

## Det 19 of 2018

- **An officer who is continuously absent without authorisation for several periods cannot hope to keep his employment.**
- **Not responding to letters from his superiors inevitably plays against such an officer.**
- **The Tribunal cannot intervene on humanitarian grounds.**

The Appellant, formerly a temporary TAE, is challenging the decision of the Respondent for having been “*summarily dismissed from the local government service for continuous absences from work without authorisation with effect from ...*”

### **Appellant’s Case**

The grounds of appeal were as follows:

- *My father, an employee of a parastatal body is wheelchair bound and I had to take care of him*
- *I am under constant pressure for the repayment of my loans*
- *As a sole bread winner in the family I suddenly felt that I had to shoulder family responsibility*

He expatiated on his grounds in a Statement of Case as follows:

- *“Appellant’s father, Mr C. D. who was a messenger at ISC fell ill since ... and took leave without pay. As per medical certificate dated..., Appellant’s father has got severe back pain with inability to walk and was wheelchair bound.*
- *As Appellant was the only one living with his parents he has had to attend to his father’s needs and to look after him during his illness. Appellant’s mother (aged 53) too was not enjoying a sound health.*
- *Appellant had contracted a housing loan of Rs ... from the Civil Service Mutual Aid Association Ltd. Appellant also contracted another loan from the Statutory Bodies, Mutual Aid Association Ltd in the sum of Rs ...*

- *Following Appellant's father inability to work Appellant was having great difficulty to repay the two loans and as such Appellant is indebted for the months of ... up to date*
- *As at that time appellant was very upset and depressed by his father's illness and his financial problems Appellant could not attend work. He did not pay heed to the consequences of his absences from work*
- *Appellant is of poor means and his work is of great importance for the welfare of the family*
- *On ... Applicant's father passed away due to his illness. This confirms the ground of appeal that the Appellant's father was seriously ill and he had to attend to his needs personally*
- *Appellant is the sole breadwinner of the family and they all depend on his salary for their livings" (SIC)*

Appellant produced medical certificates and his father's death certificate mentioned above, as well as his own birth certificate to prove that the deceased was his father.

The Appellant moved that the Tribunal allow the appeal and quash the decision of the Respondent and take any such decision as the Tribunal may deem given the circumstances.

The Appellant was cross-examined.

When Appellant was asked about his father's employment he stated that the latter was an employee of the ISC. However, he rectified this and conceded that his father had in fact retired from ISC and what he had put in his Statement of Case about his father's employment status was not correct.

Appellant was questioned about his averment that he was the only person to take care of his father and the family. Initially he conceded that his uncle was helping the family financially. When the matter was probed further, he further conceded that he had a brother who was married and who was staying on the upper floor of the same house.

The Appellant was asked whether, apart from the letters he received from the District Council, he was told by the officers of District Council about the possible consequences of his frequent unauthorized absence from work and he stated that this was not done. However, after the Human Resource Manager of the District Council deponed and informed the Tribunal that she personally spoke to the Appellant on at least two occasions about his frequent absence, the Appellant agreed that he was told about this when he absented due to his own illness.

He described in great detail how he had to accompany his father to a specialised unit for dialysis three times a week to explain why he could not go to work. However he also admitted that on days when there was no dialysis he had to work as mason to obtain some money. But he was unable to explain why on those days he did not go to perform his job at the District Council.

During cross-examination Counsel for Appellant laid emphasis on the predicament of the Appellant and the stress he was undergoing because of his father's serious health conditions as well as the health problem of his mother.

Counsel submitted that action could have been taken under Local Government Service Commission (LGSC) Regulation 41 which offered a number of options for penalties to the Appellant whereas under LGSC Regulation 43 (1) the Respondent could only declare the post vacant. Counsel also submitted that the matter could have been dealt with on humanitarian ground.

### **Respondent's Case**

The Respondent initially moved that the appeal be set aside in as much as:

- “(a) the said “grounds” on which Appellant is relying were vague and do not amount to grounds of appeal; and/or*
- (b) the appeal is trivial and frivolous”.*

However, it was agreed that the appeal be heard on the merits and the points of law be addressed at the hearing, if needed.

The Respondent averred that the Appellant was holder of the post of HWKER since ... and he was appointed TAE in a temporary capacity with effect from .... He was absenting himself from duty without authorization since ....

Since the beginning of the year... , Appellant had been absenting himself for 2 to 6 days consecutively and had, till..., absented himself for 30 days, for which seven medical certificates pertaining to him were produced in relation to his absence and he had used up all his sick leaves.

On..., a letter was issued to him regarding unauthorized absence since the beginning of the year.... He was warned that any absence without notification might be considered as a breach of contract and his post could be declared vacant or he could be summarily dismissed. He was also requested to be more regular in attendance.

Appellant was however absent from duty without authorisation as from .... On ... and ... respectively letters were sent to Appellant:

- *“informing him that it was noted with concern that he was absenting himself from work without authorization since ... and he had not submitted any medical certificate to cover his absences in case of illness, if any;*
- *reminding him that in case of absence in excess of three consecutive days, a medical certificate from a medical practitioner should be produced showing the date of its issue, the nature of illness from which he was suffering and the probable date of return to duty; and*
- *requesting him to resume duty forthwith failing which the post of HWKER held by him would be declared vacant in accordance with regulation 43 of the Local Government Service Commission Regulations”.*

Appellant failed to resume duty and did not submit any medical certificate, in case of illness, to cover his absence from work since....

On..., the Responsible Officer (RO) recommended to Respondent that the post of HWKER held by Appellant be declared vacant with effect from ....

The Respondent noted that the Appellant had not deemed it appropriate to resume duty following the request of the RO and continued to absent himself without authorization and did not respond to the letters addressed to him by his RO.

On ... the Respondent decided to summarily dismiss Appellant from the Local Government Service for continuous absence from work without authorisation and the decision was conveyed to the Appellant by his RO in a letter dated ...

The Respondent stated that the Appellant had not paid heed to the consequences of his absence from work. He failed to notify his RO of his absence and to reply to the letters sent to him. According to the Human Resource Manager of the District Council who was brought by Respondent as witness the Appellant was called at least two times in her office and he was told about his frequent unauthorized absence from work and the likely consequences of such absence. She stated that she even tried to get Appellant's brother, who also worked at the District Council, to talk to him and to ask him to be more regular at work.

The Respondent stated that there was only one post of TAE for the whole District Council and that the frequent absence of the Appellant was impacting negatively on the work of the District Council. This was confirmed by Appellant's Supervisor who also deponed.

The Respondent averred that the relevant procedure had been followed and Appellant was informed in writing and verbally about his frequent unauthorized absence and the possible consequences to him. The Respondent had no alternative than to summarily dismiss the Appellant.

The Respondent moved that the appeal be set aside.

### **Determination**

This is a case of dismissal due to frequent unauthorized absence from work.

It is not denied that the Appellant had absented himself from work on many occasions and even did so after he was told about his unauthorized absence verbally and in writing. The Appellant accepted all this and he grounded his appeal more on his

health problem and that of his father compounded by his other family problems, his repayment of loans and so on. In fact he presented all these as grounds of appeal which were *stricto sensu* not grounds of appeal. The Respondent pointed this out and wanted to resist the appeal but in fairness to the Appellant it was agreed that the background to the appeal be heard to see whether there could be elements in mitigation.

The Appellant even requested the Tribunal to consider the appeal on humanitarian grounds and on natural justice. The Tribunal pointed out that while it is governed by principles of natural justice there is nothing in the law which allows the Tribunal to adjudicate on humanitarian grounds. The Tribunal will only intervene when there is unfairness and deviations from the regulations governing local government officers.

In hearing this appeal the Tribunal notes the following:

- (i) The Appellant has been given the chance to refrain from being absent from work without authorisation. He has been told about his frequent unauthorized absence by the Human Resource Manager of the District Council and the likely consequences that such absence could cause. The RO wrote to him three letters again warning him that his absence could lead to his dismissal. The Appellant not only continued to be absent without authorization but he did not care to respond to these letters or to phone his supervisor and to explain the cause of his absence.
- (ii) The Respondent has taken time to inflict the final decision and has not done so as from the start of the string of unauthorized absence. The Appellant was given enough time to change his habit but his only excuse was that he was under stress because of his father's health. This is not an acceptable excuse as this should not have prevented the Appellant from responding to letters addressed to him and explain his situation.
- (iii) The Appellant cannot use his father's demise as an excuse as this occurred three months after Appellant was dismissed. It shows of course that Appellant's father was critically ill.

- (iv) The Appellant had averred that he was the only one who could take care of his father but at the hearing he conceded that his brother and sister in law were staying in the same building. They could presumably have helped him.
- (v) The Appellant tried to make the Tribunal believe that his father was an employee of the ISC and he was on sick leave when in fact his father had retired from ISC.
- (vi) The Appellant averred that he was not told about the consequences of his unauthorized absence and he conceded that he was so informed only after the Human Resource Manager had deponed.

The Tribunal finds that the Appellant has himself to blame in all this. In not telling the truth and hiding certain things as they became evident at the hearing the Appellant has lost his credibility.

The Appellant has asked that other penalties could have been inflicted on him in lieu of dismissal as he depended a lot on his employment. However, this could only have been possible under LGSC regulation 41 which provides for a number of options. In the case of absence without authorization action is taken under LGSC Regulation 43(1) which provides clearly that:

*“The Commission may declare the office of a Local Government Officer to be vacant or summarily dismiss the officer where the officer is absent from duty without leave or fails to resume duty on expiry of leave”.*

In the present case the officer has been absent without authorisation on many occasions, the last one being prior to his dismissal where he has been absent from work continuously for nearly one and a half month and he did not resume work in spite of written requests to do so. The Respondent has acted in all fairness to the Appellant.

The Tribunal has not seen any reason to intervene in favour of the Appellant.

The appeal is set aside.