

Proceedings under Regulation 36 of the LGSC regulation are appropriate for all cases when an officer has been found guilty of a criminal charge before a Criminal Court and has been sentenced to imprisonment, even if community service has been chosen by the court.

If the offence is a major one and involves dishonesty, the LGSC may apply the most appropriate sanction, including dismissal.

The Appellant has lodged an appeal before this Tribunal on the ground that he has been dismissed following an unlawful, unjust and unfair decision of the Respondent.

**Appellant's Case:**

Counsel for Appellant averred that:

- (a) The Appellant joined the public service on the ... as a HOST in the Ministry of ... (the "Ministry");
- (b) The Appellant was appointed as 'HSUR on the ...;
- (c) The Appellant was appointed (sic) 'Acting Senior HSUR' on several occasions whilst the Ministry was aware of the offence committed by the Appellant in ...;
- (d) The Appellant has never been subject to any warning or disciplinary action during his service;
- (e) On the ..., the Appellant received a letter from the Ministry, signed by its Senior Chief Executive informing him that he has been dismissed from the service with effect from the ...;
- (f) The letter should have been addressed to him by the Respondent, not the Ministry;
- (g) The letter does not specify on which ground(s) the Respondent has based itself to dismiss the Appellant;

- (h) The letter makes reference to the provisions of Regulation 36 of the Public Service Commission Regulations, without specifying if reference is being made to Regulation 36(1) or 36(2);
- (i) The Ministry and/or the Respondent should have called the Appellant for a disciplinary meeting whereby the Appellant could have had the opportunity to explain himself, following which the Ministry and/or the Respondent could have taken a fair decision;
- (j) If a disciplinary meeting was held, the Ministry and/or the Respondent could have considered the position of the Appellant, his family situation, his background and other related issues, enabling the Ministry and/or the Respondent to consider whether a severe warning was not more appropriate in this case;
- (k) Holding a disciplinary meeting is a possibility the Ministry and/or the Respondent should have considered under Regulation 36(2);
- (l) The Respondent took nearly two years to dismiss the Appellant whereby the Appellant has been in service for that period of time and has not been subject to any disciplinary or adverse report;
- (m) The decision making process of the Respondent is a flawed one and the decision of the Respondent is unlawful, unjust and unfair;
- (n) The decision to dismiss the Appellant could have been influenced by the fact that the Appellant had a further conviction in .... Counsel for the Appellant submitted that other charges which were subsequently lodged against the Appellant should not have been taken into account by the Respondent when making a decision;
- (o) The decision of the Respondent should be quashed by the Tribunal and the Respondent be restituted to his former post as HSUR in the Ministry.

**Respondent's Case:**

Respondent's Representative swore as to the correctness of the Statement of Defence. Counsel for Respondent averred the following:

- (a) The Appellant was not appointed as Acting Senior HSUR but was only assigned duties;
- (b) The Responsible Officer was informed by the Police on the ... that the Appellant was involved in cases of “making use of a forged private document” and “conspiracy”;
- (c) The Appellant was not interdicted from the exercise of the powers and functions of his office of HSUR;
- (d) Prior to criminal proceedings being instituted against the Appellant, the latter had a clear record of service. Thereafter, the Appellant was involved in the following criminal cases:
  - (i) On ..., the Appellant was prosecuted before the Intermediate Court for the offence of “making use of a forged private writing” and on the ..., the Appellant was sentenced to eight months’ imprisonment. On the ..., the term of imprisonment was suspended and the Appellant was required to perform 140 hours unpaid work following a Community Service Order;
  - (ii) On the ..., the Commissioner of Police informed the Responsible Officer of the Ministry that the Appellant was involved in a case of “Possession of Cannabis” and was arrested at ... by the Anti-Drug and Smuggling Unit. The Police informed the Responsible Officer who in turn informed the Respondent about this matter on the ...;
- (e) By way of letter dated ..., the Responsible Officer of the Ministry informed the Respondent that:
  - (i) The Appellant was prosecuted before the Intermediate Court for “Conspiracy”.
  - (ii) By way of letter dated ..., the Police had informed the Ministry that the Appellant was sentenced on the ... to eight months’ imprisonment (which was suspended pending social enquiry for Community Service Order) for the charge of “making use of a forged private writing”;

- (iii) On the ..., the term of imprisonment was suspended and Appellant was required to perform 140 hours unpaid work following a Community Service Order;
- (f) The Responsible Officer of the Ministry recommended in the letter dated ... that the Appellant be suspended from work without pay for a period of four days. The Responsible Officer also informed the Respondent that the Appellant was not interdicted from the exercise of the powers and functions of his office and that the case was being reported in accordance with Regulation 36 of the Public Services Commission Regulations;
- (g) On the ..., by way of letter, the Responsible Officer of the Ministry informed the Respondent that:
  - (i) The Commissioner of Police has informed the Ministry on the ... that the Appellant was involved in a case of “Possession of Cannabis” and was arrested on the ... by the Anti-Drug and Smuggling Unit;
  - (ii) The Police Department has informed the Responsible Ministry that the enquiry is in progress;
  - (iii) The Appellant has not been interdicted from the exercise of the powers and duties of his post.
- (h) On the ..., by way of letter, the Responsible Officer of the Ministry informed the Respondent that the Appellant was prosecuted before the Intermediate Court for “making use of a forged private writing” instead of “Conspiracy”. The Responsible Officer of the Ministry also informed the Respondent that a case of “Conspiracy” which had been lodged against the Appellant was still under judicial enquiry;
- (i) On the ..., the Responsible Officer of the Ministry was informed that the Respondent had, in exercise of the power vested in it by section 89 of the Constitution and, in accordance with the provisions of Regulation 36 of the Public Service Commission Regulations, considered the punishment to be inflicted upon the Appellant, in the light of his conviction by the Magistrate of the Intermediate Court (Criminal

Jurisdiction) on the ... on a charge of “making use of a forged private writing”, and has decided to dismiss the Appellant from the service with effect from ...;

- (j) On the ..., the Appellant was informed by the Responsible Officer of the Ministry that he has been dismissed from the service with effect from ...;
- (k) The decision to dismiss the Appellant emanated from the Respondent and the Responsible Officer of the Ministry was only requested to inform the Appellant of same, this being normal procedure;
- (l) The letter is very clear on the grounds for dismissal and the section of the law involved;
- (m) Disciplinary proceedings were instituted against the Appellant in accordance with the provisions of Regulation 36 of the Public Service Commission Regulations which makes no provision for a hearing before a disciplinary committee;
- (n) The Respondent has acted in conformity with the powers vested in it by section 89 of the Constitution and in accordance with Regulation 36 of the Public Service Commission Regulations;
- (o) The Respondent has determined that a dismissal was warranted after having taken cognisance of the charge against the Appellant and, in the light of the judgment delivered by the Magistrate of the Intermediate Court, and that the proper procedures have been followed;
- (p) It was confirmed by the Respondent that the two other cases lodged against the Appellant subsequently have not been taken into account when considering the punishment to be inflicted on the Appellant.

### **Determination**

The Tribunal has to decide whether firstly, the Appellant should have been provided with a hearing, and secondly, whether the decision to dismiss the Appellant was justified.

It would be apposite here to refer to the case of Rungasamy v Public Service Commission (1985 MR 35) where the applicant was enlisted as Trainee Probation Officer and was later convicted for having inflicted wounds and blows upon another person and sentenced to pay a fine of Rs 250 and to pay Rs 30 as costs. The PSC dismissed him because of the conviction and the Court relied on Regulation 36(2) which provides that “disciplinary proceedings subsequent to a conviction in a court of law should normally be confined to cases in which the conviction was in respect of an offence under the Penal Code or any other law where a prison sentence may be imposed other than in default of payment of a fine”.

The Tribunal bears in mind that disciplinary proceedings do not equate to holding a disciplinary committee since Regulation 36(1) provides that “the Commission shall determine whether the officer should be dismissed or subjected to some lesser disciplinary punishment 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 Regulations 37, 38 and 39...”

Regulation 36 is very specific. It refers to penalties to be administered when public officers have been found guilty of offences and sentenced by a court of law. It says clearly that in such circumstances the other procedures under regulations 37, 38 and 39 where the officers having committed an offence have to be heard and a disciplinary committee has to be set up. Regulation 36 dispenses the Respondent of going through a hearing process on the grounds expatiated in Rungassamy v PSC. Had there been a hearing, then the Respondent would fall back on the procedures of regulations 37, 38 and 39 and regulation 36 loses its *raison d’être*.

In the present case, in accordance with Regulation 36(1), the Responsible Officer forwarded to the Respondent, a copy of the charge and of the judgment, together with copies of (i) Police Department letter dated ..., (ii) certified court records, (iii) letter dated ... certifying that the Appellant has not appealed against the court judgment and the Probation and Aftercare Report.

We are satisfied that the Responsible Officer did send to the Respondent all the documents including the court proceedings and the judgement which allowed the Respondent to take an informed decision. The Respondent therefore complied with the provisions of regulation 36.

The Appellant is of the view that if he had been given the chance, he would have explained his family situation, his background and other related issues which would have enabled the Ministry or the Respondent to see whether a severe warning would have met the ends of justice. It is true that the Responsible Officer did recommend a lesser penalty but the Respondent decided to proceed with dismissal. It took into account the fact that the Court had found the offence committed by the Appellant to be grave and initially gave him a prison sentence. Such an offence can lead to 20 years imprisonment but the Appellant was given a sentence of 8 months imprisonment which was subsequently converted to 140 hours of community service. The Respondent is the sole body to take decisions with regards to dismissal and the Responsible Officer can only make recommendations.

Nonetheless, we hasten to add that, although it is intended that the Respondent remains independent, the Courts have in the past made it clear that the Commission has to act in accordance with basic principles of natural justice. In the present case, the Tribunal is satisfied that the records show the reason why the Respondent has proceeded with dismissal that is, that the offence committed by the Appellant is not a minor offence and was considered very serious as it entails fraud and dishonesty and, more particularly, after having taken into consideration the gravity of the offence against the Appellant and the judgment delivered by the magistrate of the Intermediate Court.

There is also no basis to the contention of the Appellant that, in the letter of dismissal, it was not made clear under which ground/s the Respondent had based itself to dismiss him. The letter makes it clear that he was dismissed <<in the light of your conviction by the Magistrate, Intermediate Court (Criminal Jurisdiction) on the ... on a charge of "Making use of a forged private writing" and has decided that you should be dismissed from the service with effect from ..., date of your conviction.>>

The Appellant also averred that he has never been subject to any warning and/or disciplinary action. This is not disputed. The Appellant is also of the view that the letter of dismissal should have been issued to him by the Respondent and not by his Ministry. This view is not correct. The Respondent never communicates directly to public officers on such matters, just as public officers do not write to Respondent directly. The channel of communication is always through the Responsible Officer either way. It is in order for the letter of dismissal to have been signed by the Senior

Chief Executive of the Ministry who made it clear in the letter that she was writing on behalf of the Respondent.

The Appellant queried whether he was being sanctioned under Regulation 36 (1) or Regulation 36(2). It is obvious to the Tribunal that the Respondent was acting under Regulation 36(2).

It is interesting to note that the Local Government Service Commission has shown some flexibility in the application of its own Regulation 36, which is an exact replica of that of the Public Service Commission Regulations. In its Circular No 9 of 2008 to all Responsible Officers of local authorities, it has "... 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 the LGSC Regulations 1984". The Tribunal is of the view that, notwithstanding Regulation 36, the PSC should consider adopting a similar circular.

It is further noted that the Employment Rights Act 2008 does provide the opportunity to an employee who has committed an alleged misconduct, which is subject to criminal proceedings, to know the charge against him/her and to be given a hearing. These provisions of the Act do not apply to public officers and officers of the local government service.

As to the date of the dismissal which has also been contested by the Appellant, the date is that of the conviction and it cannot be otherwise as the ground of dismissal was the court decision. It cannot be the date the letter was issued to the Appellant.

However, the Tribunal finds that the Respondent should act with more celerity in such cases and finds the length of time between the conviction and the decision to dismiss excessively high to say the least.

The Tribunal also recommends that, since Appellant has worked until the date of dismissal and that his salary has been duly earned, no action, if ever action was to be contemplated along those lines, be taken to have the salary refunded by Appellant.

The appeal is dismissed.