

When a free pardon is granted to someone he is deemed to have never been convicted. Respondent cannot ignore this as well as the reasonable recommendation of the RO of a Municipal Council. Dismissal in this case was unfair and unreasonable, the more so as the offence was committed almost 12 years earlier.

The Appellant is challenging the decision of the Respondent to terminate his employment as GWR at the Municipal Council of ... on the ground that he had been convicted to pay a fine for possession of cannabis. He filed his appeal form along with the grounds of appeal. Subsequently, Respondent filed a preliminary objection which read as follows:

- (i) The post of GWR was filled following a call for application by Public Advertisement.
- (ii) The decision against which Appellant is appealing relates to the termination of Appellant's temporary appointment as GWR on a day to day basis and does not in any way pertain to an appointment exercise nor to a disciplinary action taken against him.

In a ruling delivered on the ..., the Tribunal concluded that the points in law raised by Respondent do not hold and that it has jurisdiction to hear the matter since the appeal before the Tribunal was not in relation to an appointment exercise but to the termination of employment of Appellant i.e. to a disciplinary action.

Appellant's Case

The Appellant swore as to the correctness of his grounds of appeal and his statement of case. As grounds to his appeal, Appellant averred that the decision of Respondent to terminate his employment was

“(i) Unfair and unreasonable

(ii) *Abusive and prejudicial*

(iii) *Inhuman, harsh and discriminatory against my constitutional rights and human rights to be treated equally and my right to employment”.*

He further added that the reason of his conviction in Court dated as far back as Since then he had not reoffended and had been living a stable family life. He was not made aware that this conviction would have a bearing on his employment. He explained that he was granted a free pardon by the President of the Republic upon the advice of the Commission on the Prerogative of Mercy and therefore his antecedents was no longer an issue.

He further expatiated the grounds of appeal in his statement of case in which he averred that he was offered employment by Respondent on or about ... as GWR in a temporary capacity for a period of six months and that he joined the Municipal Council on One of the conditions of his employment was that he had to produce a certificate from the Director of Public Prosecutions within a month as from the date of assumption of duty to the effect that he had never been convicted of any crime or misdemeanor. Subsequently he submitted a certificate of character on or about ... to the Municipal Council emanating from the Director of Public Prosecutions wherein it was clearly mentioned that he was convicted to a fine on ... for possession of cannabis.

However, he explained that he applied for pardon to the Commission on Prerogative of Mercy on ... and handed over a copy of his application to the Municipal Council. A free Pardon was granted to him on the ... and on or about the ..., he submitted the letter from the President of Republic to the Municipal Council. In the meantime, he applied for a new certificate of character from the Director of Public Prosecutions which he received on the ... wherein it was stated that Appellant had never been convicted of any crime or misdemeanor.

He felt aggrieved that his employment was terminated despite having been granted a free pardon and considered this termination as unfair and unreasonable, abusive and prejudicial and inhuman, harsh and discriminatory against his constitutional right and human rights.

He was cross examined by Counsel for Respondent and he admitted that he did not have the Certificate of Character at the time of recruitment but applied for same on the same day. He also admitted that he was aware that he had an antecedent but he went to seek advice from the Police Officers working in the section where application of Certificate of Character was made and they told him that the fine he paid would not appear in his Certificate of Character as it dated more than ten years. He also stated that they advised him to put “no” in section 15 of the Application Form. It was put to him that it was an offence to have given wrong information on the Application Form as he should have inserted “yes” instead of “no”. He replied that he did not know the law and that he relied on the advice of the Police Officers. He further stated that he was confident that his application for Pardon would be granted as he had trust in the President being given that this constituted a second chance for him to make a pleading after the commission of the first offence, which dated more than ten years ago.

Respondent’s case

The Representative of Respondent solemnly affirmed as to the correctness of the Statement of Defence.

Respondent averred in its Statement of Defence that Appellant was offered employment as GWR on a temporary day to day basis for a period of six months in the first instance as from the ..., under the conditions mentioned in letter dated.... One of the conditions was precisely that Appellant had to produce a Certificate of Character to the effect that he had not been convicted for any crime or misdemeanor by any Court of Law. Respondent also averred that Appellant failed to mention in his application form that he had been convicted for possession of cannabis.

Respondent explained that a Certificate of Character of Appellant was produced to the Responsible Officer (RO) of the Municipal Council of ... on ... wherein it was mentioned, that Appellant was on ... fined upon conviction for the offence of “Possession of Cannabis”. Respondent admitted having received a copy of the Prerogative of Mercy Application from the Appellant on....

Respondent further averred that following the Certificate of Character deposited by Appellant on the ... where it was mentioned that Appellant had been convicted for the offence of "Possession of Cannabis", the Application of Appellant was perused and it became clear that Appellant knowingly concealed that he had been convicted of an offence and subsequently been found guilty. Therefore, Appellant had committed a breach of S. 16 of the Application Form whereby it was stated that "it is an offence to give false information or to conceal any relevant information. This may lead to an application being rejected or if a candidate has already been appointed to the termination of his appointment". Given that Appellant was still on temporary basis, Respondent decided to terminate forthwith his temporary employment. By a letter dated..., following a written request from Appellant to withhold the termination of employment, Respondent informed the RO of the Municipal Council of ... that it had decided to maintain its decision. This decision was conveyed to Appellant on ...

Respondent denied that it has acted illegally, unfairly, unreasonably, inhumanly, discriminatorily, harshly and in an abusive and prejudicial manner and averred that the Appellant deliberately made an inaccurate filling of the Application form in as much as he deliberately did not inform of the offence for which he had been found guilty and of which he was aware. This in itself justified the termination of the day to day temporary appointment of Appellant. Respondent moved that the appeal had no merits and should be set aside.

During examination in chief, the representative of Respondent explained that in the past, the Respondent used to ask for police clearance before a recruitment was made. But this procedure was taking too long and the Respondent decided to recruit first and then ask for police clearance. At a question of the Tribunal, the representative of Respondent stated that Appellant would not have been recruited if he had inserted "yes" in S.15 of the Application Form.

During cross examination by Counsel for the Appellant, the representative conceded that there was no mention anywhere in the Scheme of Service that Applicants should have a clean record but same was found in the appointment letter. Counsel referred to S. 15 of the Application Form. He put to the representative of Respondent

that it contained also a proviso that any Applicant should fill, in the event of inserting “yes”, such detailed information about the charge, the fine, or sentence and that there was no need for such proviso simply because any applicant would have been disqualified as per his previous reply. The representative of Respondent replied that he knew the Application form, as it was, and could not say anything more. At this stage, the Tribunal observed that it did not make any difference as any Applicant would either not be recruited or be sacked for any offence committed, be it a simple assault, a drug trafficking offence or a murder case.

Counsel for Appellant further put to the representative of Respondent that according to S. 5.(2) (d) of the Certificate of Character Act 2012, it is stated that if a free Pardon has been granted to a person, he is deemed to have never been convicted. The Representative replied that at the time of application, the Appellant has already committed an offence by concealing his conviction. Counsel for Appellant rightly pointed out to the representative of Respondent that the letter of dismissal dated ... did not make any mention of any misrepresentation or any lie committed by Appellant. The representative of Respondent admitted that there was no mention of same. At a further question from the Tribunal, the representative of Respondent stated that the Appellant was dismissed for both offences.

Counsel for Respondent called a representative of the Municipal Council of ... and the latter admitted that he received the certificate of character as well as the letter of free pardon granted to Appellant. He further stated that the RO of the Municipal Council of ... recommended at the first instance to terminate the employment of Appellant following receipt of the Certificate of Character and later changed his recommendation from dismissal to extension of the temporary employment of Appellant for a further period of one year after having taken cognizance of the free Pardon granted to Appellant. Both letters sent to Respondent were produced to the Tribunal.

Submission

Counsel for Appellant made a written submission to the Tribunal wherein he explained the chronology of events as already mentioned above. Copies of the relevant

legislation as well as some relevant authorities were annexed to the written submission. In his submission, he was of the opinion that the decision of the Respondent was unjust, unreasonable and unfair and moved that the decision of the Respondent be quashed and an order be made to reinstate the Appellant to his previous employment.

Determination

The Appellant relied on three main grounds to appeal against the decision of the Respondent for sudden termination of his service namely

- (a) Unfair and unreasonable
- (b) Abusive and prejudicial
- (c) Inhuman, harsh and discriminatory.

In determining the present matter, the Tribunal will deal with all the three grounds of appeal together as they are interrelated. However, there has been no evidence whatsoever to prove that the decision of the Respondent was inhuman and discriminatory, abusive and prejudicial. On the other hand, much has been said during the hearing on both sides regarding the unfairness and harshness of that decision.

It is not disputed that the Appellant was convicted to pay a fine for possession of cannabis in ... but it was brought before this Tribunal that the Appellant had not reoffended since that date. The letter dated ... clearly showed that he was dismissed on the following reason which is being reproduced below

“on..., you were fined ... upon conviction for the offence of Possession of Cannabis” (The date was almost 12 years before).

However, the Appellant applied to the Commission on the Prerogative of Mercy for free Pardon. Same was granted to Appellant. Respondent was made aware of the free Pardon granted to Appellant through the RO of the Municipal Council of ... since In fact, in the said letter the RO withdrew his recommendation for termination and substituted it by an extension of the temporary employment of Appellant. Furthermore, it is well known and is trite law that when a free Pardon is granted to a person, that

person is deemed to have never been convicted as rightly pointed out by Counsel of Appellant in his written submission. It is unreasonable for Respondent to have ignored both the free Pardon granted to Appellant as well as the second recommendation of the RO. This Tribunal has several times drawn the attention of public bodies that they should strike a balance between the adverse consequences of a conviction and the loss of the livelihood of an individual including the social and economic impact of throwing the poorer members of the population in unemployment and idleness. Respondents should bear in mind the principles of natural justice before imposing any sanction. It also has a duty not to be so unmerciful as to create more problems than to solve them.

During the course of the Appeal, the Respondent gave another reason to support their decision which had never been communicated to Appellant. In fact, their reasoning is that the Appellant failed to disclose in the application form that he was convicted by a court of law.

Even if it is an offence, natural justice demands that Appellant should have been given an opportunity to give his explanation on this specific offence. The Appellant had been taken by surprise about this new offence only when a copy of the Statement of Defence was handed over to him. The worst is that the representative of the Respondent stated under oath that Appellant was dismissed for both offences which are clearly in contradiction with the letter of dismissal issued to Appellant.

Under these circumstances, and for the reasons stated above, the Tribunal quashes the decision of Respondent under S 8(4)d of the Public Bodies Appeal Tribunal Act and remits the matter back to it to reconsider its sanction.