# <u>Tribunal Industrijali</u>

# <u>Decizjoni Numru 2946</u>

Kaz Nru: 3880/20/AM

Joshua Bugeja 659681M

vs

Malta College of Arts, Science & Technology

*dwar allegazzjoni ta' trattament illegali u / jew diskriminazzjoni*

**<u>Chairperson: Dr Anna Mallia LL.D., LL.M. (lond)., Dip.Tax (MIT)</u>**

Illum il-Gimgha 6 t'Ottubru, 2023

It-Tribunal,

**<u>Preliminari</u>**

A fol 120 dan it-Tribunal ordna li x-xhieda u dokumenti esebiti f'dn il-kaz ghandhom jitqiesu li gew esebiti fil-kaz 3879/20/AM fil-proceduri Steve Zerafa vs Malta College of Arts, Scicence & Technology u vice versa.

Dan huwa kaz fejn ir-rikorrent qed jallega li huwa mpjegat mall-Kullegg Intimat bhala Senior Lecturer u Subject Coordinator fl-Institute of Engineering and Transport sar jaf li l-kollegi tieghu mpjegati mall-istess Kullegg izda f'istitut iehor cioe' fl-Institute of Information and Commnication Technology li skond hu ghandhom xoghol u responsabilitajiet effetivament l-istess bhal tieghu jithallsu u ilhom snin jithallsu bonus annwali u li ghalhekk qed jallega diskriminazzjoni fil-konfront tieghu.

Ir-rikorrent qed jitlob li l-Kullegg Intimat jaghti d-dettalji kollha tar-reminerazzjoni tal-impjegati kkoncernati ovvjament anonimizzata; li jigi stabilit li ma hemm ebda gustifikazzjoni legalment accettabbli ghat-trattament illegali u/jew ghad-diskriminazzjoni li qed isofri; li jigi dikjarat li t-trattament tar-rikorrent mill-intimati mhuwiex konformi mal-ligi u/jew hu diskriminatorju; li jigu likwidati d-danni kollha subiti minnu minn meta tali trattament beda; li l-intimati jigu kkundannati jhallsu tali danni lir-rikorrent.

Fir-risposta tieghu a fol 7 l-Kullegg Intimat jeccepixxi li t-talbiet tar-rikorrent huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez kontra l-istess rikorrent; li r-rikorrent mhux impjegat fl-istess Istitut fejn jinghata l-bonus imsemmi; li jezistu kriterji oggettivi ghall-hlas tal-bonus kif moghti mill-Institute of Information and Communication Technology ghall-haddiema li jirrendu servizz appuntu f'dan l-Istitut specifiku li qiegħed jaghmel referenza ghalih ir-rikorrent li fi kwalunkwe kaz l-istess rikorrent ma jissodisfax u ghalhekk l-ebda hlas mhu dovut lill-istess rikorrent; ir-rikorrent ma ressaqx id-dikjarazzjoni tal-kaz b'aktar dettalji dwar it-talba tieghu kif kien imiss.

Fl-affidavit tieghu a fol 13 ir-rikorrent jghid li huwa ilu mpjegat mall-MCAST bhala ghalliem full-time mill-1 ta' Settembru 2013 u matul dan il-perjodu huwa zviluppa u ghallem diversi suggetti relatati max-xjenza u t-teknologija tal-kompjuter principalment zvilupp ta' software, databases u networking fl-Istiut tal-Inginerija u t-Transport. Mis-sena 2009 huwa gie mahtur bhala koordinatur tas-suggett tal-MCAST ghall-Informatika fejn fost responsabilitajiet ohra jissorvelja l-izvilupp u l-implimentazzjoni tas-suggett tal-Informatika bhala hila ewlenija (key skill) fl-MCAST kollu. Ghal dawn l-ahhar sentejn huwa kien ukoll ir-rapprezentant tal-MCAST fuq il-bord tas-sillabu tal-MATSEC ghas-SEAC IT.

Kien l-1 ta' Lulju 2019 li huwa kumbinazzjoni skopra li l-MCAST kien qed jaghti bonus lill-Letturi tal-MCAST li jaghtu sessjonijiet fl-Istitut tat-Teknologija tal-Informazzjoni u l-Komunikazzjoni. Meta skopra dan, huwa talab laqgha ma' Philip Vella Deputat Principal ghall-Amministrazzjoni fl-MCAST u din il-laqgha saret fl-10 ta' Lulju 2019 u Vella kkonferma li l-MCAST kien qed jaghti dan il-bonus lill-Letturi tal-MCAST fl-Istitut tat-Teknologija tal-Informazzjoni u l-Komunikazzjoni izda dettalji ohra dwar kemm hu dan il-bonus huwa ma tahx. Huwa rreferih ghall-Principal u CEO tal-Kullegg l-Professur James Calleja u fil-laqgha li saret ma' Calleja fit-8 t'Awissu 2019 ir-rikorrent jghid li Callejja ma setax jghidlu l-ammont jew meta beda jinghata dan il-bonus u ssugerilu li jmur ghand l-Ombudsman jekk huwa ma jaqbilx mall-konkluzjonijiet milhuqa mill-ufficcju tal-ilmenti fl-istess Kullegg.

Ghamel l-ilment fil-15 t'Awissu 2019 f'dan l-ufficcju tal-ilmenti izda decizjoni finali ma ttiehditx.

Ir-rikorrent jispjega li s-suggetti li jghallem fl-MCAST, il-kwalifiki u l-hiliet tieghu huma kollha fl-istess parametri tal-kollegi tieghu fl-Istitut tat-Teknologija tal-Informazzjoni u l-Komunikazzjoni. L-utilitajiet li jghallem bhala 'Data Structures and Algorithms' kif ukoll 'Software Design and Analysis' huma simili tat-taghlim u kriterji ta' valutazzjoni ghall-unitajiet kontro-parti taghhom fl-Istitut tat-Teknologija tal-Informazzjoni u l-Komunikazzjoni u huma bazati fuq kwalifiki standard tal-

industrija. Huwa jghid li mhux l-ewwel darba li huwa zviluppa unitajiet li mbaghad jigu mghallma fl-IICT.

Dan il-bonus ma jissemmiex fil-ftehim kollettiv u l-MCAST ghogbu jzomm dan il-bonus sigriet jghid ir-rikorrent.

In kontro-ezami a fol 93 et ir-rikorrent jammeti li s-suggetti li jghallem huwa huma differenti minn suggetti li jitghallmu l-istudenti tal-ICT pero' xehed ukoll li hemm unit partikolari li huwa komuni ghall-istudenti tal-MCAST kollu. Huwa pprova jmur jahdem mall-ICT izda risposta ghad m'ghandux – dan kien fil-15 t'Awissu 2019 meta sar jaf b'dan l-allowance. Huwa spjega li s-suggetti li jghallem huwa huma simili hafna ta' dak li jsir fl-ICT u li meta l-unit tieghu waqa' ghax il-kors kien spicca u kien hemm xi studenti li kellhom bzonn jaghmlu unit li kien qed jghallem hu r-registratur baghthom jaghmlu l-unit ekwivalenti fl-ICT.

A fol 23 l-MCAST ipprezenta dokument li jghid li l-posizzjoni f'Dicembru 2022 hija li dawk l-impjegati (anke ndikati b'mod anonimizzat) fi gradi bhal ta' jew analogi ma' dawk tar-rikorrent li jithallsu xi tip ta' bonus' jew 'allowance' kif deskritt mir-rikorrent fl-affidavit tar-rikorrent, hija li l-ammont (i) li jithallas kull impjegat kull xahar huwa ta' Ewro 680 u li jithallas lill-Istitut jew Dipartiment fejn kull impjegat jahdem u jaghti s-servizz tieghu IICT u t-tip ta' kuntratt ta' mpjieg li kull impjegat ghandu huwa ndefinit.

A fol 64 Conrad Vassallo fl-affidavit tieghu jghid li huwa mpjegat mall-MCAST fejn bhalissa jokkupa l-kariga ta' Direttur fl-Istitut tal-ICT fejn ilu f'din il-kariga sa minn Settembru 2015. Huwa spjega li meta thabbar il-progett ta' Smart City ghall-MCAST kien difficli li thajjar u timpjega specjalisti tal-ICT u kif ukoll tikkompeti mas-salarji li kienu qed jigu offruti mill-industrija. Li ghalhekk dan il-bonus kellu jinghata lil-Letturi gewwa l-Istitut tal-ICT peress li kellhom domanda kbira izda l-applikanti kienu ftit u kien ghalhekk li Juan Borg Manduca li kien id-Direttur tal-Istitut tal-ICT f'dawk iz-zminijiet irnexxielu jinnegozja fond u pakkett finanzjarju mill-Ministeru kkonfermat sabiex Letturi gewwa l-Istitut tal-ICT ikollhom top up/allowance /bonus sabiex jigu kemm jista' jkun vicin u ugwali mall-pagi u salarji li kienu qed jigu offruti fl-industrija ovvjament il-mira wkoll sabiex l-MCAST tattira aktar Letturi fi hdan l-Istitut tal-ICT.

Vassallo jghid li grazzi ghal dan it-top up/ allowance/bonus, it-turnover fl-istaff f'dan l-istitut tal-ICT naqqas, it-talent u l-esperjenza zdiedet u b'hekk ukoll zdiedet il-kwalita tal-courses li jigu offruti lill-istudenti tal-istitut tal-ICT. Ghal dan it-top/bonus/allowance, huma eligibli biss Letturi fl-istitut tal-ICT flimkien ma' kwalifici rikonoxxuti u approvati mid-Direttur tal-ICT u fejn il-kwalifici jigu aggornati fir-rigward tal-korsijiet li qed jigu offruti fl-MCSST u skond in-necessita

tal-industrija. Huwa jghid li r-rikorrent mhuwiex parti mill-Istitut tal-ICT u ghalhekk mhux eligibbli ghat-top up/allowane/bonus.

Xehed Philip Vella a fol 84 et li huwa Deputat Principal fl-Amministrazzjoni tal-MCAST u li ilu f'din il-kariga mill-1 ta' Jannar 2019 u li din l-ICT allowance tmur lura ghas-sena 2006 meta kien ser jinfetah Smart City u kien hemm domanda kbira ghall-istudenti fl-ICT courses. Huwa jikkonferma li r-rikorrent ma kienx jiehu din l-allowance ghax mhux qieghed fid-dipartiment tal-ICT. Huwa kkonferma li d-differenza bejn ir-rikorrent u l-Ghalliema fl-ICT hija biss li r-rikorrent ma jaghmilx parti mid-dipartiment tal-ICT u li l-institute tal-engineering joffri korsijiet differenti mill-ICT. A fol 65 et ipprezenta Dok PV1 inter-ministerial memordandum tal-4 t' Ottubru 2006 li approva l-pakkett finanzjarju ghal dawn il-Lecturers fl-ICT department.

A fol 97 et in kontro-ezami Philip Vella xehed li l-lista li tinsab a fol 90 fil-process 3879/20 fil-kaz Steve Zerafa kontra l-istess Kullegg, spjega li l-IT allowance jew top alowance tinghata lill-Ghalliema tal-ICT li jkunu jaghtu lectures gewwa l-ICT u jkollok dawk ic-certifikati li huma meqjusa li inti tikwalifika biex tiehu din l-allowance. Tali allowance giet approvata at ministry level biex thajjar aktar Lecturers jghallmu fl-ICT minhabba li kien hemm bzonn nies jahdmu f'dan is-settur meta kien ser jinfetah Smart City. Tant li meta xi Lecturers li kienu jahdmu mall-ICT marru jahdmu f'institutes ohra huma ma baqghux jiehdu din l-allowance. Anke min hu fl-ICT u ma ghandux din il-kwalifika l-allowance ma jehdohiex. Kien hemm sett ta' kwalifici li wiehed kellu bzonn biex japplika li dawn maz-zmien gew updated. Mistoqsi ghaliex ir-rikorrenti ma gewx infurmati b'din l-lista Vella wiegeb li l-lista kienet accessibbli – kien hemm access ghal din il-lista tal-Lecturers li jghallmu gewwa l-ICT.

Vella kkonferma li l-allowance bdiet tinghata mis-sena 2006 meta hareg il-memorandum Claudio Grech u li kienet tinghata lil-Lecturers li kienu jghallmu fl-ICT li kien hemm fl-ahhar pagna ta' dan il-memorandum. Huwa kkonferma li jew tkun Lecturer fl-ICT jew Lecturer fid-dipartiment tal-Inginiera anke jekk tghallem xi suggett li jkun qed jigi mghallem fl-ICT ma jfissirx li inti Lecturer fl-ICT.

A fol 116 kompla jixhed Philip Vella in kontro-ezami u kkonferma li r-rikorrrent huwa mpjegat mall-MCAST bhala Lecturer u li Steve Zerafa jista' jghallem xi units relatati mall-IT u huwa co-ordinator fl-IT subjects. Huwa kkonferma li kemm Zerafa u r-rikorrent jghallmu l-istess livelli tal-Lecturers fl-IT department. Huwa rega' spjega r-raguni ghaliex il-Lecturers tal-IT inghataw din iz-zieda. Huwa spjega li hemm xi 39 mill-Ghalliema fl-ICT department li ma ghandhomx il-kwalifici rikjesti u

ghalhekk ma jiehdux din l-allowance minkejja li jahdmu fl-ICT department. Li anke jekk ir-rikorrent u Zerafa ghandhom dawn il-kwalifici l-fatt li ma jaqghux taht l-ICT department ma humiex eligibbli ghal din l-allowance. Huwa ma jafx li kemm ir-rikorrent u Zerafa talbu transfer ghall-ICT department izda wara kkonferma li Bugeja biss talab ghal dan it-transfer.

Mistoqsi jikkonferma li l-Lecturers li jahdmu mall-Gozo Campus ukoll jinghatawx din l-allowance, Vella wiegeb li ried jivverifika pero' meta huwa gie ndikat Charla Pia Vella, Mark Anthony Cassar u Victor Saliba Vella kkonferma li dawn jiehdu topup allowance izda kellu jivverifika jekk dawn jahdmux mall-ICT department jew le. Pero' jaf li hemm ICT branch gewwa Ghawdex.

A fol 123 kompla jixhed in kontro-ezami Philip Vella li kkonferma li Steve Zerafa ma ghamel ebda talba sabiex jigi trasferit ghal mall-ICT u li r-rikorrent kien l-ewwel talab kjarifika fuq il-qualification allowance f'Jannar 2019 liema talba kienet spjegata ghax kien mifhum li qed jaghmel rikjesta fuq l-extra qualification allowance li hija l-kwalifika ghal somma ta' flus li tinghata kull sena ghal min ikollu kwalifika extra pero' wara r-rikorrent f'Lulju jew Awissu 2019 kien specifika li kien qed jirreferi ghall- ICT allowance u kien dak iz-zmien li talab li jigi trasferit ghall-ICT department. Huwa kkonferma li r-rikorrent mar ikellmu fuq din il-kwistjoni. Dwar il-Lecturers gewwa l-campus ta' Ghawdex Vella xehed li Ghawdex huwa satellite institute ta' Malta jigifieri kull kors li jinghata Ghawdex jinghata Malta u dawk li jghallmu l-courses li jinghataw Malta taht l-institute tal-ICT jiehdu din l-allowance. U li din l-allowance johduha ghax jghallmu l-istess suggetti li jghallmu Malta l-Lecturers tal-ICT u jodhuha ghax ghandhom il-kwalifici rikjesti. Dwar jekk hemmx Lecturers ohra li jghallmu Gozo Campus u li ma humiex Lecturers tal-ICT li xorta jiehdu allowance Vella ma wegibx.

A fol 92 il-Kullegg Intimat permezz ta' nota pprezenta l-lista ta' kwalifici necessarji biex persuna tkun eligibbli ghall-allowance u li Lettur irid ikollu tal-anqas wiehed mis-segwenti kwalifici biex jista' jkun Lettur gewwa l-Istitut tal-ICT. Dawn huma:

Adobe Photoshop/Illustrator/InDesign+Microsoft Programme in HTML with JS and CSS3 (exam 480)

ADOBE Visual Communication – ADODE Educator Certificate – Introduction to Augmented Reality and ARCore-Gamification-Addictive User Experience – Introduction to E-learning Theory and Practice Revised

Android Certified Application Developer

C programming Language Certified Associate (CLA)

CCENT + CCNA Routing and Switching + CCNA Wireless

CCENT and CCNA

CLA- C Programming Language Certified Associate

Java SE 8 Programmer I and Java SE 8 Programmer II

MCSA

MCSD

Microsoft Professional Program- Data Science Certificate

Oracle Certified Associate and Oracle Certified Professional Java SE 7 upgraded to Java SE8 OCP Prorammer

Oracle Database Associate and Professional

Prince 2 Practitioner

Zend PHP Certification and Zend Framework

Unity Certified Associate and Developer

A fol 109 jirrizulta li l-kwalifici tar-rikorrenti Bugeja huma s-segwenti:

1997 Ordinary level Computer Studies Grade B

Session 2000 – Matriculation Certificate Grade B

Session May 2000 – Matriculation Certificate awarded. Overall Grade B

25th September 2003 – Bachelor of Science (Business and Computing)

September 2004 – Authorised Tester Certificate (ECDL)

October 2004 – C# Introduction

October 2004 Net Windows Programming using C# Intermediate

August 2006 Edexcel Leve 5 BTEC Certificate

September 2010 Health and Safety aspect of Drugs and Binge Drinking

11th June 2013 Master of Science with Distinction

A fol 104 et gie esebit mill-MCAST il-kuntratt tal-impjieg tar-rikorrent; a fol 109 il-kwalifici tar-rikorrent; u a fol 110 il-lista tal-Lecturers fl-ICT Institute li jiehdu Ewro 680 allowance fix-xahar.

A fol 134 ir-rikorrent ipprezenta l-Formal Grievance Procedure Form li kien issottometta lill-Grievance Officer tal-MCAST li turi li t-talba ghal transfer mall-ICT department ghamilha fl-20 t'Awissu 2019, izda baqa' minghajr twegiba, a fol 139 huwa esebixxa l-korrispondenza bejnu u bejn Philip Vella dwar it-talba tieghu ghal dan it-transfer.

A fol 144 et Philip Vella in kontro-ezami li meta muri Dok X2 a fol 139 et huwa xehed li ma setax jikkonferma li huwa rahom dawk l-emails izda kkonferma li l-kontenut ta' dawk l-emails huwa rilevanti mall-emails li pprezenta hu. Dwar il-grievance report a fol 134 Vella xehed li huwa ma nghata ebda handover dwar il-kwistjonijiet tar-rikorrent u ta' Zerafa. Meta jidhol grievance report, il-grievance office jaghmel rakkomandazzjonijiet lill-Principal u dik hija l-policy. Huwa ma jkunx infurmat b'dawn il-grievances.

Dwar it-talba tar-rikorrent ghal transfer, Vella kkonferma li din ghadha pendenti u mistoqsi jekk f'dawn l-ahhar xhur saritx external call biex jidhlu nies godda jahdmu mall-ICT Institute tal-MCAST Vella wiegeb li ried jiccekkja. Meta muri Dok Xt mehuda mid-database interna tal-MCAST minn fejn jirrizulta li harget din il-call, Vella wiegeb li dan huwa l-MCAST job portal li turi l-vacancies kollha li jkun hemm ghall-MCAST u li din hija procedura normali. Pero' huwa kellu jiccekkja.

Illi fis-seduta tat-23 ta' Gunju 2023 il-provi gew dikjarati maghluqa u l-partijiet qablu li jaghmlu noti.

Ra d-dokumenti kollha esebiti.

Fin-nota tal-osservazzjonijiet taghhom ir-rikorrent jishaq li huwa jaghmel l-istess xoghol tal-Letturi l-ohra fl-istess grad tieghu li jghallmu fl-istess kullegg izda fid-dipartiment tal-ICT u ghalhekk ghandu jinghata din l-allowance li kull xahar il-Kullegg jaghti lil dawn il-Letturi. Li l-agir tal-Kullegg Intimat jammonta ghal diskriminazzjoni ai termini tal-artikolu 26 tal-Kap 452 u ksur ta-procediment aktar partikolari tal-Artikolu 27.

Ir-rikorrent qed jitlob li l-Kullegg Intimat jigi ordnat li jpoggi fl-istat li kien ikun fih kieku ma kienx hemm tali agir u ghalhekk ordnati jhallsuh l-ekwivalenti tal-allowance kollu li gie deprivat minnu u jkomplu jhallsu tali allowance il-quddiem. Dwar jekk oltre dan ghandux ikun hemm element addizzjonali ta' kumpens minhabba l-mod li bih gie trattat minhabba dewmien kf ukoll minhabba elementi ohra bhal telf ta' ntrojtu r-rikorrent halla ghal gudizzju ta' dan it-Tribunal.

Fin-nota tal-osservazzjonijiet tieghu l-Kullegg Intimat li permezz taghha huwa l-Kullegg Intimat sahaq li r-rikorrent jgawdi l-istess salarju bhal Kollegi ohrajn fl-istess nomenklatura. Li l-bonus/allowance mertu tal-kaz sabiex ir-rikorrent ikun intitolat ghalihom irid jissodisfa zewg kriterji oggetti - li jkun taht l-istitut tal-ICT u li jkollu diversi kwalifici. Li r-rikorrent ma jissodisfa l-ebda minn dawn il-kriterji u ghalhekk mhux intitolat ghal tali bonus/allowance. Li anke jekk hemm xi suggetti li huwa jghallem fid-dipartment tieghu hemm bahar jaqsam bejn ftit suggetti simili u sillabu shih. Li r-rikorrent ma ghandux l-kwalifici necessarji u lanqas gab prova ta' applikazzjoni mall-Istitut tal-ICT u li anke kieku applika tali applikazzjoni ser tkun michuda minhabba l-kriterja tal-kwalifici hija prova fundamentali sabiex ir-rikorrent jipprova l-kaz tieghu li qed jigi diskriminat. Li l-gholi tal-bonus/allowance ma jistax jigi nterpretat bhala diskriminazjoni stante li kull persuna tircievi l-istess salarju jekk ghandha l-istess titolu u ghalhekk il-principju equal pay for equal work qed jigi applikat kif huwa fil-kaz odjern. Dan bhal meta l-Kullegg jaghti perfomance bonus lid-Diretttur liema bonus ikun kaluklat skond kemm jirrendi dan id-Direttur izda s-salarju huwa ugwali ghal salarju ta' Direttur iehor.

**<u>Konsiderazzjonijiet</u>**

F'dan il-kaz fuq il-fatti hemm qbil.

Il-kontestazzjoni hija li r-rikorrent bhala Senior Lecturer u Subject Coordiator fl-Institue of Engineering and Transport gewwa l- MCAST qed jippretendi li ghandu jiehu l-istess allowance li jiehdu kull xahar il-Lecturers fl-istess grad tieghu li jghallmu fl-Istitut tal-Information and Communication Technology. Li ghalhekk huwa qed jibbaza l-kaz tieghu fuq diskriminazzjoni u qed jikkontendi li meta paragonat ma' Lecturers fl-ICT department, huwa mhux qed jircievi l-allowance li qed jircievu huma kull xahar.

L-MCAST tikkontendi li tali allowance r-rikorrent mhux intitolat ghalih ghax ma jissodisfax il-kriterji mitluba cioe' li jkun Lecturer fl-ICT department u li jkollu l-kwalifici msemmija a fol 80 tal-process u li ghalhekk mhu qed issir ebda diskriminazzjoni mieghu. Li tali allowance kellha tigi ntrodotta sabiex ihajjru aktar Lecturers jghallmu dan is-suggett minhabba li l-pjan li kien hemm biex Smart City tkun ICT city.

Il-kwalifici sabiex wiehed jista' jghallem fl-ICT department skond fol 71 overleaf et huma dawn:

IICT Lecturers Top Up Allowance Regulations

A Lecturer at the Institute of ICT can benefit from the monthly top up allowance if the underneath guidelines are followed:

New staff can apply only after they complete their one-year probation period.

1. Be in possession of a valid industry certification. A certification is considered valid if it is approved by IICT administration according to the institute and industry needs.
2. An allowance is given in full to those Lecturers who successfully complete a certification path. The employee will be remunerated in part upon successful completion of the first part of the certification which is highlighted as mandatory. The employee is bound to complete the rest of the certification in one year.
3. Valid industry certifications which are accepted by IICT Administration may change from year to year depending on the market needs
4. Any industry certification expires in a maximum of 3 years. After such date the Lecturer should renew his/her certification or obtain a new certification either in the same field or another field. Allowance will not be given for any expired certification.

Il-lista ta' accepted certifications hija elenkata a fol 80 et u li hemm dawk indikati bhala li huma compulsory u 'entitled for half of the allowance.'

Mill-provi pero' ma jirrizultax li hemm min mill-Letturi ta' l-ICT department li jiehdu nofs din l-allowance.

Dwar diskriminazzjoni, kif prospettat fl-artikolu 26 tal-Kap 452, l-avvizi legali 297 tas-sena 2003 u 461 tas-sena 2004 u d-direttivi tal-Unjoni Ewropea numru 200/42/EC u 2000/78/EC, gie dejjem deciz li l-principju tal-parita ta' trattament (like with like). Dan it-Tribunal jaghmel referenza ghad-decizjoni tat-Tribunal Industrijali tat-2 t'Ottubru 2020 fl-ismijiet Mark Muscat vs HSBC Malta (plc ) fejn it-Tribunal irrileva li: "Illi ghalhekk dan it-Tribunal sabiex jikkonkludi li kien hemm diskriminazzjoni mar-rikorrent ghandu bil-fors jikkompara like with like, irid isir "ezercizzju ta' paragun bejn, almenu, zewg gruppi ta' fatti jew cirkostanzi (vide Rose Anne Galea vs l-Onor Prim Ministru et QK 11 ta' April 1994) u jekk kienx hemm ksur tal-principju tal-parita ta' trattament (vide Paul Borg vs APS Bank Limited deciza App.Inf 26 ta' Marzu 2010) cioe' jekk kienx hemm impjegati fl-istess grad tar-rikorrent li gew trattati diversament mir-rikorrent ghal dak li jirrigwarda zieda fil-pakkett tieghu cioe' zieda fil-paga u zieda fil-bonus. "

L-artikolu 26(2) tal-Kap 452 jelenka meta jkun hemm trattament diskriminatorju: ghazla jew impjieg ta' persuna li tkun anqas kwalifikata minn persuna tas-sess oppost, hlasijiet jew kundizzjonijiet ta' mpjieg anqas favorevoli; azzjonijiet li bihom

il-principal xjentement jimmaniggja x-xoghol, iqassam il-bicciet ta' xoghol jew mod iehor jirranga l-kundizzjonijiet tax-xoghol hekk li mpjegat ikun assenjat status li manifestament ikun anqas favorevoli minn ohrajn abbazi ta' trattament diskriminatorju.

Illi oltre dan ghandha ssir distinzjoni bejn diskriminazzjoni diretta u dik indiretta u distinzjoni bejn trattament ingust u diskriminazzjoni. Per Ezampju fil-kaz The Law Society vs Kamlesh Bahl il-Qorti Ingliza rriteniet li trattament jista' jkun ingust izda ma jammontax ghal diskriminazzjoni. Dan it-Tribunal jaqbel li dan il-principju jghodd ghal Malta wkoll izda ma jaqbilx li l-lista ta' diskriminazzjoni msemmija fil-ligi Maltija hija wahda esklussiva u huwa tal-fehma li l-ligi taghna hija aktar wiesgha mil-ligi tal-Unjoni Ewropea u kwalunkwe trattament diskriminatorju ghandu jigi sanzjonat.

*Dan it-Tribunal jirreferi ghal decizjoni tal-Qorti tal-Unjoni Ewropea tal-Ewwel Istanza li rriteniet "It is well settled that discrimination involves the application of different rules to comparable situations or the application of the same rule to different situations (see, in particular, Case C-279/93 Finanzamt Koeln-Altstadt v Schumacker [1995] ECR I-225, paragraph 30). "*

U fil-kaz *Case C-309/97*, l-istess Qorti kienet spjegat dan li gej dwar diskriminazzjoni fil-pagi fuq il-post tax-xoghol:

*"THE COURT,*

*In order to determine whether different groups of persons who perform seemingly identical tasks but who do not have the same training or professional qualifications for the practice of their profession do the same work within the meaning of Article 119 of the Treaty (Articles 117 to 120 of the Treaty have been replaced by Articles 136 EC to 143 EC) or Directive 75/117 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, it is necessary to ascertain whether, taking into account the nature of the tasks that may be assigned to each group respectively, the training requirements for performance of those tasks and the working conditions under which they are performed, the different groups can be considered to be in a comparable situation.*

*That is not the case for two groups of persons, such as psychologists and doctors employed as psychotherapists, who have received different professional training and who, because of the different scope of the qualifications resulting from that training, on the basis of which they were recruited, are called on to perform different tasks or duties. Thus the term `the same work' does not apply, for the purposes of the aforementioned provisions, where the same activities are performed over a*

*considerable length of time by persons the basis of whose qualification to exercise their profession is different."*

Illi huwa dan l-ezercizzju li dan it-Tribunal irid jaghmel f'dan il-kaz cioe' li jara jekk ix-xoghol tar-rikorrent u dak tal-Letturi fl-ICT department jaqax bhala li huwa 'the different groups can be considered to be in a comparable situation' sabiex ikun jista' jasal ghad-decizjoni dwar jekk ir-rikorrent ghandux ragun.

Ir-rikorrent jallega li huwa mhux qed jigi trattat bhal Lecturers fl-istess grad tieghu li jghallmu fl-ICT. Huwa Lecturer fid-dipartiment tal-Inginerija u li l-allowance li jiehdu huma ghandu jehodha huwa wkoll kemm ghax ghandu l-kwalifici daqshom kif ukoll ghax huwa Lecturer bhalhom u jghallem suggetti simili ghal li jghallmu huma.

Tajjeb jigi rilevat ukoll li l-gustifikazzjoni moghtija mill-MCAST ghal tali allowance hija pruvata li saret minhabba esigenzi organizzativi u saru in bona fede (vide f'dan is-sena Richard Anthony Matrenza vs Joseph Attard Kingwell nominee Appell Civili 3 ta' Frar 1969). F'din is-sentenza l-Qorti qalet li tali modifikazzjoni meta hekk verament necessitata basta wkoll mhux f'mansjoni nferjuri ghal grad tieghu ma tidhirx li tikkostitwixxi ksur tal-principju tal-parita ta' trattament.

Illi mill-provi jirrizulta li l-progett ta' Smart City kif kien mahsub ma rrizultax, ma jistax jinghad ghalhekk u lanqas gie pruvat, li tali ncentiv sabiex ihajjru Lecturers fl-ICT department ghad hemm bzonnu. Tali ncentiv li dahal fis-sehh fis-sena 2006 cioe' aktar minn 17-il sena ilu kien mahsub sabiex fis-sena 2006 ihallsu 160 student aktar mis-snin ta' qabel jaghzlu suggett tal-ICT. Minn fol 79 jirrizulta li l-projections li kienu saru fil-Cabinet Memo kienu sal-ahhar tas-sena 2012 u ma hemm ebda prova li tali ncentiv kien gie estiz mill-Gvern. Huwa l-Kullegg li halla kollox ghaddej qisu xejn mhu xejn u baqa' jaghti din l-allowance lil dawn il-Letturi fl-ICT department minghajr ma kkonsulta mall-Gvern sabiex jara jekk tali allowance ghandhiex tibqa' tinghata.

A fol 104 et jirrizulta li r-rikorrent gie mpjegat bhala Assistant Lecturer mall-MCAST fil-25 t'Awissu 2003 b'effett mill-ewwel ta' Settembru 2003. Ma jirrizultax li l-impjieg tieghu kien ma' dipartiment partikolari izda kien mall-Kullegg Intimat. Il-kuntratt kien ghal tlett snin li jigi mgedded awtomatikament ghal tlett snin ohra u llum huwa jinsab fuq kuntratt indefinit.

Illi hemm qbil li r-rikorrent huwa Senior Lecturer izda mill-atti ma jirrizultax meta huwa lahaq Senior Lecturer lanqas.

A fol 110 il-lista ta' Lecturers li jircievu l-allowance ta' Ewro 680 fl-ICT Institute ma jirrizultax xi grad huma jekk hux Lecturers jew Senior Lecturers.

Dan it-Tribunal ma jistax ibierek l-argument tal-MCAST li hija qed tonora l-Cabinet Memo ta' aktar minn 17-il sena ilu, kemm ghar-ragunijiet hawn fuq indikati u kif ukoll, "In its reasoning as to the significance of existing collective agreements on pay, the Court asserted that the fact that the salaries of the employees concerned had been set by collective agreements did not automatically mean that no wage discrimination had occurred. The existence of pay agreements has to be weighed alongside other factors, though.

Li ghalhekk mill-provi jirrizulta li:

Ir-rikorrent huwa mpjegat mall-MCAST kif inhuma mpjegati l-Letturi tal-ICT department;

Ir-rikorrent huwa Senior Lecturer mall-MCAST kif suppost (ghax ebda prova ma saret) li huma mpjegati - il-lista ta' Letturi a fol 110

Ir-rikorrent ghandu kwalifici ta' Lettur u suppost ghandhom kwalifici ta' Lettur dawk li jghallmu fl-ICT department (suppost ghax ebda prova ma saret).

Ir-rikorrent ipprova li huwa kapaci u kwalifikat sabiex jghallem fl-ICT department.

Li ghalhekk huwa jissodisfa l-kriterji kollha li jwasslu lil dan it-Tribunal jasal biex jiddeciedi li jilqa' t-talba tar-rikorrent u jiddikjara li saret diskriminazzjoni fil-konfront tieghu mill-Kullegg Intimat.

Li ghalhekk huwa ntitolat li jircievi Ewro 680 allowance fix-xahar jew kull allowance li tista' minn zmien ghal zmien tinghata lil-Letturi fl-istess grad tieghu fl-ICT department u dan mid-data li huwa lahaq Senior Lecturer liema data dan it-Tribunal ma ghandux ghad-dispozizzjoni tieghu.

Ghaldaqstant:

Rigward l-ewwel talba: din sorvolata stante li tali nformazzjoni nghatat fil-mori.

Rigward it-tieni talba: din qed tigi milqugha ghar-ragunijiet hawn fuq spjegati.

Rigward it-tielet talba: din qed tigi milqugha ghar-ragunijiet hawn fuq spjegati.

Rigward ir-raba u l-hames talba: dawn qed jigi milqugha u l-Kullegg Intimat qed jigi ordnat ihallas Ewr 680 allowance fix-xahar dekorribbli mid-data ta' meta r-rikorrent lahaq Senior Lecturer.

Dan it-Tribunal jissollecita lill-Kullegg Intimat sabiex isaqsi jekk tali cabinet memo ghadux fis-sehh u jekk iva ghandux jibqa' fis-sehh.

Ghall-finijiet ta' l-Avviz Legali 48 tal-1986, dan it-Tribunal jistabbilixxi d-drittijiet ta' min assista l-partijiet fl-ammont ta' €93.17.

B'hekk tintemm din il-kwistjoni tax-xoghol.

(Iffirmat)
**Dr Anna Mallia LL.D.**
**Chairperson**

**Vera Kopja**

**Marica Psaila**
**Ghas-Segretarju**