

# PUBLIC BODIES APPEAL TRIBUNAL

Det 14of 2016

**Forgery is not a minor offence by the standards of Regulation 36(3) and it also involves the elements of dishonesty. The Commission can therefore dismiss an employee in such circumstances.**

The Appellant has lodged an appeal before this Tribunal against a decision of the Respondent to dismiss him from work as HWR in the Municipal Council of ....

## **Appellant's Case**

The Appellant averred that the decision to dismiss him was harsh.

The Appellant was found guilty of forgery. He forged the signature of his wife on a cheque and drew a sum from his wife's bank account. He accepted the charge against him and pleaded guilty before the District Court of...As a result he got a lesser sentence and was conditionally discharged upon entering into a recognizance of Rs...and to be of good behavior for a period of one year plus Rs... as costs.

The Appellant and his wife got divorced and the Court ordered the Appellant to pay alimony for the welfare and upkeep of their two children. The Appellant stated that with the dismissal, he was deprived of his income and his children would suffer. In fact, at the Hearing, he said that he was not able to pay the alimony and his wife gave a declaration against him and he was prosecuted. He was taken to Court and he was fined Rs1,000 while he was in a precarious situation financially.

The Appellant did not deny that the offence he committed was serious and he regretted it but he said that he was in a difficult situation and he was not on talking terms with his wife. He was stressed.

Counsel for Appellant submitted that the Respondent could have resorted to a lesser penalty from the list under Regulation 41 of the Local Government Service Commission (LGSC) Regulations. The offence was not related to Appellant's work, and

he had many years' service with a clean record. He referred them to a Determination of this Tribunal (Det7 of 2014 on the Tribunal's Website). This case concerned one officer of the local government service who was found guilty of embezzlement at his work place. That officer was sentenced by the Intermediate Court to furnish a security and to be of good behavior for a period of two years failing which he would have to undergo imprisonment and pay the costs. The officer was not dismissed but he was reinstated in his employment. He had only appealed to the Tribunal as to the date he should have been reinstated. The Appellant stated that, in that case, the sentence was by a higher Court and the offence was related to his work. Yet there was no dismissal.

He further stated that, since no disciplinary proceedings were taken in the case referred to, his dismissal was discriminatory and unfair. He moved that the decision of the Respondent to dismiss him be quashed by this Tribunal.

### **Respondent's Case**

The Respondent initially raised a point of law to the effect that the Appellant, after his dismissal, was no longer a local government officer and the Tribunal had no jurisdiction to entertain the appeal. At the Hearing, the Respondent, however, decided to withdraw this objection.

The Respondent averred that the offence of forgery by private individual of commercial writing and making use of forged commercial writing committed by the Appellant was very serious. The Respondent was given a hearing before he was dismissed on the ground of the seriousness of the offence which was against his own wife at the material time. The Appellant had not reported the police case to his employer and the Respondent only came to know about it when the Appellant's wife wrote to his Responsible Officer.

The Respondent stated that action was taken against the Appellant under Regulation 36 of the LGSC Regulations and, under this Regulation, the Respondent was empowered to determine the punishment to be meted out in each and every case. It was not required to give a hearing before a decision was taken against him. However, following the Circular No. 9 of 2008 from the Respondent to the Responsible Officers of local authorities in which they were advised to give a hearing before making a recommendation to the Respondent for disciplinary actions, the Appellant was given a

hearing on.... In fact, the Appellant was given two hearings as, in the first hearing, he was not told about the consequences that the Court conviction could have on his work condition. The second hearing was held on ....

After the hearing, the Responsible Officer recommended to the Respondent that the Appellant be suspended from work for a period of fourteen days.

The Respondent decided on the dismissal after taking into account all the facts and circumstances of the case, the seriousness of the offence, the fact that the Appellant committed the offence against his own wife and any mitigating factor. The Respondent stated that the Appellant did not have a clean record as he was given a warning for sleeping on his site of work. The Appellant said at the hearing before the Tribunal that he was sick on that day but chose to stay on his site of work.

The Respondent further averred that there was no discriminatory treatment *vis-a-vis* the Appellant as the officer in Determination 7 of the Tribunal had his increment stopped for one year with effect from 1 January 2014.

The Respondent moved that the case had no merit and that it should be set aside.

### **Determination**

It is not disputed that the Appellant committed a serious offence for which he tendered his apologies. He pleaded guilty in Court and was given a conditional discharge.

The main contention is that the punishment inflicted on him by the LGSC was harsh as compared to the punishment inflicted on the officer mentioned above by the LGSC itself. In the former case, the offence was committed at the workplace and was related to the work of the officer. He was heard in the Intermediate Court and his offence was more serious than the Appellant in this present case. Yet, the Appellant finds that he has been dismissed and the other officer had a lesser punishment in terms of a suspension of increment.

In the light of the various mitigating factors in this case and, in the light of previous decisions taken by the Local Government Service Commission itself in more

serious cases, the Tribunal remits the matter to the Respondent for further consideration with a view to settling the matter.

The Local Government Service Commission is to report back to the Tribunal within a period of two months and to inform the Tribunal if any settlement has been found in this matter.

## **Det 14a of 2016**

On ...the Public Bodies Appeal Tribunal (PBAT) referred the above case to the Local Government Service Commission (the "Commission") for further consideration with a view to settling the matter "in the light of the various mitigating factors in this case and, in the light of previous decisions taken by the Local Government Service Commission itself in more serious cases".The Commission reported to the Tribunal that it had considered the matter and "*Finally come to the conclusion that its decision to dismiss ...should be maintained.*"

Under section 30 of the Local Government Service Commission Regulations 1984 (the "Regulations"), the Commission shall not exercise its powers in connection with the dismissal, the disciplinary punishment or the termination of appointment otherwise than by way of dismissal of any officer in the local government service except in accordance with the provisions of these regulations or such other regulations as may be made from time to time by the Commission under the Act. In this matter, the Respondent stated that action was taken against the Appellant under Regulation 36 of the Regulations and, under this Regulation the Respondent was empowered to determine the punishment to be meted out in each and every case. Section 36 of the Regulations reads as follows:

"36. Procedure on criminal conviction

(1) Where a local government officer is found guilty of a criminal charge likely to warrant disciplinary proceedings, the responsible officer shall forthwith forward to the Secretary a copy of the charge and the proceedings relating thereto together with his own recommendation.

(2) The Commission shall determine whether an officer to whom paragraph (1) relates should be dismissed or subjected to some disciplinary punishment other than dismissal 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 regulation 37, 38 or 39 being instituted.

(3) Disciplinary proceedings subsequently to a conviction shall not normally be taken in respect of minor offences under the Road Traffic Act, and of minor offences not entailing fraud or dishonesty and not related to an officer's employment.”

Under regulation 36(2), the Commission has the power to determine whether an officer, found guilty of a criminal charge, should be dismissed or not. However, this power is limited by regulation 36(3). The first element to be satisfied under regulation 36(3) is whether or not the offence of the Appellant, namely forgery, can be considered to be an offence entailing fraud or dishonesty

In the case of *Elaheebocus H.R. v The State* [1997 SCJ 86], the appellant had appealed against the judgment of the Learned Magistrates of the Intermediate Court convicting the appellant on one count of issuing cheque without provision, one count of forgery in a private writing and two counts of embezzlement, and sentencing him to one year's imprisonment for issuing cheque without provision and two years' imprisonment on each of the other three counts. The appeal was against both conviction and sentence. It was held in this case that having found the appellant guilty, the Learned Magistrates could not be faulted for taking into consideration two previous convictions of the appellant relating to offences involving fraud and dishonesty when passing sentence. Thus, in case of doubt, the aforementioned judgment confirms that the offence of forgery is one that would involve the element of dishonesty.

It is to be noted that under Section 4(1) of the Local Government Service Commission Act 1975 (the “Act”), the following powers shall vest exclusively in the Commission:

The power –

(a) of appointment;

- (b) to exercise disciplinary control over local government officers;
- (c) to remove from office or approve the retirement of local government officers;
- (d) to select candidates from among local government officers for the award of scholarships or other similar privileges.”

Of course, the PBAT by virtue of Section 3 of the Public Bodies Appeal Act has the power to review such a decision if it is unreasonable or wrong. However, being satisfied that the Commission has correctly respected the provisions of the applicable regulations and given their stand in the matter, the Tribunal finds no reason to intervene in the Commission's decision. The appeal is therefore dismissed.