

## Det 17 of 2018

**Prolonged absence without authorisation will inevitably lead to a severe sanction like declaring the post of the officer vacant specially when leave to be spent locally is spent abroad.**

The Appellant is appealing against the decision of the Respondent to declare vacant his post as GWKR in the Council of ... on the ground of unauthorised absence.

### **Appellant's case**

Appellant averred that he was employed as a GWKR by the Council since ... and that his post had been declared vacant due to unauthorised absence from.... The grounds of appeal are reproduced below:

- (a) I have been deprived of my employment rights under the laws of Mauritius.*
- (b) While declaring my post of GWKR vacant, the ...Council of ... under the direction of the Local Government Service Commission has acted in breach of S. 9 (1) (c) of the Employment Rights Act.*
- (c) I was not in position and capable to contact the City Council regarding my arrest and detention.*
- (d) My relatives (my wife and brother in law) did inform the department of my absence due to arrest and detention. (SIC)*

Appellant averred that he was on vacation leave from the ... till ... and was on overseas travel. He returned to Mauritius on ... and was arrested by the ADSU at the Airport of Mauritius on his arrival from ... for alleged importation and distribution of psychotropic. As the ... was a Public Holiday, he was supposed to resume his work on the ... but could not do so due to his detention at ... Police Station. He also averred that he was further detained by the Police at ...Police Station, ....Prison up to ... when he was released on bail.

He further averred that after his release on bail, he phoned the ... to inform him that he would resume work on the next day but the latter told him that he should take instructions from the Human Resources Department. He admitted that a letter

dated ... was remitted to him by the Assistant of the Human Resource Officer on the next day and it was then that he took cognizance that his post as GWKR had been declared vacant as from ... for being absent without authorisation.

He drew the attention of the Tribunal to the fact that he was not allowed to have visitors when he was detained at ... Police Station and ... Police Station. However he was given the opportunity to consult his legal advisor on ... and he requested him to ask his relatives to notify his place of work regarding his absence at work. He further averred that his wife, and his brother in law, did inform the Council of ... regarding his absence at work and that they were informed that such notification was at a very late stage. He also averred that neither his relatives nor himself had received any letter under registered post in accordance with Regulation 47 of the Local Government Service Commission Regulations.

During cross examination, he admitted that he was reprimanded on the ... for having absented himself from work without authorisation for period ... to...

Hence Counsel for Respondent put it to him that it was not true to say that he had a blameless record as averred by him. He was also questioned about his application for leave for period ... to ... which was meant to be spent locally and not to travel abroad. He insisted that he made mention that he would be travelling abroad on his application form.

The Appellant was re-examined by his Counsel and he stated that he lived on the first floor while his parents stayed on the ground floor and that his wife was living downstairs along with his parents. He further stated that his wife remitted to him the letter dated ... emanating from the Council of ...after being bailed out.

Appellant's wife was called as witness. She stated that she met Appellant together with her brother in law on the ... and Appellant told her to report his absence to the ,... and .... She stated that she called at the office of Council of ... on the but she did not know the name of the officer whom she met. The Tribunal asked her if she could identify the person referred to as Mr M who was waiting outside as witness. She replied in the negative. She further stated that she received the letter whereby Appellant was informed that his post as GWKR was declared vacant.

Appellant's brother in law was also called to depone as witness for Appellant. He too stated that he accompanied Applicant's wife to meet the officer responsible for ... on the ... but he did not know the names of that Officer and could not even identify him.

Appellant prayed the Tribunal to (i) quash the decision of the Respondent, (ii) recommend his re-instatement and recovery of expenses incurred in preparation of the present appeal and (iii) recommend payment of his wages since the date his post had been declared vacant.

### **Respondent's Case**

Respondent's Representative swore to the correctness of the Respondent's Statement of Defence wherein Respondent confirmed that Appellant joined the Council of ... on the ... as GWKR. Respondent averred that Appellant was reprimanded on 1<sup>st</sup> June 2012 on the ground of unsatisfactory service and his salary was also stopped on several occasions as a result of unauthorised absence for 14 days in..., 22 days in ..., from 22<sup>nd</sup> to 29<sup>th</sup> November ... and on six days in December of the same year. Respondent further averred that Appellant did not resume duty, nor submitted any explanation for his absence after the expiry of his vacation leave from ... to ... which was approved to be spent locally.

Respondent averred that Appellant was requested to resume duty forthwith failing which he was warned that his position as GWKR would be declared vacant, in accordance with regulation 43 of the LGSC Regulations 1984.

Counsel for Respondent called its representative, and the latter confirmed that the letter dated ... sent to Appellant, requesting him to resume duty, was returned undelivered with mention "addressee is abroad". She produced the said envelope after Counsel for Appellant had taken cognizance of same. She also confirmed that the Employment Rights Act did not apply in the present matter and the decision was taken under Regulation 43 of the Local Government Service Commission Regulations. She added that according to Regulation 47 of the abovementioned Regulations, it was enough that a registered letter be sent to the last known address.

The Respondent noted that the Responsible Officer had followed the procedures as laid down in the Regulations.

A representative of the Council was called as witness and he stated that the letter of the ..., declaring the post of Appellant vacant, was also returned undelivered with mention "Gone Away". Since Appellant insisted that he received the letter at home and it was not undelivered, and explained that his mother handed the letter to him, a copy of the envelope was produced and filed.

The Representative of Respondent also produced the application for leave submitted by Appellant and the latter was confronted with same as it did not make mention that he would spend the leave abroad and that no address had been inserted so as to contact him abroad. Appellant admitted that he signed the letter but stated that he informed his overseer about same. The Tribunal wanted to be enlightened about the number of unauthorised leave taken by the Appellant. It was stated that the 27 days of unauthorised leave were scattered and taken on different occasions.

Mr M, the Superintendent of the concerned department, deponed in favour of Respondent. He stated that he was not aware that the wife and brother in law of Appellant called at his office to inform him of the prolonged absence of Appellant. He confirmed that he received the application for leave from Appellant with mention "urgent" and that the foreman told him that Appellant had some urgent matters to attend to.

The Respondent moved that the appeal be set aside.

### **Determination**

During hearing, it has been established that the Appellant had absented himself on several occasions without authorisation even after having been reprimanded by Respondent. This clearly indicates that Appellant is someone who does not care about his employment or his employer. The Tribunal has also noted serious contradictions as regards the letter issued by Respondent on the.... On the one hand, Appellant insisted that the letter was handed over to him by his mother when he came out from Police Cell which was confirmed by his wife who deponed as

his witness. On the other hand, the Respondent stated that the said letter was returned undelivered with mention "Gone Away". The version of the Respondent is more credible in as much as the Appellant himself averred in his statement of case that he called at the ... Council after having been released on bail and it was then that he was remitted the letter informing him that his post was declared vacant.

The Tribunal found that the Appellant and his witnesses were not credible and their testimonies before the Tribunal cannot be relied upon. The Appellant had sufficient time and opportunity to inform the Respondent about his prolonged absence, the moreso as he could have asked the Police Authorities to do the needful.

As to the prayer of the Appellant to the Tribunal to recommend his re-instatement, this is the prerogative of the Respondent which is the sole body to decide on the matter. The Tribunal cannot also recommend as to costs or for payment of wages since his post has been declared vacant as this is a purely administrative matter which is beyond the purview of this Tribunal.

The Appellant also referred to the provisions of the Employment Rights Act (ERA) which applies in certain situations only. However, the ERA does not apply in the present matter and the Appellant is governed by the Local Government Service Commission Act and the Local Government Service Commission Regulations.

The Tribunal concluded that there is no merit in this case and the Appeal is set aside.