

## Det 26 of 2014

**In a selection exercise Regulation 13 of the LGSC puts qualification, experience and merit before seniority. Even when a Scheme of Service does not specify that it concerns a selection exercise, the very fact that there is an advertisement calling for candidates to apply for a post implies that it is not a promotion**

The Appellants are GWR in the... They are challenging the decision of the Respondent to appoint the Co-Respondent as GDR

### **Appellants' Case**

The Appellants have averred that they are senior to the Co-Respondent and that their longer years of work in the specialised section in the Municipal Council of ... had given them more work experience than the Co-Respondent.

Appellant No 1 had been employed for more than ten years at the said Municipality. He had applied for the post of GDR many times but without a positive response.

Appellant No 2 joined the service in ... He was senior to the Co-Respondent but he was not called for the interview in spite of the fact that he had been working in the specialised section and had experience in the job.

Appellant No 3 had been working for 10 years and had experience in the job. He also spent four years in the specialised section. As senior to the Co-Respondent he could not understand on what basis the Co-Respondent's application was accepted.

Appellant No 4 worked for ten years in the Municipality of ... and claimed more experience in the job than the Co-Respondent.

Appellant No 5 had 10 years experience in the job at the said Municipality and, as this was a grade to grade appointment, the Respondent should take into

account LGSC Regulation 13 which puts “qualifications, experience and merit before seniority in the local government service”.

Appellant No 6 was recruited as GWR in ... and placed on the permanent and pensionable establishment in .... He claimed more work experience than the Co-Respondent.

The Appellants averred that the Co-Respondent was placed on the permanent and pensionable establishment later. Being senior to the Co-Respondent, they should have been found more suitable than the Co-Respondent. They also stated that the advertisement made no mention that there was going to be a selection. According to them, past appointments to the post were always done on the basis of seniority.

The Appellants also referred to a previous case lodged before this Tribunal as regards one of their colleagues who was not appointed GDR but he was later appointed to the post following trade union pressure. The officer then withdrew his appeal.

The Appellants appealed to the Tribunal for redress.

### **Respondent’s Case**

The Respondent averred that the post of GDR was filled by selection as per the Scheme of Service that was effective since ... The Respondent conceded that the Appellants were senior to the Co-Respondent. However, in a selection exercise, seniority is not a determining factor and other criteria were taken into account in compliance with LGSC regulation 13.

The Respondent stated that the application of Appellant No 2 was not retained as the latter failed to fill in part 15 of the application form. The Respondent drew the attention of the Tribunal to the effect that instructions were given to applicants informing them that incomplete application forms would not be considered. The Appellant was, therefore, not convened for interview.

The Respondent stated that the vacancy for the post of GDR was advertised on ... among serving officers of the Municipality. There were 24 applications and twelve of them were found eligible and were convened for interview on ... Following the interview, the Co-Respondent was offered employment.

The Respondent submitted that it followed all the procedures and the appointment was made as per the requirements of the Scheme of Service and its Regulation 13. The Respondent also averred that the each Appellant “*failed to state precisely the grounds upon which he is relying to have the decision of the Respondent quashed*”.

The Respondent moved that the appeals be set aside.

### **Determination**

The fact that the post of GDR is filled by selection cannot be disputed. The Scheme of Service is clear about this and the Tribunal is not aware whether this Scheme of Service has been put in question. It is true that in the advertisement for the filling of the vacancy there was no mention that there was going to be a selection. The Appellants stated that this was unfair as, had this been made known to them, they would have prepared themselves more adequately for this appointment exercise. The Tribunal does not accept this point of view. If there is an advertisement, it follows that there will be a selection exercise. If the post is filled by promotion, there is no need to advertise it at all.

The Tribunal finds that the Grounds of Appeal of all Appellants were quite clear and precise and related to seniority and experience.

Appellant No 2 cannot challenge the Respondent for not calling him to the interview as he did not fill a section of the application form when it is clearly said that incomplete application forms will not be considered. It was argued that this Appellant’s application should not have been rejected as the information pertaining to this section was available at the Municipality and could have been sought by Respondent. However, the onus to provide all information falls on the

applicant and the Respondent cannot be expected to correct or supplement information from an applicant.

In a selection exercise, seniority comes after qualifications, experience and merit as per LGSC regulation 13. But for a post like GDR what is experience? The Appellants claim that they have been doing the job for a longer period of time than the Co-Respondent and they have been doing the work without any adverse report being levelled against them. The Scheme of Service does not expect any elaborate qualifications from the candidates to the post except five years experience in the field. There is no mention about educational attainments which give an edge to those who have been more successful in their studies. The Tribunal therefore has to find where has the Co-Respondent drawn an advantage over the other applicants to the post and why have the Appellants been denied appointment?

The Tribunal sought information from Respondent on the criteria for the assessment, the weightage of each criterion, the markings as well as the questions asked. These were provided to the Tribunal under confidential cover. The Tribunal finds that there was no mark allocated for academic qualifications. The only criterion that was considered was performance at the interview. Therefore, the selection panel gave an overall marking of 5 points for the interview and each member marked the candidates separately. There was only a thin margin between the marks obtained by the Co-Respondent over those obtained by the Appellants which tipped the balance in favour of the Co-Respondent.

It is also noted that disciplinary action was taken against five of the Appellants and the sixth Appellant was not called for interview. The Co-Respondent has no adverse report against him. It is also clear from the record that the Co-Respondent scored higher marks than the Appellants at the interview. It can therefore be concluded that irrespective of the disciplinary record of the Appellants, they would not have been selected.

As regards the case of the officer who was not appointed as GDR but who was subsequently appointed when he lodged an appeal to the Tribunal, the representative of the Respondent stated that the Supervisor of that officer made a wrong report on that person. The Supervisor had conceded that he was new to the post and he acted under work pressure. The Supervisor rectified the situation and produced another report on the officer which allowed him to be favourably considered in a subsequent appointment exercise.

The Tribunal finds that the Respondent has chosen the Co-Respondent after having assessed him at the interview. The Tribunal cannot substitute itself for the selection panel and has found no grounds to find that the Respondent has acted unfairly in the selection process.

The Tribunal, therefore, dismisses the appeal.