

Qualifications, experience and merit are more important criteria than seniority in a selection exercise as per LGSC Regulation 13

The two appeals have been consolidated for the purposes of giving a determination as they both relate to the same appointment exercise for the post of DHML by the Respondent and the appointees, whose appointment are challenged, are the same and were called as Co-Respondents in both appeals.

The post of DHML was advertised on ... among serving employees of the Municipal Council of ... Fifteen candidates were found eligible for the post, including the Appellants, in both appeals. They were all called for interview.

Following the interview, the Respondent decided to appoint the Co-Respondents as DHML.

In Appeal A - Appellant's Case

Appellant solemnly affirmed to the correctness of his grounds of appeal and Statement of Case. Appellant No 1 considered that he should have been selected for the post of DHML. He was under the impression that seniority was an important factor and confessed that he was confident that as senior-most, he would have been appointed to the post.

He explained that, having been to the interview, he was therefore eligible for the post but he maintained the fact that as he had several licences this was a material factor which should have weighed in his favour during the interview. He found strange that it was not considered since when he went for

an interview at a previous selection exercise for the same post, he was questioned as to whether he had other licences. That was the reason why he had taken further tests and acquired more licences.

Under cross-examination, he admitted having been reprimanded in the past. He was interdicted, after being reprimanded but was reinstated thereafter.

He averred that the Co-Respondents joined the service after him and they did not possess the appropriate licences. They could not do the job.

He admitted that the proper procedures were followed by the Local Government Service Commission in relation to appointment exercises.

In Appeal B, Appellant swore as to the correctness of his Grounds of Appeal and Statement of Case. He appealed against the appointment of five of the seven appointees. However, since the determination of the Tribunal would impact on the two other appointees, they were joined as Co-Respondents as well. Appellant averred that he had the necessary licences which he claimed was not the case for the Co-Respondents. The Scheme of Service, he stated, required applicants to be holders of the relevant and necessary licences.

The Appellant also stated that seniority had not been taken into account and that seniority should be a priority. The Respondent had appointed his juniors which he considered to be an arbitrary decision "without any rationale". He firmly believed that he should have been appointed as he possessed many licences relevant to the duties and he could not understand why the Co-Respondents had been appointed. He stated that he had been told by his supervisor that it was necessary for him to have the special licences, which were appropriate to the post.

Respondent's Case

In Appeal B Respondent had raised a Preliminary Objection in Law as follows:

- (a) *paragraphs 1,5 and 9 be set aside in as much as same were not raised in the Grounds of Appeal and are outside delay;*
- (b) *Prayer 10 (e) be set aside in as much as the Tribunal does not have the jurisdiction to entertain same.*

It was agreed that paragraph (a) of the Preliminary Objection would be dealt with on the merits.

As to paragraph (b), Prayer 10 (e) was finally dropped by Appellant.

In both appeals the Respondent solemnly affirmed as to the correctness of their Statements of Defence. Respondent averred that the post of DHML was filled by selection as per the Scheme of Service. Although the Appellants were qualified for the post and were, therefore, called for interview, they were not considered as the best candidates for the post after a proper selection exercise was carried out.

The Respondent averred that in Appeal A, the Appellant was interdicted on ... from his post under Regulation 31 of the LGSC Regulations He was subsequently reinstated to his post and was given a severe reprimand under Regulation 42 of the LGSC Regulations.

The Respondent submitted that it had followed scrupulously all procedures and the appointment of the Co-Respondents were made following a selection exercise as per the Scheme of Service of the post which took into

account “*qualifications, experience and merit before seniority in the local government service*”

Counsel for Respondent submitted a Determination of the Tribunal on similar issues and which contains the same reasoning (Det 5 of 2013 on the Tribunal's website).

Co-Respondent's Case

In Appeal B, Appellant had only contested the appointment of 5 appointees and the Tribunal decided to call the other 2 so that all 7 were in fact made Co-Respondents so that they could have a right to be heard in both appeals.

Co-Respondents Nos 1, 4 and 5 had submitted statements of defence to which they solemnly affirmed. The gist of their Statements was to the effect that they had been found by the Respondent to be fit for the post and, therefore, deserved to be appointed. Co-Respondent No 3 also submitted his defence in Appeal A. All those who had been appointed to the post met the relevant qualifications requirements and they had clean records.

Determination

According to the Scheme of Service for the post of ..., candidates for the post must be from ...who possess a ...licence. There is no mention about the need for candidates to have any of the special Licences for them to operate ... The Appellants had grounded their appeal on the fact that they do have these licences.

The fact that the Scheme of Service requires the candidates to only possess a ... Licence as basic qualifications requirement seems to be the source of the

confusing situation. It was not disputed that a person who holds only a a ... Licence will not be able to operate any other kind of vehicle. Therefore, such a person if appointed will be of no use in the Unit even if he meets the requirements of the Scheme of Service.

This is why the Appellants find it unfair that they were not appointed. This would have been an anomalous situation. However, the Respondent produced a document at the hearing and it was obvious that the Co-Respondents had several other Licences.

Contrary to the averments of the Appellants, the Tribunal finds that the Co-Respondents are also holders of Licences that allow them to operate in the Unit.

The appointment was done by selection and seniority is not the determining factor as Appellant in Appeal A had thought. The Respondent had relied on its regulation 13 which puts qualifications, experience and merit before seniority. Appellant in Appeal B had averred that there was no adverse report against him. The Respondent confirmed that the Co-Respondents also had no adverse reports.

The Tribunal finds that the Respondent has not erred in its appointment process.

Both appeals are set aside.