

The LGSC Regulations are silent on the date of reinstatement of an officer who has been interdicted and has been found not guilty of a criminal charge. When he has been found guilty the LGSC has the right to reinstate him as from the date of his interdiction.

The Appellant is challenging the decision of the Respondent to reinstate him to his post of ...as from the date of his assumption of duty and not as from the date of his interdiction.

Appellant's Case

The Appellant was interdicted in...on a charge of "embezzlement by public officer". He was found guilty by the Intermediate Court but he was reinstated to his post as from the date of his assumption of duty that is ...

He averred that the Respondent should have reinstated him as from the day he was interdicted. For the Appellant this was not correct as reinstatement meant the termination of his interdiction and thus his reinstatement should take effect as from the date of interdiction itself, the more so because he was drawing his normal salary during his interdiction. The Appellant stated that the Respondent's decision would deprive him of his seniority, his increments and would affect his future earnings.

Counsel for the Appellant referred to the case of *Moraby v The Government of Mauritius* [1989] SCJ 178 in which it is said that "*Reinstatement can only mean that his interdiction comes to an end*". Moraby was reinstated as from the date of his interdiction.

The Appellant asked the Tribunal to reconsider the decision of the Respondent and to determine the appeal in his favour, that is to bring the effective date of his reinstatement to the date he was interdicted.

Respondent's Case

The Respondent averred that the Appellant was interdicted from office in ... as he was accused of embezzlement while he was performing duties He was found guilty by the Intermediate Court and was sentenced to furnish a security of ...and to be of good behavior for a period of two years, failing which, he was to undergo imprisonment and pay the costs".

The Respondent stated that, following his conviction, disciplinary action could have been taken against the Appellant under regulation 41 of the Local Government Service Commission Regulations which comprise:

- *“Dismissal*
- *Reduction in rank or seniority*
- *Stoppage of increment*
- *Deferment of increment*
- *Suspension from work without pay for a period of not less than one day and not more than fourteen days*
- *Severe reprimand*
- *Reprimand*
- *Recovery of cost or part of the cost of any loss or breakage or damage of any kind caused by default or negligence , provided that no such cost has been recovered by surcharge action under any appropriate financial instructions or regulations”*

The Respondent averred that no such disciplinary action was taken against the Appellant. He was simply reinstated and his reinstatement took effect as from the date he resumed work.

Respondent stated that an officer was not entitled to draw any increment as of right but only with the specific approval of the Responsible Officer or the Supervising Officer, as appropriate. An increment would be granted only where the work and conduct of the officer during the previous twelve months had been satisfactory. According to the Human Resource Management Manual, an officer who had been interdicted would not be allowed to draw any increment for the period of interdiction except with the approval of the Senior Chief Executive of the Ministry of Civil Service and Administrative Reforms. When making a case for the grant of the increment, the Responsible Officer or Supervising Officer would explain the circumstances leading to the interdiction and submit all relevant documents including a copy of the judgment. In the present case, since the Appellant was found guilty the question of increment did not arise. The officer was paid his salary during the period of his interdiction.

Counsel for the Respondent stated that the case of Moraby was not similar as in the present case, unlike Moraby, the Appellant was found guilty and convicted by the Intermediate Court. The Appellant was reinstated to his post of... and was not in a worse position as averred by the Appellant.

The Respondent averred that the appeal had no merit and moved that it be set aside.

Determination

This is a case where an officer was interdicted from office. He was found guilty and convicted by a court of law. But he was reinstated to his post. The only issue is that of the date of reinstatement.

It is a fact that the Respondent could have taken disciplinary action against the Appellant under regulation 41 of the LGSC Regulations. It did not and opted for reinstatement as from the date the officer resumed his post.

The issue of increment during interdiction initially canvassed by the Appellant was not carried further during the hearing of the case. The granting of increment during interdiction was brushed aside by Respondent who referred to the Human Resource Management Manual. However, more important still, is that an increment is not automatic and it has to be earned. While under interdiction, an officer cannot show that his work and conduct have been such that he deserves such an increment.

As to the date of his reinstatement, this is at the discretion of the Respondent. The LGSC Regulations are silent as to the date of reinstatement when an officer, who has been interdicted, is not found guilty of a charge against him. The Respondent has found it fit not to inflict any of the disciplinary measures it had under its regulation 41. The Appellant cannot expect the Respondent to close its eyes on the offence committed by him and simply restore to him all the privileges which he would have enjoyed were it not for the interdiction. The Appellant referred to the case of Moraby but the Respondent on rebuttal made it clear that Moraby was acquitted while the Appellant was found guilty.

The points raised by Appellant regarding his loss of seniority, increments and shortfall in his future earnings are not grounds for an appeal but are the consequences of the decision of the Respondent. If the decision of Respondent is not flawed, and the Tribunal finds it is not, then the consequences of the decision follow.

The appeal is set aside

