

## Det 13 of 2019

- A candidate who does not have the basic certificate required for the job cannot be appointed when another candidate having the basic requirement was not even called for interview;
- A candidate who failed a literacy test cannot pass same for the same job a few months later, the more so as the test was different.
- When experience is a criterion it must be experience in the public and not the private sector

The Appellant is a WHR at the Municipal Council of ... He has appealed against the decision of the Respondent not to call him for interview for the post of TASE. The appointment of Co-Respondent was notified on ....

### **Appellant's Case**

The Appellant solemnly affirmed as to the correctness of his Grounds of Appeal (GOA) and his Statement of Case (SOC).

His GOA were:

*"I possess all the required qualification for the post of TASE according to the advertisement. However I was not even selected for interview. Since I join the Council of ... in ... to date, I have been posted to the relevant section and perform the following duties.*

*As I was posted at the ... section I have follow a trade course in the relevant field on my own so that in future I can apply for the post of TASE. My job consist:*

- *To assist an ETC for the daily work*
- *To keep my working place clean*
- *To be familiar with all the tool required*
- *To be familiar with all the material required*
- *Loading and unloading materials from the lift of the lorry*

- *Since ..., I have been at the disposal of the Council during all festival and religious ceremony such as Cavadee, Spring festival, MahaShivaratree, Independence day, Ougadi, Eid-UI-Fitr, Ganesh Chaturthi, Divali, Christmas*
- *As an WHR I was posted at the place from ... till now".(SIC)*

He expatiated on his GOA in his SOC in which he stated that the Co-Respondent had the basic Certificate and had years of experience. He could not understand how somebody who was working in the CSV department could be shifted to a field when he had the technical expertise as well as the qualifications. In his Application Form he had specified that he had the technical and other qualifications:

On cross examination Appellant was asked why he had put in his SOC that the Co-Respondent was holder of the basic Certificate when the Respondent itself confirmed that the Co-Respondent did not have the basic Certificate. His reply was that when he found that the Co-Respondent went to the interview he assumed that the latter was holder of the basic Certificate.

It was put to the Appellant that the fact that he had a certificate in DEIN was not enough to show that he had experience in the field. He did not agree. In fact he had produced to the Respondent the course content of that certificate which was annexed to his certificate.

Counsel for Appellant made his submission to the effect that experience gained in the service has to be considered rather than experience gained outside the service, outside normal working hours or prior to joining the service. He referred the Tribunal to the Supreme Court Judgement of A. G. B. Jumun v PBAT ipo LGSC & Ors (2015 SCJ 31) Record No 108644.

### **Co-Respondent's Case**

Co-Respondent had submitted a SOD to which he solemnly affirmed as to its correctness. But he merely stated that he had been selected by the Respondent as TASSE and posted in the Council of ...

His Counsel had the opportunity to examine him at length, during which she referred to a case which Co-Respondent had entered before the Tribunal in ... when he had not been selected to the same post. He maintained that he had “*lost his case*” and she then stated that therefore the selection exercise had been approved. She even produced the GOA and SOC of Co-Respondent (then Appellant) and SOD of Respondent and several other relevant documents produced then.

She referred specifically to a document entitled “*Employment History and Qualifications of both Appellant and Co-Respondents*”. She cross examined Appellant on the fact that one of the Co-Respondents in that previous case had, according to that document, submitted two testimonials from private companies regarding their experience and she submitted that these had been taken into consideration. She was told that all this would have to be read in the context of the previous case to which she agreed. Counsel for Respondent also agreed and even gave the reference of the case to the Tribunal to facilitate matters.

### **Respondent’s case**

The representative of the Respondent solemnly affirmed as to the correctness of the Respondent’s Statement of Defence (SOD).

The Respondent averred that according to the Scheme of Service for the post of TASE, appointment thereto is made “*by selection from among serving employees of the Local Authority holding a substantive appointment, and who possess the required skills and certificates.*”

The post was advertised on ...by way of ... Circular Note. There were ten candidates who applied in response to the advertisement. After the analysis of the applications, only one candidate, namely the Co-Respondent was convened on ... with a view to assess his eligibility and suitability for appointment as TASE in the Council of .... Following the selection exercise, the Respondent found that the Co-Respondent was suitable for the said post and appointed him in a temporary capacity with effect from...

The Respondent averred that all information concerning qualifications and experience for both the Appellant and the Co-Respondent were taken into consideration. The Co-Respondent did not possess the basic Certificate but he passed the Literacy Test. He satisfied the requirements of the Scheme of Service for the post. The Respondent produced at the Hearing a letter from a private firm saying that the Co-Respondent had been working as Part-Time ...for the said enterprise from ...till ..... The Respondent produced at the same time a statement from the Council, dated, when it was said that ...applicants including the Appellant and the Co-Respondent do “not possess experience in relevant works in the ... Service”. The Respondent also confirmed that the Appellant was holder of a basic Certificate and had passed a higher level examination.

The Respondent described the duties of a WHR which was the same that the Appellant had given in his SOC. The Appellant was not expected to be doing any relevant work at the relevant Section in the Council. The fact that Appellant was posted at the said Section did not automatically qualify him for the post. The Appellant should have satisfied the requirements of the Scheme of Service for the post to be eligible for the same. The Appellant failed to produce any evidence of having the knowledge, aptitude and experience in the field and he was not convened for the interview.

The Co-Respondent was found eligible and was convened for the literacy test and interview exercise. Attending the interview did not mean automatic selection for the post. The interviewing panel, on the basis of various criteria, performance at the interview and suitability of the candidate decided to select the Co-Respondent.

The Respondent averred that all procedures had been followed and the appointment of the Co-Respondent was made in line with the requirements of the Scheme of Service for the post. It complied with the applicable law.

The Respondent averred that the appeal had no merit and should be set aside.

The Tribunal requested the following information in writing from Respondent:

- (a) the qualifications and experience of all candidates
- (b) a copy of the filled questionnaire for literacy test for the Co-Respondent

(c) the scrutiny report for eligibility for interview.

The Respondent provided all the documents.

Some candidates did not hold a substantive appointment. One did not submit his second copy and four of them, including Appellant were said to have no evidence of knowledge, aptitude and experience. Co-Respondent was the only one eligible by the standards of the Respondent but he had to pass his literacy test. The questionnaire mentioned by the Respondent was produced and was totally different from the one that Co-Respondent had undergone in his previous application when he was not selected. In that case, referred to by his own Counsel during the hearing, the Secretary of the Commission certified, on..., that he failed the test as he was unable to read an extract of a newspaper. Co-Respondent had been asked whether he could write a report or read and write in English and French and he had replied in the negative.

### **Determination**

The Appellant has stated that he was not contesting the appointment of the Co-Respondent. He is only contesting the selection process where he has been denied the chance to attend the interview and that he had thus been unfairly treated.

In this selection exercise, the candidates are required to possess a basic Certificate or pass a literacy test and produce evidence of having the knowledge, aptitude and experience in the trade chosen.

According to information provided by the Respondent itself the Tribunal finds that:

- (i) The Appellant has a basic Certificate and has passed a higher level examination. The Co-Respondent has no basic Certificate and had to pass a literacy test which he is said to have passed.
- (ii) Both Appellant and the Co-Respondent did not possess experience in the works in the Local Government Service as certified by the Chief Executive of the Council of .... The Co-Respondent is stated to have been working in the relevant field for a few months in a private firm.

As regards the experience, Co-Respondent supposedly acquired in the private sector this has not been validated as the representative of the Respondent was not in a position to say whether the private enterprise was contacted to know more on the nature of the work performed by the Co-Respondent. The Appellant for his part was cross-examined on the work he was doing at the Section. The letter from the private employer was taken at its face value. Only experience in the local government bodies should normally be considered in the assessment of candidates. Therefore, for all intents and purposes, the Co-Respondent had no proof of experience in the trade. Both Appellant and Co-Respondent do not have the second requirement of the Scheme of Service.

Concerning the evidence adduced by Co-Respondent's Counsel in relation to a previous case entered by the Co-Respondent before the Tribunal, the Tribunal referred to that case. It in fact found out that the case was dismissed because the then Appellant, (now Co-Respondent) had failed to attend the Tribunal on the day of Hearing and the case was therefore never heard on its merits. In fact Respondent then informed the Tribunal that in the meantime he had been appointed. The question of accepting those testimonials regarding some candidates therefore never arose before the Tribunal, even if the Respondent may have accepted same.

Regarding the same issue of experience, the judgement in the case of Jumun v/s PBAT ipo LGSC referred to us by Appellant's Counsel directly relates to it.

The PBAT had taken the view in that case that experience must relate to "*experience in the local government service and not to experience in private enterprises*", which was maintained by the learned Judges of the Supreme Court. The Counsel for the PBAT had submitted that "*given the fact that appointment is being made by selection among serving employees, the first Co-Respondent can at least act on reliable and verifiable evidence coming from Responsible Officers of the various local authorities*". The Determination of the PBAT was upheld in that case.

Qualification-wise it is not contested that the Appellant has a basic Certificate and a certificate at a higher level examination while the Co-Respondent has no basic Certificate. The Appellant is eligible for the first requirement of the Scheme of Service

and the Co-Respondent was not. Further it is surprising that he passed the literacy test a few months later after having failed the first time as certified by the Secretary of the Commission.

It is, therefore, not reasonable that the Co-Respondent, who failed on the two eligibility criteria, was called for the interview and the Appellant who met the qualifications criterion was not. Both Appellant and Co-Respondent followed some training in relevant works.

The Co-Respondent did not have a basic Certificate and was given the chance to pass the literacy test. The Appellant had a Certificate in a similar field and was working in the relevant Section. He should have been given a chance to be interviewed to assess his technical capabilities in the relevant matters the more so as his course content for his certificate shows his knowledge in the trade chosen acquired during 75 hours of training. There should have been somebody knowledgeable in the trade to assess the candidates.

For the reasons given above the appeal is allowed and the Tribunal quashes the selection exercise.