

## PUBLIC BODIES APPEAL TRIBUNAL

No. D/13 of 2016

In the matter of:-

**Doorga Bharati BAHADOOR**

**Appellant**

**v/s**

**Public Service Commission**

**Respondent**

**and**

(1) **Logambale POOLEE-COOTEE**

(2) **Oumah RAMSAHYE-MAITARAM**

(3) **Mahesh PRAYAG**

**Co-Respondents**

(4) **Dhaminee SEWRAJ**

(5) **Breenda JUGURNAUTH**

(6) **Shaneel Singh BOODHNA**

(7) **Zeinab BHUGALOO**

### **Determination**

The Appellant is challenging the decision of the Respondent to appoint the Co-Respondents to the post of Library Officer.

According to the Scheme of Service the post of Library Officer is filled

*“By selection from among officers in the grade of Senior Library Clerk who:*

- (i) reckon an aggregate of 10 years' service in a substantive capacity in the grades of Senior Library Clerk, Library Clerk and the former grade of Library Assistant; and*
- (ii) possess a diploma in Library and Information Science or a diploma in Information and Library Studies from a recognised institution or the "Certificat d'Aptitude aux Fonctions de Bibliothécaire" or the Higher Certificate in Librarianship and Information Science of Napier University or an equivalent qualification acceptable to the Public Service Commission.*

**NOTE**

*In the absence of qualified serving officers by selection from candidates who*

- (i) possess a diploma in Library and Information Science or a diploma in Information and Library Studies from a recognised institution or the "Certificat d'Aptitude aux Fonctions de Bibliothécaire" or the Higher Certificate in Librarianship and Information Science of Napier University or an equivalent qualification acceptable to the Public Service Commission; and*
- (ii) are computer literate.*

*Candidates should produce written evidence of knowledge claimed."*

**Appellant's Case**

The Appellant made solemn affirmation as to the correctness of her grounds of appeal and her Statement of Case.

The Appellant averred that she joined the service on 17 April 2002 and was confirmed to the post of Senior Library Clerk. She applied for the post of Library Officer but she was informed on 16 September 2015 that she was not selected. She was aggrieved as she possessed all the criteria and qualifications required as well as being experienced and well versed with the duties and demands of the post.

She assumed the duties of Library Officer for 8 years. She received recommendations from the Rectors of the schools where she was posted as well as from the then Director of Education Zone 1. She claimed she had more experience than the Co-Respondents and more years of service. In 2004 she converted a classroom into a fully functional Library and ran it with all the facilities to users.

She was a reliable officer, showing professional ethics and was ever ready to assume additional responsibilities and showed team spirit. She worked in close collaboration with Education Officers to promote the reading culture. She listed a number of activities in which she was involved such as fund-raising activities.

She stated that she was more deserving and prayed that the Tribunal redresses the situation and directs the Respondent to review its decision.

Appellant's counsel also drew the attention of the Tribunal to the fact that, by truncating the Scheme of Service and advertising only part thereof, that is the Note, prejudice can be caused to those who were fully qualified for the post.

### **Respondent's Case**

The Respondent averred that there was a PSC circular No10 of 2014 which was advertised from among serving officers in the Grade of Senior Library Clerk for the filling of nine vacancies as Library Officer. This advertisement dated 28 March 2014 was under the core qualifications of the Scheme of Service. Following this selection exercise seven Senior Library Clerks were assigned the duties of Library Officer. The Responsible Officer (RO) of the Ministry of Education was requested by the Respondent to initiate action for the filling of the remaining vacancies.

The RO then recommended that the two remaining vacancies be filled from among candidates possessing the required qualifications under the item NOTE of the Scheme of Service. In the meantime one additional vacancy occurred.

The vacancies were advertised on 14 May 2015 by way of PSC Circular No 13 of 2015 under the item Note.

After the publication of the advertisement, the RO reported another four vacancies, bringing the total number of vacancies to seven.

There were 96 candidates and 48 of them, including the Appellant, were found eligible and were called for interview. The seven Co-Respondents were selected and offered employment. They assumed duty on 11 September 2015. The Appellant was not selected.

The Respondent confirmed that the Appellant was recruited on 17 April 2002 as Trainee Library Clerk and appointed Library Clerk on 16 December 2003. She was promoted Senior Library Clerk on 20 October 2014, that is, after the appointment of the Co-Respondents to the post of Library Officer. The Respondent denied that the Appellant was a Senior Library Clerk, as averred by her in her Statement of Defence, at the time of the advertisement and even at the time of the appointment of the Co-Respondents to the post of Library Officer.

The Respondent also denied the averment of the Appellant that she “*has assumed the duties of Library Officer for 8 years*” and stated that the Appellant was never assigned the duties of Library Officer.

The Respondent noted that some of the averments contained in the Appellant’s Statement of Case were not in the grounds of appeal. These were not canvassed further.

The Respondent averred that all the relevant information contained in the Appellant’s application form was taken into consideration. The candidates called for interview were fully qualified for the post of Library Officer.

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

### **Co-Respondents’ Case**

Co-Respondent No.4 affirmed to the correctness of her Statement of Defence and was cross-examined by Counsel for Appellant. She denied the averment of the

appellant that she was not qualified for the post. She stated that she was holder of a Diploma in Librarianship and Information Science and did not do a top up of the degree as alleged by Appellant since September 2014 and was qualified at the time of the interview. She obtained incremental credits when she obtained her diploma. She also completed her BA (Hons) Librarianship and Information Science. She further stated that she was officially assigned the duties of Library Officer on four occasions.

Co-Respondent No.3 also affirmed to the correctness of his Statement of Defence and stated in cross-examination that he joined service as Trainee Library Clerk in 2005. He was a Library Clerk since 2008. He obtained his Diploma in Librarianship and Information science in 2007. He had been performing the duties of Senior Library Clerk on 11 occasions. He also gave details of his duties.

The other Co-Respondents did not depone.

### **Determination**

The vacancies were filled by selection.

There was an advertisement but it only referred to the eligibility criterion under the Note in the Scheme of Service. Contrary to the previous appointment exercise of 2014, where only those who met fully the core criteria of the Scheme of service were invited to apply, this selection exercise were opened to those who did not meet the core criteria. This was done, as was explained by the Respondent, on the advice of the RO following the 2014 exercise where all those eligible under the core criteria were appointed. In fact only seven vacancies out of the nine could be filled.

. The respondent has assumed that there were no candidates who met the core criteria. This assumption was proved wrong as after the closing date for applications the Respondent itself recognised that there were three candidates who met the core requirements.

However, it is apposite to note that the Appellant did not qualify under the core requirements. She was not yet a Senior Library Clerk at the time of application. She was, therefore, not prejudiced by the way the advertisement was framed.

On the basis of information provided by the Respondent to the Tribunal under confidential cover and during the proceedings of the case, the Tribunal finds the following:

(1) The criteria for the selection exercise were;

- Additional relevant qualifications
- Computer literacy
- Experience in Library
- Knowledge of duties and responsibilities
- Personality
- Communication and interpersonal skills
- Administrative and Organising skills
- Aptitude

(2) There was an advisor on the panel who gave marks ( maximum of 20 out of 100)

(3) The Appellant and 4 of the Co-Respondents did not have additional relevant qualifications at the time of the interview. Co-Respondents Nos 1, 5 and 6 had a B. A (Hons) in Library and Information Science and obtained additional marks in the assessment for their degree. The Appellant unfortunately obtained a B.A degree after the appointment was over.

(4) In terms of years of service, and therefore experience, the Appellant and the Co-Respondent had more than ten years' service with the exception of Co-Respondent no 5 who reckoned 3 years in service but she was one of those who had a degree. Both the Appellant and the Co-Respondents were given same markings, except Co-respondent No 1 who was slightly above as regards the criterion Knowledge of Duties and Responsibilities.

(5) The Appellant and the Co-Respondents obtained exactly the same marks on Experience in Library with the exception of Co-Respondent No. 6 who obtained

less marks. This is not surprising as the latter had shorter years of service in the field, and

(6) Had the Appellant obtained her B.A degree at the time of application for the post she would have been appointed ahead of many of the Co-Respondents.

The Tribunal finds that the Appellant had been given a fair treatment in this selection exercise.

The appeal is set aside.

**S. Aumeeruddy-Cziffra (Mrs)**  
Chairperson

**G. Wong So**  
Member

**P. Balgobin-Bhoyrul (Mrs)**  
Member

**Date:** .....

**Note:** This case is not being treated confidentially as there has been a motion for Judicial Review before the Supreme Court by the Appellant. All information relating to the case was made public as the Supreme Court, unlike the PBAT, does not deal with such motions in camera. The Supreme Court upheld the Determination of the Tribunal which has now become final.