

Det 04 of 2020

- **The eligibility criterion cannot be considered as a criterion for marking purposes.**
- **All eligible candidates must be treated *pari pasu* whether they qualify under a note or under the qualification in the first part of a scheme of service.**

The Appellants are contesting the decision of the Respondent to appoint the Co-Respondents to the post of Senior SIWO. There was a third appellant but he decided to withdraw his appeal. The two appeals have been consolidated as they refer to the same appointment exercise.

Appellants' Case

Appellant No 1: The Appellant solemnly affirmed as to the correctness of his Grounds of Appeal (GOA) and his Statement of Case (SOC).

His GOA were as follows:

- “(i) Appellant is more qualified, experienced and meritorious than some of the Co-Respondents;*
- (ii) Appellant is more deserving for the post as he has more years of experience than some of the Co-Respondents;*
- (iii) Some of the Co-Respondents do not satisfy the criteria of appointment;*
- (iv) Although the Appellant possessed the required qualification and experience and given the fact that the Appellant did well in his interview, he was not selected for the post; and*

(v) Overall on a consideration of qualifications, experience and merit, Appellant is better qualified to discharge the duties of the post of Senior SIWO”.

In his Statement of Case (SOC), he reproduced the qualifications requirements of the Scheme of Service for the post. He stated that he was more qualified than Co-Respondents Nos 1, 2 and 3. He was also more deserving than Co-Respondent No 4 as he has more years of experience and the latter was appointed SIWO only on He was the holder of Level 5 IV Advanced Diploma in ... from The City and Guilds of London Institute since.... This qualification was pitched at Level 6 of the National Qualifications Framework by the Mauritius Qualifications Authority pursuant to a letter dated the.... He met, therefore, the requisite qualifications as per the Circular Note ...of ... dated ...

On cross-examination, Appellant agreed that all the Co-Respondents were eligible for the post, albeit that they were found eligible under Note 1 of the Scheme of Service. He maintained that he had the necessary qualifications to be eligible under Part A of the Scheme of Service as well as under Note 1. He agreed that Co-Respondents Nos 3 and 5 were appointed as SIWO in ... and he was appointed to the same post five years later and the two Co-Respondents had acquired more experience than him.

Appellant No 2: The Appellant solemnly affirmed as to the correctness of his GOA which were:

“First and foremost I have 16 years of experience as SIWO. I possess the qualification from the City and Guilds in ELT ENG and in BRL, BKL and CCT that is one more qualification required by the LGSC”.

His appeal was directed mainly at Co-Respondent No 4.

The Appellant did not submit a SOC.

On cross-examination, he re-affirmed that his appeal was only against Co-Respondent No 4. He stated that he had 16 years of experience as SIWO and was, therefore, more qualified than Co-Respondent No 4. He was not contesting the way the interview was carried out but based himself only on the grounds that he was more qualified and experienced than Co-Respondent No 4. When he was confronted with the fact that Co-Respondent No 4 was holder of a Diploma while he had only a Certificate, he replied that the Diploma was only in one field whereas his Certificate covered two fields. He did not agree that somebody with less years of service could be appointed.

Respondent's Case

The representative of the Respondent solemnly affirmed as to the correctness of Respondent's Statement of Defence (SOD) in which it averred that there were initially four vacancies in the post. These were advertised on ... among officers in the grade of SIWO by way of Circular Note No... ofThe date limit for applications was.... Two additional vacancies were reported bringing the total number of vacancies to six. There were 29 candidates, and 24 of them, including the Appellants were found eligible. Following the selection exercise, the Respondent decided on the ... to appoint the Co-Respondents to the post of Senior SIWO with effect from...

The Respondent gave the statement of service of the Appellants and the Co-Respondents. As regards Co-Respondent No 4, the Respondent averred that the said Co-Respondent was found eligible as per the qualification requirement under Part A while

the Appellants and the other Co-Respondents were found eligible under Note 1 of the Scheme of Service (SOS).

The Respondent averred that qualifications and experience were not the only criteria used for the selection exercise and gave the criteria as follows:

- (i) Qualifications
- (ii) Experience
- (iii) Personality
- (iv) Good communication and interpersonal skills
- (v) Organisation, supervisory and leadership skills, and
- (vi) Knowledge of the job

The candidates were assessed on their performance at the interview. The Respondent maintained that the Appellants and the Co-Respondents were all eligible for appointment and were convened for interview. Co-Respondents were duly appointed as per provisions of the Scheme of Service (SOS) and in accordance with Regulation ... of the LGSC Regulations.

The Respondent averred that the appeals had no merit and moved that these be set aside.

Co-Respondents' Case

Co-Respondents Nos 1 and 4 decided to abide by the decision of the Tribunal.

The other Co-Respondents made solemn affirmation as to the correctness of their SODs.

Co-Respondent No 2 averred that he had experience in service for more than ... years. He stated that qualification and experience were mere criteria that were considered for appointment to the post. He further stated that the Appellants were challenging the appointment of only one of the Co-Respondents. He himself carried out his duties successfully and diligently and Respondent found him fit to be appointed to the post of Senior SIWO. He questioned the fact that he was made a Co-Respondent in this appeal process but it was explained to him that all those appointed in the exercise have to be brought in as Co-Respondents.

Co-Respondent No 3 gave his qualifications and his career path in the local government service. He was appointed in ... and he averred that he was assigned the duties of Senior SIWO on seven occasions at the Municipal Council of ... He worked for 33 years and nearly 20 years in the relevant grade. He had no adverse report against him. He did not agree that Appellant No 1 was more experienced than him as Appellant No 1 was appointed Assistant SIWO in ... and Co-Respondent was already in the capacity of SIWO and was assigned the post of SIWO one year later.

Co-Respondent No 5 gave his career path and his qualifications. He had 17 years experience as SIWO and had good knowledge of the job. He possessed all the requirements for the post of Senior SIWO. He was assigned the duties of SIWO on two occasions and the last one was for a fairly long duration without any adverse report.

Co-Respondent No 6 listed her qualifications and detailed her career path and the duties she performed while in the local government service. She was appointed Assistant SIWO in ... up to ... she was assigned duties of SIWO and was appointed SIWO in....

She worked with minimum assistance and supervision. She mastered the use of ICT in the performance of her duties. She was given the opportunity to shoulder higher responsibilities and did so without being assigned the duties and without additional remuneration.

Determination

It is not disputed that the post was filled by selection and eligible candidates were called for an interview. They were assessed as per the criteria which the Respondent produced at the Hearing and the SOS which provided as follows:

“By selection from among officers in the grade of SIWO reckoning at least two years service in the grade and possessing several diplomas which are detailed...

Equivalent qualification acceptable to the Local Government Service Commission

Note 1:

SIWO in post as at ... will also be considered for appointment to the post of Senior SIWO.

Note 2:

Senior SIWO will be required to follow an in-service training course in ... duties.

(B) Candidates should also possess:

- (a) good communication and interpersonal skills;*
- (b) organisation skills; and*
- (c) supervisory and leadership skills.”*

It is also clear that in a selection exercise seniority is not a determining factor as Local Government Service Commission Regulation 13 (2) (b) says that *“in the case of*

officers in the local government service, take into account qualifications, experience and merit before seniority in the local government service” The point that Co-Respondent No 4 had only two years service as SIWO does not preclude him from appointment.

The Tribunal was provided with the mark sheets under confidential cover. One point hits the attention of the Tribunal is that marks were given for the initial qualification of candidates. In other words, those who had a diploma were given an advantage over those who became eligible under Note 1. This puts those found eligible under Note 1 at a disadvantage and impacted on the final outcome of the selection exercise. This is not in order as the initial qualification renders the candidate eligible for consideration for the post just as Note 1 allows those who do not have such qualification to compete for the post. As this qualification was considered for eligibility it cannot be given marks at the interview. All those who are eligible under the qualification under Part A or under Note 1 of the Scheme of Service must be treated *pari passu*. Under the criterion Qualifications only additional relevant qualifications are to be given marks. By giving marks for the qualification which has been considered for eligibility, the Respondent has double-counted this factor and the merit list is flawed.

The Tribunal, therefore, quashes the decision of the Respondent to effect appointments on a flawed list and remits the matter back to the Respondent under section 8(4)(b) of the Public Bodies Appeal Tribunal Act 2008.