

Det 17 of 2019

- **Seniority and assumption of duty in the job are not selection criteria and cannot be favourable to those who base their appeals on these grounds.**
- **In a selection exercise qualification, experience and merit are essential criteria.**
- **Candidates must do well on all the selection criteria and it is the overall marking that counts.**

The Appellant, SHR at the Municipal Council of ..., has lodged two appeals in connection with the decision of the Respondent to appoint candidates to the post of PHR.

In the first appeal, the Appellant is contesting the appointment of Co-Respondent No1 and in his second appeal he is challenging the appointment of Co-Respondent No 3.

The appointments to the post of PHR were done in four batches. as follows:

- (i) Batch 1 Co-Respondent No 1 was appointed;
- (ii) Batch 2 Co-Respondent No 2 was appointed;
- (iii) Batch 3 Co-Respondent No3 was appointed; and
- (iv) Batch 4 Co-Respondents Nos 4 and 5 were appointed.

All appointees have been joined as Co-Respondents as the Determination may have an impact on their appointment.

As the two appeals concern the same selection exercise, they have been consolidated and one determination is being given.

Appellant's Case

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

In his GOA, he averred that he joined the service on...as THR at the Municipal Council of In..., he was sponsored for a two-year full time course leading to a Diploma in SSN at the University of ... and after successful completion of the course, he was awarded the Diploma on He was appointed HR on ... and promoted SHR on.

Appellant averred that he had been assigned the duties of PHR on several occasions from which he acquired sound knowledge, skills and work experience. He had to attend Council Meetings, Executive Meetings and other meetings and these were vital experience gathered to efficiently discharge the duties of PHR.

He also followed a course in PSN duties at the office of the Specialised Office and was awarded a certificate to that effect.

He stated that Co-Respondent No 1 joined the service after... and was appointed SHR after.... Co-Respondent No 3 was appointed SHR after the year

He inferred that the decision of the Respondent to appoint the two Co-Respondents was arbitrary and that the Respondent did not observe the criteria which were:

- (i) Knowledge of the job;
- (ii) Experience; and
- (iii) Seniority.

In his Statement of Case, he averred that Respondent had not applied the standards prescribed in Regulation 13 of the Local Government Service Commission (LGSC) Regulations. He had gathered knowledge and experience required to discharge the duties of PHR as he performed the duties on several occasions(391days)and he believed that he was better than the two Co-Respondents who did not have such opportunities and experience.

Respondent's Case

The representative of the Respondent solemnly affirmed as to the correctness of the Statement of Defence (SOD) in both appeals.

Respondent averred that the post of PHR was filled by selection from among officers in the grade of SHR, reckoning two years service in the grade and possessing;

- (i) Good interpersonal, communication, leadership and administrative skills;and
- (ii) A fair knowledge and understanding of ... matters relating to the prevention and control of....

As this was a selection exercise, seniority was not an overriding criterion.

There were ... candidates and they were all found eligible. They were interviewed on ... and ... and a merit list was drawn.

The Respondent confirmed the career path of the Appellant. He was SHR at the Municipal Council of On ...he was transferred to the Municipal Council of ...and on ..., he was again transferred to the Municipal Council of ... where he started his career.

Co-Respondent No 1 joined service as AHR on He was appointed HR on ... and SHR on....

Co-Respondent No 3 joined service on ... as SVR and was appointed as AHR (SIC) on He was appointed HR on ... and SHR on

The Respondent confirmed that the Appellant was called upon to perform the duties of PHR on 19 occasions and not 16 as averred by Appellant. Co-Respondent No 1 was assigned the duties of PHR on 11 occasions. Co-Respondent No 3 was never assigned the duties of PHR. The Respondent stated, however,that the assignment of duties was done for administrative convenience and would not give any claim to permanent appointment to the higher post. The Appellant was aware of this.

The Respondent averred that attending meetings at the Council or Departments and other bodies were part of the duties of a SHR.

It was also the duties of a SHR tocases before the concerned authority.

The Respondent averred that it took into consideration all the information contained in the application forms of the candidates. The appointments were made following a selection exercise as per the requirement of the Scheme of Service for the post of PHR, the criteria of selection, performance at the interview and bearing in mind the suitability of the candidates for the post.

Co-Respondents' Case

The Co-Respondents Numbers 1, 3, 4 and 5 solemnly affirmed as to the correctness of their Statements of Defence. The SODs of Co-Respondents were as follows:

Co-Respondent No1 explained his career path, the duties he performed and his different postings in the ... service. He reckoned ...years' service as SHR and was assigned the duties of PHR on ... occasions for a total period of ... years and ... days and he averred that he did so with due diligence. He had no adverse report. He had the opportunity to be in charge of the relevant Department during his assignment of duties as PHR while the HCR was on leave. He elaborated on the many activities in which he was involved such as when there were cases of ... and.... He followed training courses. He attended three interviews in the past but was not successful.

Co-Respondent did not agree with Appellant that the work load is much more in Municipal Councils than in District Councils. He averred that on the contrary in District Councils there is a shortage of staff and the work load is heavier.

He was not cross-examined.

Co-Respondent No 2 was originally an Appellant before the Public Bodies Appeal Tribunal. On... he withdrew his appeal as he had been appointed and became a Co-Respondent in the present appeal. He had initially decided to abide, but finally changed his mind and was allowed to depone based on his letter sent to the Tribunal. He reminded us of the battle that he and his seniormost friends have been fighting regarding the way that the Respondent has been selecting candidates on the basis of experience obtained during assignment of duties. He was reminded that since he has been appointed, he cannot speak as if he is still an Appellant.

Co-Respondent No 3 also gave his career path and stated that assignment of duties was done for administrative convenience and that the Appellant was aware of this. He followed courses on specialised duties and he carried out those duties from 1995 to 2009 when required. He stated that he attended interviews in the past but this could not be used as a criterion for appointment. Performance at the interview was more important. He had appealed to this Tribunal in the past when he was not

appointed but he withdrew his appeals when he understood the principles of selection. He added, during examination-in-chief, that he had performed well at the interview, that he had the capacity to move ahead and he was senior to Appellant and had more experience than him.

He wanted to underline the difference between the seminars attended by the Appellant and himself and courses that he followed including training by officers of the ...Office.

He was cross-examined by Appellant who told him that he had not produced documentary evidence as per LGSC Form7 (item 13). He replied he did not remember and had to check the information.

Co-Respondent No 4 averred in his SOD that as SHR he acted as PHR on four occasions in the Council of ...and on one occasion in the Council of.... He gave the list of courses which he followed.

He was not cross-examined.

Co-Respondent No 5 averred in his SOD that he had a Diploma in SNS as well as a "*Bachelor ...*" from the University of.... The major subjects of the course leading to the Bachelor were ... and He was assigned the duties of POR and headed the relevant Department for a staff of 700.

He was promoted as SHR on ... and was assigned the duties of PHR on two occasions at the ...District Council, and on 11 occasions at the District Council of.... He also listed the ... Courses followed by him.

He prayed the Tribunal to set aside the SOC of Appellant as being trivial and frivolous as per Section 6(4)(a) of the Public Bodies Appeal Tribunal Act 2008.

Appellant wanted to cross-examine him on this point but the Tribunal explained that this section no longer applied to this appeal which was already at the Hearing stage. In any case any objections under this Section of the law should have been made by the Respondent.

At the request of the Tribunal, the Respondent provided the mark sheets to the Tribunal for its eyes only.

Submissions of Appellant

The Appellant referred the Tribunal to a Determination in which he was an Appellant together with Co-Respondent No 2 in which the Tribunal held that *“it stands to reason that an officer gains knowledge of the post where he is assigned such duties and that he does the duties well. Otherwise, they would not have been assigned such duties so many times without any adverse report”*.

Determination

According to the Scheme of Service for the post, the appointment as PHR is done by selection. Seniority and assignment of duties as PHR are, therefore, not determining criteria in the appointment exercise. The Appellant has also averred that he attended the interview for the post of PHR three times in the past, implying that this should give him some priority of consideration for appointment to the post. This is, of course, irrelevant.

The criteria for the assessment of the candidates were:

- (i) Qualifications: SC, HSC, Diploma, other Higher Qualifications (related and not related);
- (ii) Personality;
- (iii) Sense of Discipline, Attitude and Integrity;
- (iv) Interpersonal and Communications Skills;
- (v) Leadership and Administrative Skills; and
- (vi) Knowledge of the Job

The Qualifications criterion carried one-third of the total marks. The way the qualifications have been disaggregated is a cause of concern. The Respondent has given marks for the Diploma and a few candidates scored more marks. However, the entry grade for the Cadre is HR and for this grade the incumbent must have either a Diploma in ... from the University of ... or a Diploma in SNS from the University of.... It stands to reason that the SHR must have either one of the two Diplomas. There can be

no difference between the two Diplomas. There was therefore no need to have the Diploma as a criterion and less still to give different markings.

There was also no reason why the SC should be assessed as this was an entry requirement for the post of HR and the SC was an eligibility criterion. Once the candidates have passed this hurdle, they should be treated *paripassu*.

The Respondent has taken wrong indicators under the Qualifications criterion which could have caused injustice to candidates. The Tribunal recommends that henceforth the Respondent should review its very complex marking system as regards the criterion qualification, which must be clear and not include the eligibility criterion nor any lower qualifications which are no longer required for the post. Be that as it may, the Tribunal finds that the Appellant obtained high marks for the SC and the Diploma components. He has therefore, not been prejudiced by the flawed criteria which would have played against him in the overall markings.

The Tribunal notes that the Appellant got low marks for "*Knowledge of the Job*". This is surprising given that he had according to Respondent itself performed the duties of PHR on 19 occasions and never got any adverse report while he was assigned these duties. Regarding the previous case cited the Tribunal maintains its finding. However, the total marks obtained by the Appellant was far from the total marks obtained by the Co-Respondents, and would not have affected the final outcome even if he was given higher marks under this criterion.

The Tribunal finds that there appears to be no unfairness done to the Appellant.

The appeal is set aside.