

If an equivalence is required for a qualification, reasonable time must be given to candidates to seek same from the TEC or other appropriate authorities.

The two appeals which have been heard together concern an appointment exercise made by the Local Government Service Commission (“**Commission**”). The appellants’ main claim is that, following the issue of a Circular Note by the Commission on ... (“**Circular**”) inviting applications from qualified officers in the grade of DABAS of the Local Government Service for appointment as ASITOR, they applied for the post but were not convened for the interview exercise. For convenience, the appellants in the first and second cases are referred to as Appellant No. 1 and No. 2 respectively in this decision.

All the Co-respondents informed us that they would abide by the decision of the Tribunal.

Case for Appellant No. 1

The Appellant No. 1 confirmed the correctness of her Statement of Case under solemn affirmation. It was her case that the decision of the Commission not to appoint her to the post of ASITOR was unjust, unfair and unlawful because the Commission had not given due consideration to the fact that she (i) held a degree in INS delivered by the University of ... and which, according to her, met the qualification for a diploma that was required for the post of ASITOR; (ii) had been in continuous employment as DABAS at the Municipal Town Council of ... since ...; (iii) had more than 6 years’ experience in the field of INTY; and (iv) meets all the criteria required for the post. According to her, the Commission ought to have appointed her in the post. For the same reasons, she further

contended that the Commission acted unjustly, unfairly and unlawfully for not having convened her for an interview.

[1]. During the course of the hearing, Appellant No.1 accepted that she did not have a Diploma in COS or in INTY. She did not send any proof of equivalence of her degree in INS together with her application for the position for ASITOR because, according to her, she held an equivalent qualification. She further stated that, at the University of Mauritius, the basic modules for a Diploma in COS and INTY and a Degree in INS were the same and she was following the same course as the students studying the Diploma in COS. She further stated under cross-examination that, because a degree was higher than a diploma, she was of the view that she was qualified for the post and there was no need for her to submit proof of equivalence of qualification.

Case for Appellant No. 2

[2]. It was also the case for Appellant No. 2 that the decision of the Commission not to appoint her to the post of ASITOR was unjust, unfair and unlawful because no due consideration was given by the Commission to the fact that she (i) held a Diploma in COS (Major in Network and Communication) delivered by the University of Cambridge Local Examination Syndicate; (ii) held an International Diploma in COS delivered by NCC Education; (iii) held a Bachelor of Science degree in COINS delivered by NCC Education and the London Metropolitan University. According to her, all of these qualifications met the requirements of a Diploma which was required for the post.

[3]. Appellant No. 2 further contended that she (i) had acted on numerous occasions for an aggregate period of 18 months as DABAS at the Municipal Council of ... between the period ... and ...; (ii) had been appointed as DABAS at the Municipal Council of ... since ... (iii) acted as ITOR on 2 separate occasions for an aggregate period of 2 months between the period ... and ...; (iv) had more

than 7 years' experience in the field of INTY; and (v) met all criteria required for the post.

- [4]. Appellant No. 2 confirmed the correctness of her Statement of Case under solemn affirmation. Under cross-examination, she accepted that when she applied for the post she did not have a Diploma in COS or INTY. She did not submit proof of the equivalence of her Degree in INS because she considered that this requirement did not apply to her because a Degree in INS was a higher qualification than a Diploma.

Case for the Commission as regards both Appellants

- [5]. The Commission objected to the appeal made by the appellants on the ground that Appellants were eliminated from the selection exercise and were not convened for an interview because they did not possess a Diploma in COS or INTY which is the core requirement for the post of ASITOR.
- [6]. In its Statements of Defence dated ..., the Commission stated that the appellants neither possess the required Diploma for the post, i.e., a Diploma in COS or INTY, nor did they produce any equivalence to the Diploma in COS or INTY and, therefore, they were not convened for an interview. The Commission further stated that the onus for the submission of equivalence of qualifications from the relevant authorities rested on the candidates.
- [7]. The representative of the Commission stated that, by virtue of Note 1 of the sub-heading "**Qualifications**", the onus was on an applicant who did not possess a Diploma in COS or INTY to produce proof of equivalence of qualification.
- [8]. In relation to Appellant No. 1, the representative of the Commission stated that she held a qualification which was not one required for the post and that a Diploma in INTY or COS was not the same as one in COS (presumably, he meant to say INS). He further stated that the Commission did not have the required knowledge and expertise to assess equivalency of qualifications.

- [9]. As regards Appellant No. 2, the representative of the Commission reiterated the averments made in the Statement of Case of the Commission dated ...
- [10]. Learned Counsel for the Commission submitted that the Circular made it clear that if an applicant did not have either one of the two Diplomas mentioned, the applicant should provide the Commission with proof of equivalence. She further submitted that the Commission would not seek such equivalence for each and every applicant who did not submit one with an application. Learned Counsel acknowledged the difficulty which an applicant could face to obtain such proof of equivalence but this difficulty, she submitted, should not put an obligation on the Commission to accept an application which, on the face of it, did not meet requirements of the advertisement. She further submitted that an applicant could inform the Commission of any predicament to obtain the proof of equivalence and sought an extension to provide such proof and the Commission 'could' have entertained such request for extension. She concluded her submissions by stating that, short of a proof of equivalence, the Commission did not have any other alternative than to reject the appellants' application.

Issue

- [11]. The issue before us is whether the decision of the Commission not to convene the Appellants for an interview because they did not submit proof of equivalence of their qualifications with their respective application was unjust, unfair and unlawful.

Analysis

[12]. The Circular inviting applications from qualified officers in the grade of DABAS in the local government service to be considered for appointment as ASITOR in the service dated the ... sets out the following qualifications and requirements:

2. Qualifications:

By selection from among officers in the grade of DABAS in the Local Authorities possessing: -

A. *A Diploma in COS or INTY **or** an equivalent qualification acceptable to the Local Government Service Commission.*

and

B. *Reckoning at least 2 years' experience in the field of INTY.*

[13]. Note 1 under this sub-heading provides that:

1. *The onus for the submission of equivalence of qualifications (if applicable) from the relevant authorities rests on the candidates.*

2. ...

[14]. The Circular further provides on the last page that:

(iii) *Incomplete, inadequate or inaccurate filling of the application form may cause the elimination of candidates from the competition.*

[15]. It is not disputed that the post of ASITOR is a new grade created following the publication of the **PRB Report 2013**. The Scheme of Service for the post was

prescribed on At this juncture, it is apposite to refer to the relevant provisions of the **PRB Report 2013** which recommends the creation of the post of ASITOR:

Recommendation 3

- [16]. According to paragraph ... of the **PRB Report 2013**, the ASITOR “would provide direct support and assistance to the ITOR/STAR, *formerly ITOR.*” It is to be noted that at **Recommendation 2**, paragraph ... (ii) of the **PRB Report 2013**, the Pay Research Bureau recommends that: ...
- [17].
- [18]. The representative of the Commission stated that the Commission does not have the knowledge to make assessments to determine equivalence of qualifications. We may conveniently refer to two institutions which are empowered by statutes to evaluate qualifications for the purpose of establishing their equivalence. They are the Mauritius Qualifications Authority established under section 3 of the Mauritius Qualifications Authority Act and the Tertiary Education Commission established under section 3 of the Tertiary Education Commission Act. We are not concerned with the Mauritius Qualifications Authority because the appellants’ degrees have been obtained in the post-secondary sector. One of the objects of the Tertiary Education Commission by virtue of section 4(h) of the Tertiary Education Commission Act is to “*determine the recognition and equivalence of academic or professional qualification in the post-secondary education obtained in or outside Mauritius.*”
- [19]. Under section 8A of the Tertiary Education Commission Act, an application for the equivalence of an academic certificate obtained in the post-secondary educational sector must be made in such manner as may be prescribed. It appears to us that no regulation has been made to prescribe the manner by which an application under section 8A of the Tertiary Education Commission Act

is to be made. The application fee for equivalence of academic qualification has, however, been prescribed in the Tertiary Education Commission (Fees and Charges) Regulations 2009 (GN No. 116 of 2009). Be that as it may, we were informed during the hearing by Appellant No. 1 that upon being unsuccessful, she applied for the equivalence of her qualification to the Tertiary Education Commission on ... and was informed by letter dated ..., that is nearly 9 months after her application for equivalence, that the Panel on Recognition and Equivalence of Post-Secondary Education Qualifications has concluded that the modules of the Diploma in COS awarded by the University of Mauritius are covered in the BSc (Hons) in INS awarded to her by the University of Mauritius. Appellant No. 1 also produced to the Tribunal a screenshot of the website of the Tertiary Education Commission on '*Recognition and Equivalence of Postsecondary Educational Qualifications*' which states that the Tertiary Education Commission will inform an applicant within 2 months of receipt of the complete application form and the supporting documents.

[20]. The Respondent did not dispute the fact that an application for equivalence of qualifications would be determined by the Tertiary Education Commission within a period of two months. On the assumption that the Appellants had to submit proof for equivalence of their respective qualification(s), it is clear that (at least in the case of Appellant No. 1 because she eventually made such an application) she would most likely not have received the proof of equivalence before the closing date specified in the Circular. In the Circular, the Commission has given only 3 weeks to qualified candidates to submit an application for the advertised post.

[21]. To a question from the Tribunal, the representative of the Commission replied that he was not aware if the Commission had verified with the Tertiary Education Commission or any other competent authority how long it takes for equivalence of qualifications to be obtained before finalising an advertisement for a post. We are of the view that giving only 3 weeks for candidates to seek equivalence of

qualifications (if this is required) and to apply for the post does not amount to reasonable time, the more so since the body issuing such equivalence (according to information on its website) itself seeks to provide a response within 2 months. At any rate, as we have said earlier at paragraph [20] above, it stands to reason that if a person holding a Degree in INS would be eligible to apply for the post of ITOR/STAR, a person holding a Diploma in the same subject and satisfying all the other requirements for the post of ASITOR, would be eligible to apply for the post and they ought to have been called an interview. Our opinion on this is further strengthened by the equivalence which was subsequently issued to Appellant No.1 on ... by the Tertiary Education Commission.

[22]. During the hearing, we were also informed that the two appellants had been assigned duties of ITOR in the past. In the case of Appellant No. 1, it is not disputed that she was assigned duties of ITOR for the periods ... to ... and ... to.... The application form which she had submitted for the post of ASITOR does not disclose that she had been assigned duties of ITOR in the past. Likewise, the application form for Appellant No. 2 does not disclose that she had been assigned duties of ITOR during the periods ... to ... and ... to We have perused the LGSC application form which the appellants have used to apply for the post of ASITOR and we note that the application form, whilst referring to 'Present employment' and 'Previous Employment', does not provide anywhere for an applicant to state other responsibilities held. The Commission may wish to review the fields of information stated on an LGSC application form.

[23]. We would like to say a few words on the acting allowances which were paid to the two Appellants when they were assigned duties as ITOR in the past. Appellant No. 1 stated that when she was assigned duties as ITOR she was paid an 80% acting allowance and, following a complaint which she made to the Human Resource Office, she was paid a full acting allowance for the post. The representative of the Commission informed us that, according to the PRB Report, a fully qualified officer who meets all the criteria may be paid a 100% acting allowance and someone who does not meet all the criteria for the post concerned

may be paid an 80% acting allowance. It is understood that, before assigning the duties of a higher post to an officer, the Responsible or Supervising Officer must ensure that the appointee has the relevant expertise or competencies to perform most of the core duties and also to shoulder the responsibilities of the absentee. We would like to say a word of caution here. Having pointed out the above, we are aware that the fact that an officer is assigned the duties of a higher post does not necessarily mean that, if that officer does not possess the required qualifications as specified in a job advertisement, the officer must be convened for an interview and/or ultimately be appointed in the advertised position. The test is whether the prospective appointee in an acting capacity has the relevant expertise or competencies to perform most of the core duties and also to shoulder the responsibilities of the absentee. Having been paid the full allowance when she was assigned duties as ITOR, Appellant No. 1 must therefore have been found to be fully qualified for the post of ITOR.

[24]. Finally, we would like to say a few words on Note 1 of the Circular cited earlier. It is the case for the Appellants Nos. 1 and 2 that because they hold a Degree in INS and in COINS, respectively, they are of the opinion that the issue of equivalence of qualifications does not apply to them because they hold a higher degree. Note 1 reads:

“1. The onus for the submission of equivalence of qualifications (if applicable) from the relevant authorities rests on the candidates.

[25]. We assume that the Commission meant to say that if an applicant does not hold a Diploma in COS or Diploma in INTY, the applicant must submit equivalence of qualifications for any other qualification held. The use of the words “if applicable” creates confusion from the reader’s perspective. It is not clear who determines if equivalence is applicable and required under Note 1 as drafter. Unless it is expressly specified in which circumstances an equivalence is required, quite understandably, a person who holds a degree in the field of ... can legitimately

think when reading Note 1 as drafted that this provision does not apply to him or her because he or she holds a higher degree in that field. To that extent, we find the arguments put forward by the appellants for not applying for an equivalence are plausible. Had the appellants been granted an interview, the Commission would have been in a position to investigate whether they have the academic knowledge and experience to discharge the duties for the post of ASITOR as specified in the Circular. In the circumstances, we find that it would be most unfair for the appellants to be penalised and that any ambiguity or lack of clarity should go in their favour.

Determination

- [26]. For the reasons given above, we hold that the Commission has acted unfairly for not having convened the appellants for an interview because they have not submitted proof of their equivalence of qualifications with their applications. We, therefore, allow the two appeals and direct the Respondent to carry out a fresh interview and selection exercise and give the appellants the opportunity to compete for the post. Finally, if the Commission considers that equivalence of a qualification is required for an academic qualification other than a Diploma in COS or INTY, this must be stated in clear terms in the advertisement, and furthermore a reasonable period of time must be given to candidates to seek and obtain such equivalence. In the present matter, the closing date for applications to be submitted to the Secretary of the Commission was ..., i.e., 3 weeks after the date of the Circular.