

LGSC Regulation 31 provides that in cases where an officer has been found guilty by a court and sentenced accordingly or who has lodged an appeal against the conviction, the officer should be interdicted without pay as from the date of conviction

Appellant was informed by way of letter dated the ..., that he was being made to retire in the public interest. Feeling aggrieved by this decision in as much as he was put before a fait accompli without having been given the opportunity to comment or to make representations prior to that decision, he appealed before the Public Bodies Appeal Tribunal. The Appellant's contention is that this decision has deprived him of a substantive promotion in the future, since he has been removed from his post.

Appellant's Case

The Appellant is of the view that all court proceedings and judgements have to be submitted to the LGSC prior to any adverse decision being taken against any officer. According to him, the LGSC did not take appropriate cognizance of same, as had it done so, it would have found that there were compelling reasons for his re-instatement.

Appellant explained his dissatisfaction with the fact that he was not given the opportunity to make any representations prior to the decision to interdict him being taken. No mention was made in the letter convening him to a hearing that disciplinary action can be taken and that he had the right to counsel. On the day of hearing, he had to beg the Committee, in his words, to allow his counsel to represent him and he was allowed to do so.

Furthermore, the Appellant felt aggrieved by the alleged discriminatory treatment bestowed upon him by the LGSC. According to the Appellant, other officers of the local government who had been convicted of offences involving dishonesty, which the Appellant emphasised is not present in his case, were not

only reinstated by the local government, but also given promotion. He referred in particular to a case whereby an officer who was a SRI was reintegrated for a day or two after having been suspended for eleven years. According to the Appellant, this disparity in treatment is further exacerbated by the fact that he was not paid his salaries during the period when he was under interdiction. The Appellant maintained that he was only paid for the months of January, February, March, April up to May ... and that in May ... his salary was adjusted with the new PRB. The Appellant further insisted that the issue of non-payment of his salary was within the ambit of the Tribunal as this was a direct result of the disciplinary action taken against him.

Counsel for the Appellant insisted that in the event that the Appellant was being retired in the public interest, he should not have been penalised in terms of arrears of salaries. Furthermore, the Appellant felt that he had satisfied the requirement to be retired on the salary of CHE, as per the PRB Reports.

Referring to the Supreme Court Judgment of Oodally v/s Municipal Council of Beau Bassin Rose Hill (2012 SCJ), Counsel for the Appellant referred to the purpose which an interdiction was intended to serve and that the decision of the Respondent in the present case to interdict the Appellant without pay could not be supported.

The relevant part of the judgement read as follows:

“We find it apposite to refer to the observations of Lord Denning in **Lewis v Heffer & Ors [1978] 3 All ER** at page 364 that:-

“Very often irregularities are disclosed in a government department or in a business house; and a man may be suspended on full pay pending enquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. ...The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended.”

Interdiction therefore is purely a preliminary step taken to facilitate the investigative process into the allegations of misconduct or malpractices in a controlled environment and without any interference whilst allowing the department to continue its normal operation. It is a holding operation done in the interest of good administration. It removes the officer from the work environment, albeit temporarily to allow the investigation to take place free from external influence or interference. It is a measure taken until either the Director of Public Prosecutions or the Local Government Service Commission (LGSC) can determine, based on the findings of the investigation, whether or not to institute criminal or disciplinary proceedings against the Local Government Officer or until the LGSC determines whether or not to retire him in the public interest.

Counsel for the Appellant also referred to Paragraph 5.12.1 of the Human Resource Management Manual, which states:

“An officer who has been interdicted from the exercise and functions of his office, shall pending the determination of his case, continue to be paid his salary (2)Notwithstanding sub paragraph (1) where an officer is sentenced to a term of imprisonment, payment of his salary shall be stopped with immediate effect even if the officer has lodged his appeal.”

He stressed on the fact that PSC Circular of 23rd May 2011 which stated that the officer should be interdicted from pay as from the date of conviction is contrary to the law. Counsel for the Appellant further stated that the right of a Local Government Service Officer, who is being retired in the public interest, is the same as anybody who has been retired in the normal course from the Local Government Service. Furthermore, any person subject to criminal proceedings, who is made to retire in the public interest, should not be penalised in any way because at the date he retires he is deemed to be still in service. That is why he is being retired in the public interest.

Respondent's Case

Respondent deponed and explained that Appellant was informed in a letter dated the 2nd December 2013 that he was being made to retire in the public

interest from the local government service in accordance with Regulation 36 LGSC Regulations 1984 which is as follows:

“36. Procedure on criminal conviction

- (1) Where a local government officer is found guilty of a criminal charge likely to warrant disciplinary proceedings, the responsible officer shall forthwith forward to the Secretary a copy of the charge and the proceedings relating thereto together with his own recommendation.*
- (2) The Commission shall determine whether an officer to whom paragraph (1) relates should be dismissed or subjected to some disciplinary punishment other than dismissal or whether his service should be terminated in the public interest if the proceedings disclose grounds for doing so, without any of the proceedings prescribed in regulation 37, 38 or 39 being instituted.*
- (3) Disciplinary proceedings subsequently to a conviction shall not normally be taken in respect of minor offences under the Road Traffic Act, and of minor offences not entailing fraud or dishonesty and not related to an officer's employment.”*

On the ..., the Responsible Officer of the Municipal Council of ... interdicted the Appellant from the exercise of the powers and functions of his post of ...at the Municipal City Council of Port Louis following an alleged act of gross misconduct concerning an ... Officer. On the same date, the Responsible Officer of the Municipal Council of ... sought the covering approval of the Commission to that effect.

On the ..., the Commission gave covering approval for the interdiction of the Appellant from the exercise of the powers and functions of his post of ... with effect from ...

On..., the Respondent explained that the Appellant was arrested in connection with a case of ... and was bailed out after furnishing a surety and a

recognizance of... on his own name. The Appellant was not interdicted from the exercise of his functions.

On the 19th June 2007, the Director of Public Prosecutions advised prosecution against the Appellant for ... The Appellant was subsequently prosecuted before the Intermediate Court and the case was fixed for trial on the ... In a judgement delivered on the ..., benefit of the doubt was granted to the Appellant and the case was dismissed.

In a letter dated the..., the Responsible Officer of the Municipal ... recommended the re-instatement of the Appellant with effect from the... Subsequently, in a letter dated the..., the Commission informed the Responsible Officer of the Municipal Council of ... that it had been decided that the Appellant should be re-instated to his post of ... with effect from the ... The Appellant resumed duty on the ...

On the ..., the Director of Public Prosecutions advised prosecution against the Appellant for ... In a letter dated the ..., the Commissioner of Police informed the Chief Executive of the Municipal Council of ..., where the Appellant had then been posted, that on the ..., the Appellant was found guilty of the charge of ... and was sentenced to pay a fine of ... under each count. The Appellant was thereupon interdicted from his duties without pay on the ... by the Permanent Secretary, Ministry of Local Government. The Appellant appealed against this judgement to the Supreme Court but the appeal was dismissed on the ... by the Supreme Court.

Following conviction, the Respondent decided to initiate disciplinary action against the Appellant under Regulation 36 of the LGSC Regulations. In a letter dated the ..., the Supervising Officer of the Municipal Council of ... invited the Appellant to attend a hearing at the Municipal Council of ... On the ..., the Appellant, represented by Counsel, appeared before a disciplinary committee and was given full opportunity to make representations.

After having taken cognizance of the Court proceedings, the judgment and the recommendations of the Responsible Officer, on the ..., the Commission

decided to retire the Appellant in the public interest. On the ..., the Responsible Officer of the Municipal Council of ... was informed of the decision of the Commission.

On the ..., the Responsible Officer issued a letter to the Appellant informing him of the decision of the Commission. According to the Respondent, all procedures were followed and it was even put to the Appellant at the hearing, that he was fortunate that he was made to retire and was not dismissed.

The Respondent further averred that the post of CHE is filled by selection and not by promotion. Therefore the averment by the Appellant that he will be penalised in the higher post did not hold. The Respondent denied that discriminatory treatment was meted out to the Appellant and further averred that the Appellant was interdicted without pay with effect from ... since he was not reinstated to his post. The question of paying salaries and other benefits during interdiction did not arise.

Respondent stated through its Counsel that the salary of Appellant was paid by cheque as at ... and that as from January the salary was probably paid into his bank account.

Determination

The Tribunal has to consider three issues. Firstly, whether the Appellant should have been notified of the consequences of the hearing in terms of disciplinary action. Secondly, whether the Appellant should have been interdicted on full pay during the time of his interdiction. Thirdly, whether the Appellant should have been made to retire from the public service or not, in the light of his conviction.

With regards to the first issue of whether the Appellant should have been notified that dismissal could occur as a result of the disciplinary action and that he was entitled to be assisted by counsel, we take note of the fact that regulation 36 of the LGSC Regulation 1984 does not provide for such notification, contrarily to the Employment Rights Act, for example where specific provision is made for the

employee convened to a disciplinary committee to be informed of his right to be assisted. *Regulations 36 of the LGSC Regulations 1984 stipulates that:*

36 (1) *Where a local government officer is found guilty of a criminal charge likely to warrant disciplinary proceedings, the responsible officer shall forthwith forward to the Secretary a copy of the charge and the proceedings relating thereto together with his own recommendation.*

(2) *The Commission shall determine whether an officer to whom paragraph (1) relates should be dismissed or subjected to some disciplinary punishment other than dismissal or whether his service should be terminated in the public interest if the proceedings disclose grounds for doing so, without any of the proceedings prescribed in regulation 37, 38 or 39 being instituted.*

Regulations 37, 38 and 39 refer to the institution of a committee of disciplinary prior to the decision to take disciplinary action. Regulation 36, therefore, waives this step when it comes to criminal charge. However, the Respondent recommend in its Circular Letter No. 9 of 2008 (dated 20 October 2008) as follows:

2. *I am directed by the Local Government Service Commission to inform you that the Commission has decided that Responsible Officers be advised that henceforth they should give a hearing to employees who have been convicted by a court of law before making a recommendation as regards the punishment to be inflicted upon them in accordance with regulation 36 of LGSC Regulation 1984.*

3. *Responsible Officers are therefore advised to abide to the above and ensure that henceforth all recommendations under regulation 36 be accompanied by a certified true copy of the hearing.*

4. *The Commission relies on the cooperation of all those concerned.*

In the present case, the Appellant was heard on 21 March 2013, by a Committee under the Chairmanship of Mr. ..., Chief Executive of the Municipal Council of ... and comprising the Chief Executive of the Municipal Council of ... and the Deputy Permanent Secretary of the Ministry of Local Government. The Appellant was represented by Counsel at this Hearing. The Committee prepared a report dated ... which it submitted to Respondent.

The Respondent has therefore, acted in accordance with its Regulation 36 and its Circular Letter No. 9 of 2008 sent to all Local Authorities. Counsel for Appellant insisted that nowhere in the letter inviting the Appellant to the Hearing there was mention that action was contemplated against him under LGSC Regulation 36.

Be that as it may, and while we cannot find fault in the LGSC for not having informed the Appellant of his right to be assisted by counsel and of the consequences of a disciplinary hearing under Regulation 36 of the LGSC Regulations, we urge the LGSC to adopt the practice of doing so in the future. This would be in line with the rules of natural justice and the right to a fair hearing. In the present matter, Appellant who was a high level officer of a local authority was assisted by Counsel on the day of Hearing and must have known the stakes of the Hearing.

The second issue relates to whether the Appellant should have been interdicted on full pay. The latter was interdicted on the ... without pay in accordance with the provisions of LGSC Circular no 3 of 2011 which reads as follows:

“Under regulation 31 of the Local Government Service Commission Regulations 1984, a Responsible Officer may interdict a local government officer from the exercise of the powers and functions of his Office pending the conclusion of the proceedings against the officer. In such a case, the interdiction of the officer is on full pay.....

3. *In cases where an officer has been found guilty by a court and sentenced accordingly or who has lodged an appeal against the conviction, the officer*

should be interdicted without pay as from the date of conviction. The Responsible Officer shall notify the officer of his decision to interdict him on no pay and immediately thereafter apply for covering authority from the Commission.

4. Responsible Officers are requested to strictly adhere to the above.....”

On the ..., he was retired in the public interest from the LGSC. It is clear that according to the LGSC Circular no 3 of 2011, the Appellant should be interdicted without pay as from the date of conviction and we therefore cannot find any fault in the Commission for having done so.

On the last issue, of whether the Appellant should have been made to retire from the local government service in the public interest or not, we again find no reason to review the decision of the Commission. The appropriate procedures were duly followed before that decision was taken and the nature of the offence taken into consideration. While we are aware that the Supreme Court found that the Appellant was well intentioned ..., the fact remains that the nature of the offence was a sufficiently serious one.

Regarding the issue of discrimination we find that mere reference to a case is not sufficient and the Tribunal cannot compare the cases without further evidence having been adduced by Appellant.

For the reasons given above, the appeal is dismissed.