

**Respondent is legally entitled to call somebody who has technical expertise to form part of the interviewing panel in compliance with the Regulations.**

Appellants appealed against the decision of the Respondent to appoint the Co-Respondents as MSH in the public body. Both appeals were heard together and only one determination will be delivered. Appellant No 1 was also against the appointment of Co-Respondent No 4 as MSH on the grounds that he was an Instructor and did not possess experience in management of institution.

**Appellants' case**

**Case of Appellant No. 1**

Appellant No 1 solemnly affirmed as to the correctness of his grounds of appeal (GOA) and Statement of Case (SOC).

The GOA of Appellant No. 1 are as follows:

- “1. *Recruitment not done on merit.*
2. *Educators who have been appointed do not have experience and have not shown ability to lead a team of officers as stipulated in section B of qualifications in circular letter No ... of ... dated 24 July 2018*
3. *I possess experience in Management of an Institution as I was Administrative MDH since 2006 at an Institution. I have thus prior to 24 July 2018 more than 2 years' experience in administration.*
4. *I had always had more than 3.0 points in PMS and I am thus eligible for promotion.*
5. *I had attached testimonials from my headmasters to show that they were fully satisfied with my work as MDH and I had been able to take charge many times of the institution in the absence of the Head. Moreover, Report from Inspectors sent to the relevant department was also very good.*

6. *I had my interview on the ... i.e at the beginning of the exercise. The interview had been done for 4 months. This I have been penalized as others were aware of questions to obtain during the interview. So, they got sufficient time to prepare.*
7. *Just 30 minutes of interview cannot prove that the Instructor is able to manage an institution. Experience is more important. I had answered most of the questions during my interview.*
8. *Some senior officers were on the board of interview and hence the exercise was not fair at all. There was favouritism.*
9. *Since appointment of seniors is still being done, I must say that till January 2016 and up to now, I am an Administrative MDH with a vast experience in Managing correctly a school so my experience is being ignored as compared to the Instructor.*
10. *I request the tribunal to look at the markings.” SIC*

He further expatiated on the GOA in his SOC.

Under cross examination, Appellant No. 1 agreed that he is satisfied with the scheme of service and that all other co-respondents were qualified. He further added that he is challenging the appointment of Co-Respondent No 4 as same was not done on merit. However, he conceded that he is not aware as to whether she did better or not during the interview. He further agreed that experience is not the only criterion to be taken into consideration and that qualifications, merit and suitability also are factored in.

Further Appellant No. 1 stated that the questions asked in the interview were on social media but conceded that he had no evidence to support this. Likewise, he stated that the 30 minutes of interview was not enough and that according to him he did well in the interview but he was not certain as to whether the interview panel was of his view. Moreover, Appellant No.1 agreed that whenever there is an interview, the Respondent calls for somebody who has technical expertise, more specifically senior inspectors, to assist the members of the said panel.

In addition, Appellant No.1 agreed that he had no evidence of “favouritism” as mentioned in his GOA. Moreover, he affirmed that he was questioning particularly the appointment of Co-Respondent No. 4 and that his experience should have been

counted. Nevertheless, he admitted that he was not aware of the performance of the latter in the selection exercise and that she had the required qualifications.

### **Case of Appellant No. 2**

Appellant No.2 solemnly affirmed as to the correctness of the GOA and SOC. In his SOC, he expatiated upon his grounds of appeal.

The GOA of Appellant No 2 are as follows:

- “1. *Merit and experience*
2. *Questions set during the interview were already shared among participants and on Facebook*
3. *Duration of interview not adequate to assess the competence of a Senior” SIC.*

He also submitted an additional list of grounds of appeal after the prescribed delay. All parties agreed that these grounds of appeal should not be taken into consideration.

Under cross examination Appellant No.2 agreed that all the Co-Respondents possessed the relevant qualifications and that his main concern was that teachers have been appointed as Senior and suddenly he was working under them. He further stated that the Respondent should not have appointed teachers for the post of MHS but conceded that he neither challenged the Scheme of Service nor lodged a Judicial Review against it. Moreover, Appellant No 2 agreed that he was never given any assignment for the post of Senior prior to the ... 2018 but only replaced whenever required. Appellant No.2 agreed that experience is not the same as merit and suitability for the post and has different meaning than merit. He admitted that the Respondent had only acted in accordance with the Scheme of Service.

He agreed that it may happen that when a candidate can answer so well that he covers all the questions in a shorter time. For his interview, it lasted about 20 minutes and this was sufficient time for him. Further, he agreed that a scheme of service is followed by a recommendation made by the Pay Research Bureau and he did sign the option form. He further added that he did get assignment to act as MSH after the closing date but mentioned same during the interview.

### **Case of Respondent**

The representative of the Respondent affirmed as to the correctness of its Statement of Defence (SOD). She produced a list of criteria for the purposes of the interview and deponed that there were 920 candidates eligible for the post. They were invited for an interview which lasted for about 3 months. She further stated that a selection exercise is done in accordance with regulation 14(1)(c) of the Public Service Commission and that consideration is given to qualifications, experience, suitability for a post. She also stated that the weightage is determined by the interviewing panel and that there was an IPS on the interviewing panel, which is in line with Regulation 16(1)(b) of the PSC regulations as he has the necessary technical expertise. She also added that there is no set time for each interview. Under cross examination, she also stated that out of the 920 candidates, 154 were selected in the first list which was submitted to the Responsible Officer of the public body for appointment.

She admitted that the Co-Respondents were appointed on the basis of a merit list drawn after the selection exercise and that no new applications were invited for the post of MSH. She was unable to say as to whether the 920 candidates were aware of the establishment of that merit list. She was also not aware as to where the Respondent derived its power to establish a merit list but stated that it has been the practice to draw a merit list after any selection exercise. She also stated that there are four elements taken into consideration before seniority.

### **Case for the Co-Respondents**

We note that Co-Respondents No. 12, 13 had given their stand that they will abide by the decision of the Tribunal while Co-Respondent No. 18 did not give any stand.

Co-Respondent No.7, being the representative of the remaining Co-Respondents affirmed as to the correctness of the SOD and was tendered for cross. He agreed that he did not have any written mandate to represent Co-Respondent No. 4. He did not agree that other persons who had less experience had been favoured compared to the Appellants and maintained that all those who had been called for the interview possess the required qualification.

## **Determination**

The Tribunal has given due consideration to the GOA, SOC, SOD as well as the submissions of learned counsel. Some of the grounds of appeal of both Appellants, which are inter-related to the same issue will be dealt with together.

### **Appellant No. 1**

#### **Ground 1**

This ground relates to the opinion of the Appellant that the recruitment was not done on merit. However, he could not give any evidence to support this ground of appeal. Hence ground 1 fails.

### **Appellant No. 1**

#### **Grounds 2, 3, 7 and 9**

### **Appellant No. 2**

#### **Ground 1**

Grounds 2, 3, 7 and 9 of Appellant No. 1 as well as ground No. 1 of Appellant No. 2 refer to the same issue of experience which was extensively canvassed by both Appellants. It was not disputed that the post of MSH was filled as per the scheme of service for the Post. Experience and knowledge in the post are not the only criteria upon which the selection exercise was made. Inasmuch as Respondents averred in their SOD that all the experience and knowledge as claimed by the Appellant were taken into consideration. Appellants admitted during cross-examination that that the Co-Respondents could have done better during the interview and scored more marks in the criteria.

Further, Respondent also averred that it acted in accordance with Regulation 14 of the Public Service Commission Regulations and that consideration was given to qualifications, experience and suitability for the post. In addition, Appellant No 2 did agree that the Respondent had acted only in accordance with the scheme of service. As such, grounds 2, 3, 7 and 9 of Appellant No. 1 and grounds No. 1 of Appellant No. 2 fail.

**Appellant No. 1**

**Grounds 4 and 5**

Appellant referred to testimonials and other documents relating to his performance received from his superiors and the Respondent stated in its SOD that all documents produced by the Appellant were duly considered by it. In the absence of any evidence to prove that this was not the case, these grounds have also no merit. Both grounds fail accordingly.

**Appellant No. 1**

**Grounds 6 and 8**

**Appellant No. 2**

**Grounds 2 and 3**

Grounds 6 and 8 for Appellant No. 1 and grounds 2 and 3 for Appellant No. 2 are interlinked with the manner and procedures adopted by the Respondent for the interview. There is no regulation which provides for a specific amount of time that the interview should be conducted.

The Respondent stated that it has acted in conformity with regulation 16(1)(b) of the Public Service Commission Regulations regarding the composition of the selection panel. Further, it was not disputed that whenever there is an interview, the Respondent call for somebody who has technical expertise, to form part of the panel. We suffice to say that time taken for an interview is not a matter for the Tribunal to probe into Respondent averred that the time allocated for the interview was adequate for assessing the candidates. The grounds relate also to the issue that other candidates were already aware of the questions asked during the interview. However, no evidence has been adduced in support of those grounds. Therefore grounds No. 6 and 8 of Appellant No. 1 and grounds 2 and 3 of Appellant No.2 fail.

**Appellant No. 1**

**Ground 10**

Appellant No. 1 is merely calling the Tribunal to verify its markings and as such is not a proper ground of appeal. This ground too fails.

The attention of the Tribunal has been drawn by Counsel of Appellant No 1 during cross-examination that the Respondent is not empowered under any of its regulations to draw a merit list. It was not disputed that it was so far the practice to draw a merit list after any selection exercise. Counsel for Appellant No 1 contended that his client was prejudiced by making appointment from a so-called merit list instead of giving him an opportunity to apply once again for the post. As it was not a ground of appeal, the Tribunal could not determine on this issue but draws the attention of the Respondent that in a spirit of fairness and equity to Public Officers aspiring for an appointment or promotion in a selection exercise they should be made aware of this practice of establishing a merit list and about the need to be consistent in the use of the merit list, especially with regard to the period of validity of the merit list drawn up in respect of each selection exercise.

In light of the above, all grounds of both Appellants having failed, both appeals are set aside.