

**PUBLIC BODIES APPEAL TRIBUNAL**

No. D/23 of 2013

In the matter of:-

**Appeal A:**

**Ajay Jeawon**

**(Appellant)**

**Versus**

**Local Government Service Commission**

**(Respondent)**

- 1. Abdool Gorah Bai Jumun**
- 2. Sawood Bocus**

**(Co-Respondents)**

**Appeal B:**

**Ajay Jeawon**

**(Appellant)**

**Versus**

**Local Government Service Commission**

**(Respondent)**

**Mr. Ameer Hamza Dilloo**

**(Co-Respondent)**

**Appeal C:**

**Saiyad Ally Boodhun**

**(Appellant)**

**Versus**

**Local Government Service Commission**

**(Respondent)**

**1. Abdool Gorah Bai Jumun**

**(Co-Respondents)**

**2. Sawood Bocus**

**Determination**

The three appeals have been consolidated as they relate to the same exercise for appointments in the grade of Overseer in the Municipality of Vacoas/Phoenix (hereafter referred to as the Municipality).

The post of Overseer is filled according to the prescribed Scheme of Service for the post, effective as from 13 May 2009, which reads as follows:

*“By selection from among employees who*

- (i) Possess the Certificate of Primary Education*
- (ii) Hold a substantive appointment and reckon at least 10 years service; and*
- (iii) Reckon at least five years’ proven experience in the supervision of field workers performing outdoor duties”*

The fact that there was a selection exercise is not disputed.

The vacancies to the post of Overseer were advertised among qualified employees of the Municipality of Vacoas/Phoenix on 18 October 2011 by way of

Circular No.66 of 2011. The closing date for submission of applications was 11 November 2011. There were 51 applications and six candidates were found eligible and were convened for interview on 9 April 2012. Co-Respondents Jummun and Bocus were appointed as Overseer with effect from 16 April 2012.

Subsequently, another vacancy for the post of Overseer arose and Co-Respondent Dilloo was appointed with effect from 31 December 2012.

### **Appellant's Case**

Appellant Jeawon, Head Attendant, averred that he was qualified for the post but he was not called for interview (in Appeal A and Appeal B). As Head Attendant, he performed supervisory duties of cleaners and attendants of the reception hall. He claimed that Co-Respondents Jumun and Bocus were called for interview in spite of the fact that they were not eligible. Co-Respondent Bocus had been reprimanded by the Municipal Council and in addition Appellant stated that Co-Respondent Bocus had a police case against him. The Appellant found that this was unfair as he was doing work outdoor and was doing supervision of workers and had no adverse report against him. He should have been called for interview and be considered for the post.

Appellant Boodhun averred that he joined the Municipality as Lorry Loader on 17 June 1994. On 3 October 1994, he was appointed Labourer (Malaria), later restyled Handy Worker (Sanitation Disease Control). Appellant claimed that he met the requirements of the Scheme of Service and had been assigned the duties of Overseer on six occasions. He was senior to the two Co-Respondents (in Appeal C) by one month. He also referred to the severe reprimand following disciplinary proceedings against Co-Respondent Bocus and the fact that the latter "has not a clean criminal record". The Appellant was called for interview but was not appointed.

In the three appeals, the Appellants averred that Co-Respondents Jummun and Bocus did not satisfy requirement (iii) of the Scheme of Service, i.e. "*reckon at least five years proven experience in the supervision of field workers performing outdoor duties*". Co-Respondents Jumun and Bocus were Barbenders at the Municipality. Co-Respondent Bocus was, before joining the Municipality, Packing Supervisor at

Tropic Knits, a private enterprise and was not supervising outdoor workers. Both Co-Respondents could not be found eligible for consideration for the post of overseer.

The Appellants felt aggrieved that they had not been found fit for the post while the Co-Respondents Jumun and Bocus did not meet the requirement of the Scheme of Service but they were called for interview and selected for the post.

### **Respondent's case**

The Respondent averred that there was a selection exercise. In the first instance, there were two appointments. Consequently, there was another vacancy and Co-Respondent Dilloo was appointed. There was no fresh interview for the appointment of Co-Respondent Dilloo as the Respondent drew from the merit list that was established from the interview exercise of April 2012.

The Respondent stated that, as this was a selection exercise, seniority gave way to qualifications, experience and merit as per section 13 of the LGSC Regulations. In the same vein, assignment of duties that have been given from time to time did not give the incumbents any claim for permanent employment.

Counsel also stated that Respondent acted on information provided to it by the Responsible Officer (R.O) of the Municipality. The R.O had certified that the Co-Respondents had the necessary experience in the supervision of field workers performing outdoor duties. He also certified that Appellant Jeawon did not have this experience as he was supervising cleaners and attendants who were not performing outdoor duties.

Respondent conceded that Co-Respondent Bocus was severely reprimanded in June 2010 following disciplinary proceedings for being absent from site of work without authorization and for carrying out private work. However, the R.O was not aware of any criminal record against Co-Respondent Bocus. Respondent averred that letters were sent by the R.O to the Divisional Commander, Vacoas Police Station to enquire but he did not get any reply.

Respondent averred that it had followed scrupulously all procedures and acted according to regulation 13 of the LGSC Regulations. Respondent had to ascertain the suitability of the candidates before making the appointments.

The Respondent asked the Tribunal to set aside the appeals.

### **Determination**

All parties agree that there has been a selection exercise and the sequence of events to the appointments is not contested.

The contention of the Appellants is that the Respondent acted on wrong premises. This concerns the experience of the Co-Respondents as regards supervision of field workers and the adverse report(s) against Co-Respondent Bocus.

As regards Appeal B, the Appellant is challenging the fact that he was not called for interview. This appeal can be set aside as the appointment of the Co-Respondent was made from a merit list which was still valid at the material time. The Respondent is perfectly in order to resort to the merit list. There is nothing to show that the Co-Respondent was not eligible for consideration as his duties include "*supervising the work of Chainmen*" who are performing outdoor duties.

The first problem in Appeal A and Appeal C concerns eligibility of the Co-Respondents. Both Co-Respondents are Barbenders. There is nothing to show that their work includes the supervision of field workers doing outdoor duties. If the R.O recommended Co-Respondent Bocus to the Respondent on the basis of his experience at Tropic Knits as Packing Supervisor, this was wrong. It became clear during the Hearing that the post of Packing Supervisor could not qualify as outdoor duties. The Tribunal has already given a Ruling in a previous Determination where it stressed on the fact that experience referred to in the Scheme of Service clearly relates to experience in the local government service and not to experience in private enterprises.

The second problem relates to adverse reports. Co-Respondent did not dispute the fact that he was severely reprimanded for leaving his work site without authorisation. Further with regards to the fact that the R.O failed to get confirmation that the

Co-Respondent Bocus had a police case, the Tribunal finds this most unsatisfactory as it cannot be said that the R.O's recommendation was based on facts which had been crosschecked. However, the Co-Respondent himself conceded at the hearing that he had a police case against him and he was on remand for six days from 15 September to 22 September 2008. Had the R.O asked Co-Respondent Bocus about this issue, he would have received confirmation of this fact before finalising his report to Respondent. Co-Respondent Bocus also conceded that he obtained a medical certificate for sick leave from 13 September 2008 to 22 September 2008 for lumbar pain but he never informed his employer about the pending police case. Surprisingly, the sick leave is on all fours with the period of remand.

The Tribunal, therefore, finds that the Respondent has erred in finding Co-Respondents Jumun and Bocus eligible as they do not one of meet the requirements of the Scheme of Service, which is mandatory. In addition, in the case of Bocus, the Respondent has not taken into account an element which it should have taken into account, viz the reprimand and the police case against him.

The Tribunal quashes the decision of Respondent to appoint Co-Respondents Jumun and Bocus to the post of Overseer.

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

**G. Wong So**  
Member

**P. Balgobin-Bhojrul (Mrs)**  
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.**