practice but rather what Servol contested was that section 10 (3) allows the Industrial Court to make such an award where there was no written agreement stipulating a retirement age nor payment of a benefit. The Industrial Court could pronounce on whether the lack of terms and conditions regarding retirement benefits is contrary to good industrial relations practice, then it could go on to consider if to make an award for this. It was the parties' responsibility to put evidence before the court on all of the issues that the parties wish to have considered **[EB/Vol III/1183]** para 159
- i. In this case, there was no written contract which stated that there were to be no retirement benefits. Servol had simply not provided for retirement benefits. It is correct that the law generally does not provide a right of a worker to a retirement benefits. Some written contracts of employment provide for them, some do not; **[EB/Vol III/1185-1186]** para 165
- j. The Industrial Court had to decide whether, given the length of service of these three workers, it was contrary to good industrial relations, for them to be terminated (whether before the retirement age or by the effluxion of time) with no provision for retirement benefits for them. The

Industrial Court decided it was contrary and it provided for an award of damages. **[EB/Vol III/1186]** para 169

- k. The Industrial Court considered what was fair and just in the circumstances, acknowledging that Servol was a not for profit, voluntary organisation, but also having no specific evidence before it of any consequences which may result by determining it would be contrary to good industrial relations practice not to provide for a retirement benefit. **[EB/Vol III/1186]** para 169

- l. The Industrial Court's decision need not adopt a particular format as long as they were sufficient to establish what requirements of section 10 (3) of the Industrial Relations Act were clearly in mind as to the dispute before them was, the requirements of section 10 (3) and their analysis of the section 10 (3) requirements based on the evidence and arguments placed before them. Overly detailed analysis was unnecessary. Weight of the different factors was a matter for the Industrial Court; **[EB/Vol III/1186]** para 171

- m. In this case the Industrial Court took account of the evidence placed before it and had a rational basis for its decision, and identified: undisputed facts; the contentions of the parties; analysis of the law including the basis for making an award under section 10 (3) where there was no finding of a dismissal under harsh and oppressive circumstances; application of section 10 (3); discussion of good industrial relations practice in relation to the facts; conclusions and findings; the requirements for making an award; and, the statement of the award. **[EB/Vol III/1187]** para 173

- n. It is either that equity counts for something, or it does not, irrespective of the manner of their separation. In a case where there is retirement after a long period of dedicated and unblemished service as opposed to

where there was a justifiable dismissal that “equity” ought, logically, to mean more. The Industrial Court found precisely that. The finding was one that was open for the Industrial Court to make and accordingly, not one that the Appeal Court should interfere with as the Industrial Court was mapping out what constituted good industrial relations principles and practice.; **[EB/Vol III/1189-1190]**

- o. In these circumstances, the Industrial Court had to decide if there should be a retirement benefit in keeping with good industrial relations practice having found there was no dismissal under harsh and oppressive circumstances. The Industrial Court did not, in these circumstances “devise a wholly new cause of action or ground of substantive liability”. It was carrying out its section 10 (3) function of resolving the dispute placed before it; **[EB/Vol III/1189]** para 178

- p. This case is distinguishable from **Byron v Eastern Caribbean Amalgamated Bank** [2019] UKPC 16; **[EB/Vol III/1187]**

- q. The dispute began by Servol indicating the retirement age was 60 years as the workers approached that age, and not 65, and the workers wrote back asking to see the Company’s policy.. Servol asserted there was no retirement benefit. There was no evidence that this had previously been told to the workers. The issue before the Industrial Court whether the workers should be entitled to a retirement benefit in accordance with good industrial relations practice (the retirement age issue having fallen away) and what that might be in a specific context and factual circumstance. Accordingly, no new cause of action was put before the Industrial Court since the dispute included consideration of whether a retirement benefit was payable in keeping with and as a requirement of good industrial relations practice. The Industrial Court did not, in these circumstances “devise a wholly new cause of action or ground of

substantive liability". It was carrying out its section 10 (3) function of resolving the dispute placed before it; **[EB/Vol III/1188]** para 177

- r. The provisions of the National Insurance Act, which provides a pension benefit to workers who are members of the national insurance scheme based on the contributions of their employers and them was not considered by the Industrial Court in any way as a reason why the lack of a retirement benefit in their employment contract would not be a breach of good industrial relations practice. Such a benefit was within the term "notwithstanding any other rule of law to the contrary" in the IRA and was not an answer to the question of whether the lack of a retirement benefit in this case constituted a breach of good industrial relations principles or practice; **[EB/Vol III/1189]** para 180
- s. Servol did not contemplate that the Industrial Court would go on to make an award in the sums it did. Had they considered the wide ambit of section 10 (3) they may have considered it appropriate to advance evidence and submissions on the effect such awards might have had on the operations of Servol so that the impact on the parties might have been more fully considered. The Industrial Court was deprived of evidence from Servol on factors that might impact on it if such awards were made and to what extent this scenario might impact on it in relation to other employees; **[EB/Vol III/1191]** paras 184-185 and
- t. Given Servol is a not for profit company; that it provides important national service; it was not represented by legal Counsel; the case was novel in the sense of seeking to establish a retirement benefit when none was stated before; and this decision may impact on other employees of the company, quantum should be remitted to make such award as it thinks fit. **[EB/Vol III/1191]**

Minority Reasoning

36. In his dissenting judgment, P Rajkumar, JA reasoned :

- a. The Industrial Court correctly recognized that in each case it was making its order/awards in the absence of stipulated terms and conditions of employment relating to the separations of employees. The Industrial Court correctly asked itself “*whether the worker is entitled to any terminal benefits and whether the jurisdiction existed for the court to do so*” [EB/Vol III/1137]
- b. The Industrial Court correctly accepted that the retirement age was 60 and that there was no unlawful or premature termination or termination of employment other than via retirement at the established retirement age was the predictable consequence of reaching the retirement age that the employment relationship would come to a natural and consensual contractual end. See *Chitty on Contracts Volume II Specific Contracts 31st Edition, page 1193, paragraph 39-170*. [EB/Vol III/1138]
- c. The Industrial Court incorrectly failed to distinguish, misquoted and misapplied the Court of Appeal’s decision in **Civil Appeal No. P213 of 2015-Carib Brewery Limited v NUGFW**, which was referring to compensation arising from termination of employment for loss of an equity accruing from long years of unblemished service. This was not a situation of consensual determination as a result of retirement at an established retirement age; [EB/Vol III/1146-1150]
- d. The Industrial Court failed to consider the statutory limits of section 10(3) (a) of the Industrial Relations Act and failed to engage in the necessary analysis. The Industrial Court failed to appreciate the critical distinction between a consensual and predictable termination of a contract of employment at the retirement age thereunder, and the unpredictable and unilateral termination on the ground of misconduct in relation to a worker

who would have had a long and otherwise unblemished record of service prior to the consensual retirement age. **[EB/Vol III/1150-1152]**

- e. The Industrial Court's reasoning was not based on evidence but rather speculation that the payment of termination benefits under section 10(3) of the Industrial Relations Act was in the workers' interest and in the interest of Servol whose employees would be satisfied knowing that their service would be recognized and rewarded and by extension be incentivized to work and be more productive in their dealings with Servol and be more committed to their working relationship and being satisfied by Servol action would eventuate in the interest of the community and Servol as a good corporate citizen; **[EB/Vol III/1152]**
- f. While the Court of Appeal would not second guess the Industrial Court on what constitutes good industrial relations within section 10(3) (b) of the Industrial Relations Act, the Industrial Court disregarded the specific and concrete financial impact upon Servol and the community as a whole of substantial awards in respect of unplanned and unexpected expenditure in deviation from the norm which had not been required under the contracts of employment; **[EB/Vol III/1152]**
- g. The Industrial Court did not consider meaningfully or at all the impact of its award on Servol as a voluntary non-profit service organization, on its budget, its ability to hire other staff, its ability to provide services to the community and upon the community and nor did it consider the impact or effect on other voluntary nonprofit service organization employers similarly circumstanced in the community providing services to the community, but which generated no profits and who were reliant on funding from government subventions and voluntary donations to provide those services to the community and who had employees of long standing in their employ for whom no contractual provision had been made for benefits upon their retirement; **[EB/Vol III/1152-1153]**

- h. The Industrial Court did not consider meaningfully or at all the interests of the persons immediately concerned and the community as a whole. The Industrial Court was required to consider the **financial impact** of its decision on the persons immediately concerned and the community as a whole. Those persons included the employee and Servol Employer and the community as a whole. The community as a whole potentially included recipients of the services of Servol, other employers similarly circumstanced, their employees present and future, and the recipients of services of similarly circumstanced employers who were also voluntary non-profit service organizations. **[EB/Vol III/1153-1153]**

- i. The Industrial Court did consider the interests of the employees. The Industrial Court did not consider whether or not it was also in the interest of the employer and the community as a whole, and if not, whether the balancing of the considerations under section 10 (3) (a) (the interests of all of the parties, employer/employees and the community as a whole), justify departing from the position that would have applied under the Act or under any rule of law i.e. the starting position cf. TD 43 of 1994 **OWTU v National Petroleum Marketing Company** . The Industrial Court failed to comply with the statutory conditions of section 10(3) (a) of the Industrial Relations Act ; **[EB/Vol III/1151]**

- j. The Industrial Court did not afford any party the opportunity to address it on the potential exercise of any jurisdiction under s. 10(3), depriving the parties, and specifically the appellant, of any opportunity to address it on the financial impact of such an award. Even though the parties had agreed to the determination of the dispute on the basis of their written submissions, the Industrial Court failed to observe that the dispute referred to it was not on the basis of section 10 (3) and neither party's submissions addressed this jurisdiction. The Industrial Court invocation of section 10 (3), without providing the parties with an opportunity to address this specifically, rendered the decision and any award based thereon procedurally flawed. **[EB/Vol III/1155]**

- k. The Industrial Court made its decisions and award without regard to Servol's ability to pay. It is no answer to say it was Servol's obligation of the employer to lead such evidence when its defence was that there was no obligation to do so and neither party had invoked section 10 (3). The Industrial Court accepted that there was no contractual liability to make such payment but notwithstanding anything in the act or any rule of law to the contrary it purported to exercise s 10 (3) jurisdiction to make an award contrary to basic fairness which required an opportunity to be provided to the parties to address it on this newly introduced factor in the case. **[EB/Vol III/1155]**
- l. Unlike **Carib Brewery** case where there was an underlying right to payment for the equity in the workers' contracts, the Industrial Court identified no underlying right in this case to terminal benefits in respect of Servol's employees who had no contractual entitlement to such benefits.. **[EB/Vol III/1155]** para 74
- m. Section 10 (3) does not confer a right upon the Industrial Court to create an obligation on employers to make payments which had no basis in statute, in common law, collective agreement or under contract. The employer/employee relationship is usually founded upon contract. The termination of that relationship by an established retirement age brings that relationship to a consensual end. The Court therefore had no underlying basis to grant the awards. The Industrial Court had no power to create financial obligations where none existed under contract, statute, collective agreement or common law and had no power to create a new cause of action -see **Byron v Eastern Caribbean Amalgamated Bank [2019] UKPC 16** para 30 **[EB/Vol III/1155-1156]** paras 75 &76
- n. The Industrial Court's reasoning created legal uncertainty and disregarded the statutory context of the National Insurance Act which compulsorily requires employer and employee registration and the

provision of an NIS retirement pension or retirement grant. **[EB/Vol III/1161-1164]**

- o. This is not a matter where remitting it to the Industrial Court would be appropriate because:

i] The parties did not argue the applicability of section 10(3) as the basis of jurisdiction to award retirement benefits, and the Industrial Court provided no advance notification that it proposed to base its decision on this un-argued ground;

ii] No evidence had been invited or led before the Industrial Court on this issue. Remitting the matter therefore would be an invitation to the parties and to the Court to consider an entirely new case - , which had not been argued -see **Ashmeed Mohammed v Mary Gomez [2019] UKPC 46** as to the unfairness and impermissibility of determining a matter on a basis not argued before the Court. **[EB/Vol III/1165-1166]**

- p. The Industrial Court cannot determine a matter on a basis in respect of which an opportunity to be heard had not been provided to the parties. Remitting this matter to the Court would be an invitation to it to hear what amounts to a different matter because i] it would be on a different legal basis, and ii] it would now be on the basis of evidence which had ever been previously introduced by either party. **[EB/Vol III/1166]** para 109
- q. The Industrial Court also committed a fundamental error by effectively legislating to introduce a right to termination benefits in the absence of statute or in the absence of an applicable contractual provision, and that failing would be endorsed by remitting it. (See **Byron** supra); **[EB/Vol III/1166]** para 110; and
- r. This Court normally defers to the Industrial Court's presumed expertise on the principles and practices of good industrial relations that in fact provides no logical justification in this case for reconsideration by the Court. That is because no one takes issue in this case with the Court's

consideration of that factor under section 10 (3) (b) of the Act. It is the failure to consider adequately the matters that it was required to take into account under section 10(3)(a), as well as inter alia the impermissible extension of its jurisdiction, into the creation of a new cause of action and remedy, devoid of any legal underpinning, that is the basis upon which this appeal must be allowed. **[EB/Vol III/1166]** para 111

37. There are other similar matters before the Industrial Court against the Appellant that were stayed pending determination of the consolidated matters in the Court of Appeal, and the majority Judgement effectively put those matters back in motion. **[EB/Vol III/1110-1111]**

Appeal to the Judicial Committee

38. On 1st October 2025 the Appellant was granted final leave to Appeal to the Judicial Committee of the Privy Council. **[EB/Vol III/1347-1349]**

Issues in the Appeal

39. The Issues that arise on the appeal are :
 - i. Whether the majority erred in law and misconstrued section 10 (3) of the Industrial Relations Act in deciding that the Industrial Court had properly and lawfully exercised its power under section 10 (3) in circumstances where the employees did not have any contracts stipulating any retirement benefits and upheld the Industrial Court's finding that they were entitled to retirement benefits contrary to the principles and practices of good industrial relations and made an award of damages.
 - ii. Whether the majority erred in law when it acted unfairly and in breach of natural justice in deciding that the Industrial Court did not need to

hear the parties nor give them an opportunity to address the issue of whether the failure to provide for a retirement benefit constituted a breach of good industrial relations practices for which an award was justifiable under section 10 (3) of the Industrial Relations Act.

- iii. Whether the majority erred in law and misconstrued as a matter of law the Industrial Relations Act in failing to appreciate as a matter of law the effect of the provisions of the National Insurance Act and the retirement benefits to registered employees that the Industrial Court had erred in law in failing to have regard to National Insurance Act 32:01, and retirement benefits in determining whether there was a breach of good industrial relations practice and in determining in error that such retirement benefits fall within the term “notwithstanding any other rule of law to the contrary” in the Industrial Relations Act .
- iv. Whether the majority erred in law and misapplied section 10 (3) of the Industrial Relations Act when it affirmed the Industrial Court’s creation of retirement benefits right as a wholly new cause of action, and a new liability upon the Appellant which was not contracted for and duplicated the employees’ retirement benefit entitlements under the National Insurance Act.. Further the majority erred in law in deciding that it was not bound by the Board’s decision in **Byron v Eastern Caribbean Amalgamated Bank** [2019] UKPC 16
- v. Whether the majority further erred in law and further misconstrued section 10 (3) of the Industrial Relations Act when it remitted the matter back to the Industrial Court on the issue of damages/compensation only and failed to recognize that the Industrial Court’s failure to consider section 10 (3) factors could not be cured by a remittal as to quantum.

Dated 04th August 2026

IAN L. BENJAMIN, S.C. Bethany Chambers DELROY S. BURRIS Burris, Benjamin and Associates JANELLE K. BENJAMIN Burris, Benjamin and Associates For the Appellant	DOUGLAS MENDES, S.C. ANTHONY BULLOCK CLAY HACKETT ALASTASHE GIRVAN All of Chancery Chambers For the Respondent
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Annexure

Chronology of Proceedings – Servol v Early Childhood Teachers Trade Union

1. 31st July 2023 TD 288 of 2018 decision
2. 21st September 2023 TD201 of 2019 decision
3. 21st September 2023 TD202 of 2019 decision
4. 25th August 2023 Notice of Appeal filed – CA P264 of 2023
5. 27th October 2023 Notice of Appeal filed – CA P317 of 2023 & CA P318 of 2023
6. 23rd February 2024 Consolidation of the three appeals
7. 02nd December 2024 Appeal Hearing in the Court of Appeal before Justices of Appeal - **Hon. Mr. Justice P.A. Rajkumar JA, Hon. Mr. Justice R. Boodoosingh JA, Hon. Mr. Justice G. Henderson JA**
8. 21st March 2025 Decision of the Court of Appeal before Justices of Appeal - **Hon. Mr. Justice P.A. Rajkumar JA, Hon. Mr. Justice R. Boodoosingh JA, Hon. Mr. Justice G. Henderson JA**
9. 21st May 2025 Grant of Conditional Leave before Justices of Appeal - **Hon. Mr. Justice M. Mohammed J.A., Hon. Mr. Justice P. Rajkumar J.A. and Hon. Madam Justice M. Wilson J.A**
10. 01st October 2025 Grant of Final Leave before Justices of Appeal
- **Hon. Mr. Justice R. Boodoosingh J.A., Hon. Mr. Justice J. Aboud J.A. and Hon. Mr. Justice R. Rahim J.A.** Final Leave to appeal to the JCPC granted.

**IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL Appeal No. JCPC/2025/0118
ON APPEAL FROM THE COURT OF APPEAL OF THE REPUBLIC OF TRINIDAD AND
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BETWEEN

SERVOL LIMITED

Appellant

AND

EARLY CHILDHOOD TEACHERS TRADE UNION

Respondent

PRECIS

1. Servol, the Appellant is a Not-for-Profit organization, engaged in education and which receives government subventions for its operations. The Union is the registered Trade Union that represents employees (“Workers”).
2. The Industrial Court found that each Worker was entitled to terminal benefit terms and conditions of employment in accordance with good Industrial relations practices under section 10 (3) of the Industrial Relations Act Chapter 88:01.
3. On 21st March 2025 the Court of Appeal, by a majority (Boodoosingh & Henderson JJA), allowed the Appeal in part, and remitted quantum to the Industrial Court. re-Rajkumar JA in dissent set aside as flawed the exercise of section 10 (3) of Industrial Relations Act Chapter 88:01.
4. The Appellant seeks to set aside the majority decision as legally flawed.