

PUBLIC BODIES APPEAL TRIBUNAL

No. Det32of 2016

Those who are employed on a day today basis in a temporary capacity are informed in their letter of appointment that their employment may be terminated forthwith without notice or compensation in lieu of notice. In such cases the Tribunal does not have jurisdiction.

The Appellant had lodged an appeal before this Tribunal contesting the decision of the Respondent to dismiss him from the post of temporary RECR.

Appellant's Case

The Appellant averred that he was dismissed after the Respondent found out, after he had taken up employment at the ... District Council, that he was fined for 'disturbance'. He was summarily dismissed by Respondent and he considered it to be a disciplinary action which he found harsh as he was convicted for a minor offence that did not warrant dismissal. He stated that he needed this job for his family. He had a wife and three children who relied on him. He could not understand why he was dismissed for an offence which he considered minor and not related to his work. He said that he was a good person and active in church activities and never had any other police case against him.

At the hearing, Counsel for the Appellant submitted that disciplinary action against the Appellant should have been taken under PSC Regulation 36 and the Respondent's Circular No 9 of 2008. This would have required the Respondent to give a hearing to the Appellant before action is taken against him. The summary dismissal of the Appellant was unfair, the more so that the offence for which the Appellant had to pay a fine of only Rs500 was a minor offence not related to Appellant's work.

Respondent's Case

The Respondent averred that the post of RECR in the District Council of ... was advertised on ... There were many candidates and there was an interview that was

carried out from ... to Following the interview, the Respondent decided to appoint 15 candidates as RECR on a temporary day to day basis with effect from

Twenty permanent vacancies thereafter occurred in that grade and Appellant and 19 other eligible candidates were employed as RECR on a temporary day to day basis with effect from ... The tenure of the letter of appointment was as follows *“Your employment will take effect as from the date of your assumption of duty and will be on a purely temporary day-to-day basis and will not give you any claim to permanent appointment in the Local Government Service. The appointment may be terminated without notice or compensation in lieu of notice.”*

On ..., security clearance was sought from the Prime Minister's Office (Home Affairs Division) in respect of 19 temporary employees, including the Appellant. The Respondent was informed that on ... the Appellant had been sentenced by the District Court of ... to pay a fine of Rs500 + Rs100 as costs for disturbance in relation to an incident which occurred on ...

The Appellant did not inform his Responsible Officer that he had been sentenced by a court of law. The Appellant was offered appointment on ... and he assumed duty on ... He was sentenced on ..., following his assumption of duty. The Respondent only came to know of the sentence more than six months later following security clearance sought by it.

The Respondent decided to terminate the appointment of the Appellant forthwith, on the basis that his appointment was in a temporary capacity and on a day to day basis and that it was therefore allowed to do so.

The Respondent stated that in the letter of offer of appointment dated..., the Appellant had been informed that the appointment was in a temporary capacity and on a day to day basis and would not give him any claim for permanent employment in the local government service and that his appointment could be terminated without notice or compensation in lieu of notice. He had accepted the appointment on the terms and conditions of the letter of appointment. He was not dismissed under any of the PSC Regulations, and in particular not under regulation 36.

The decision to terminate Appellant's appointment was based on the need to preserve and maintain integrity within the local authority. Two other candidates who were found to have been sentenced, after security clearance was sought, were also dismissed.

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

Determination

Although the issue of jurisdiction was not raised at the initial stage and that the Tribunal has heard arguments on the matter, we consider that in light of the Supreme Court judgment of Jolicoeur M M & ors v Public Bodies Appeal Tribunal [2015 SCJ 73], in which the Appellants were employed on a month to month basis, and which was in relation to the termination of temporary employment, the Tribunal has no jurisdiction to hear the matter. Indeed, section 3(1) of the Public Bodies Appeal Tribunal Act states the following:

"3. Jurisdiction of Tribunal

(1) Subject to subsections (2) and (3), the Tribunal shall hear and determine an appeal made by any public officer, or any local government officer, against any decision of the Public Service Commission or the Local Government Service Commission, as the case may be, pertaining to an appointment exercise or to a disciplinary action taken against that officer.

In the Supreme Court matter referred to above, it was held that the decision, from which the appeal was being sought, was a decision relating to the termination of the Appellants' temporary employment and that it did not in any way pertain to an appointment exercise nor to a disciplinary action against the Appellants. Therefore, in the circumstances the Tribunal was found to have no jurisdiction to hear the appeal.

In view of the above and based on the same reasoning as given in the case of Jolicoeur M M & ors (supra), we conclude that we do not have jurisdiction to entertain the appeal.

The appeal is therefore set aside.