

- **Candidates who do not meet the requirements of the Scheme of Service cannot be considered even if the issuing of the circular with a cut off date was done in an unreasonable manner by the relevant Ministry.**

The Appellants averred that they were debarred from taking part in a selection exercise despite the fact that they had higher qualifications than the Co-Respondents and had more experience. Yet they could not compete for a post that required a lower qualification. In terms of salary, they were getting less with their University degree than those appointed for a post which only required a Diploma. Appellants applied to the Tribunal for redress. In his submission, Counsel for Appellants laid emphasis on the unreasonableness of the PSC regarding the professional choices of the Appellants who had to take decisions on the courses that they would follow at particular times and in specific contexts, specially after not having been admitted to the relevant course. He stated that the relevant Circular itself was unreasonable as it mixed up graduates and 'diplomates'. He also found the processing of the applications to be unreasonable.

He maintained that, since there were 34 persons qualified and the Ministry declared 33 posts vacant, it was not a selection exercise but amounted to a promotion exercise with a predetermined outcome. He stated that letters of protests and a *mise en demeure* were ignored. The PSC did not take its responsibility by questioning the Ministry or seeking appropriate legal advice.

Counsel stressed on the fact that "the Tribunal should intervene, not in any way against those who have been selected or nominated, but to ensure that there is a level playing field for all citizens of this country that could have had a case for positions they have served."

Respondent's Counsel, in her submission, was adamant that it could not entertain applications from candidates who had not yet obtained their qualifications even if they were to obtain them in the coming days. If Respondent were to do so, this could create a precedent and would open a never-ending floodgate for such

requests in the future. The Respondent pointed out that it was bound by the prescribed Scheme of Service. The Respondent averred that it had acted fairly and reasonably in following the procedures of recruitment and the Appellants had no case for appeal.

Counsel for Co-Respondent submitted that the PSC did not have a discretion under the Constitution to decide on any protest or on anything that had to do with central government. He agreed that there had been a “confusion” but held that this can only be corrected at the level of central government. He said the appeal was misconceived, and should have gone before the Supreme Court. He also said that the PSC did not have to react to a *mise en demeure* which was not a court order.

One of the main contentions was whether the Respondent had the discretion to shift the closing date for a recruitment that was already in process to suit the special circumstances of potential candidates. In the present case, the Appellants found it hard that they were missing an opportunity to apply since they were awarded their diplomas two months later. Unfortunately, however sad their case may be, a cut-off date is a mandatory time-limit and could not be modified in the middle of a recruitment process. The Appellants had just fallen on the “wrong side of the line” and it was not Respondent’s doing. The Respondent could not accede to the request to move the closing date even if the request had reached Respondent before the closing date for application.

The Tribunal determined that it was clear that the Appellants could not ask the Respondent to consider them for appointment as they did not meet the requirement of the Scheme of Service which is binding.

As regards the issue as to whether the Respondent was capable of questioning the issuing of the relevant Circular which would clearly favour the 34 applicants who qualified and exclude all those who were on the verge of qualifying, the Tribunal determined that Respondent could delegate its powers but retained full responsibility for all appointment/recruitment exercises.

The Tribunal could not accept the “humanitarian” ground raised as a valid ground for appeal as per the PBAT Act.

The Tribunal did not find that the Respondent acted in bad faith. Rather there was a severe lack of planning and administration of the sector in question which unfortunately impacted negatively on the career of some officers who had been committed to this very demanding and sometimes ungrateful sector. But the Tribunal viewed with concern the fact that the Ministry chose to issue its Circular with that cut-off date even though it must have known that there were teachers following the course leading to the diploma required in the Scheme of Service.

The Tribunal found that Respondent had followed the prescribed Scheme of Service and the appeals were therefore not allowed.