

**The actual posting of an employee should not necessarily impact on his appointment as long as he is qualified.**

The Appellant is challenging the decision of the Respondent to appoint the Co-Respondents to the post of ...restyled HDWE.

### **Appellant's Case**

The Appellant's grounds of appeal were that:

*“(i) First and foremost the doctrine of Transparency and Meritocracy as enunciated by Government in its Government Programme 2015-2019 and the version 2030 document have not been adhered to.*

*(ii) The Selection Criteria namely: Seniority, Qualifications required and Experience have not been properly complied to during the course of this exercise. May I inform you that I have been discharging the duties attached to post of HDWE for last three years at the Sub-Office. Consequently my non-selection demonstrated state of affairs which is unfair, unjust and above all unacceptable.”*

Appellant averred that he had a General Certificate of Education (GCE). He joined the service as GLWR on .... He attended work regularly and he had the knowledge and he had been working as HDWE for four years. This could be seen from the records in the logbooks kept at the Office.

He found it unfair that those who had not done the work of HDWE could be appointed instead of him.

### **Respondent's Case**

Respondent averred that the post of HDWE was filled by selection as per the Scheme of service for the post. There were ... vacancies and there was an advertisement dated ... inviting applications to fill these vacancies. There were ... applicants and they were all found eligible for consideration and they were convened for an interview. Some of them did not turn up for the interview. The remaining candidates were assessed on the following criteria:

- (a) Qualifications
- (b) Experience
- (c) Communication skills; and
- (d) Physical aptitude

The Co-Respondents were appointed and the Appellant was not selected.

The Respondent agreed that the Appellant had a C.P.E certificate, had passed Form IV but he failed his GCE.

The Respondent also conceded that the Appellant had been regular at work.

The Respondent also averred that it was the established procedure to register the names of employees in the logbooks.

The Respondent averred that the Appellant had the following disciplinary record:

- (a) On ..., a warning was administered to him for unauthorized absence from place of work, indecency and insubordination;
- (b) On ..., a reprimand was administered to him for hitting a lady with a mango while on duty.

The Respondent averred that it had followed all the procedures for this appointment exercise and moved that the appeal be set aside.

### **Determination**

It is not disputed these vacancies were filled by selection as per the Scheme of Service for the post.

In an appointment exercise, the Respondent is guided by its regulation 14 which puts qualifications, experience and merit before seniority. In addition it has to determine the suitability of the candidate for the post as per its Regulation 19 (6).

The main contention of the Appellant is that he has worked for more than three years as HDWE and he had the experience of the post and he should have been appointed. He stated that his name was on the logbooks. He further stated that his Supervisors could give evidence to that effect and he gave the names of a SHDWE and a SI. These two officers deponed before the Tribunal. At times, however, there was a need to have also GLWR when the workload is increased. It can happen also that there is no HDWE available, in which case a GLWR performs the duties of a HDWE. In the present case, it was agreed that the Appellant worked for a long time but most of the time to give assistance to the HDWE, but still in his capacity as GLWR. The Appellant was not given any assignment of duties as HDWE and this was so even when he worked alone. There has been no official assignment of duties to the Appellant as the posting was done by the SI and the SHDW in relation to the workload. They conceded that the Appellant had the work experience as HDWE while he was working. They also stated that two of the Co-Respondents performed duties on LOIE like the Appellant but they did not know for the others who were not under their supervision.

The Appellant drew attention in particular to Co-Respondent No.4 who did not perform the same job as the Appellant and was posted in the SRE. However the representative of the Respondent stated, and this was not rebutted, that GLWR are sometimes posted in the SRE and perform the work of HDWE. It was not out of order that Co-Respondent No.4 was helping as HDWE in the SRE. The Tribunal was told by Appellant that Co-Respondent No.4 was again sent to work in the SRE two days after

his appointment as HDWE. These facts do not mean that Co Respondent No 4 was not fit to be appointed.

In order to see whether the grounds of appeal and the averments of the Appellant have been taken into account by the Respondent in the selection exercise the Tribunal sought information under confidential cover from the Respondent as regards the criteria, their weight and the markings. The Tribunal finds that the Appellant obtained the highest score in terms of qualifications together with some of the Co-Respondents who attained post CPE education similar to him. Similarly, the Appellant was almost at par with the Co-Respondents as far as experience was concerned. In other words his time working was taken into account in the assessment. At the hearing, the supervisors of the Appellant did say that some of the Co-Respondents who worked with them had such experience.

The Tribunal finds, therefore, that the two grounds on which the Appellant carried his case do not hold as the information provided by the Respondent to the Tribunal shows that the Appellant was treated fairly. The Co-Respondents did better than the Appellant on the other two criteria.

The Respondent has not erred in its decision.

The appeal is set aside.