

Seniority is a conclusive element in a selection exercise.

Appellants appealed against the decision of Respondent to appoint the Co-Respondent for the post of PHN in the Council. Both appeals were heard together and only one determination is delivered.

Appellants' Case

Appellant No 1

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

His GOA are reproduced as follows:

“1. Working experience in the local Government Service

2. The criteria set out and the marking scheme adopted

1. Case of Dr. Vishal Jaunky v/s The Mauritius Institute of Education as evidence with regard to working experience claimed

2. Not been under report or interdicted from the services for the last 10 years

3. Assignment of duties to act as PHN” (SIC)

He further expatiated on his GOA in his SOC to the effect that he has been in service since 24 years during which period he has never had any adverse report. He has been doing assignment of duties as PHN during these periods:

12 July 2016 to 19 August 2016

01 October 2018 to 17 October 2018

22 July 2019 to 16 August 2019

27 July 2020 to 14 August 2020

He further averred that given experience is an essential criterion, the markings awarded to him should reflect same.

Under cross examination he agreed that the post of PHN is filled by selection and the Respondent found him eligible to be convened for an interview. He did not agree with the fact that the Respondent found the Co-Respondent more suitable for the post.

He further agreed that the burden was on him to demonstrate the knowledge claimed to the selection panel. While he agreed that the assignment of duties is done for administrative convenience, he added that it gives also working experience to perform the duties of PHN.

He stated that he is not aware as to whether the Respondent had taken into consideration all details regarding experience, as disclosed by himself. He also stated that while he was favourably reported, he was not aware of the Co-Respondent's report. He further conceded that the candidates were assessed on qualifications, experience, interpersonal and communication skills, leadership and administrative skills, knowledge of environmental matters and knowledge of the job. He conceded that he was interdicted from his functions on the 16 November 2007 for an alleged case of embezzlement of Council's funds but maintained that he was not found guilty inasmuch as the Director of Public Prosecutions advised no further action and he was reinstated to his position. He stated that he is also aware that Co-Respondent was interdicted on the 22 February 2016 for a case of verbal abuse and the case was dismissed in July 2017. Finally, he did not agree that the selection exercise was done in accordance with the Local Government Service Regulations.

Appellant No 2

Appellant No 2 solemnly affirmed as to the correctness of his Grounds of Appeal (GOA) and his Statement of Case (SOC).

His GOA is reproduced as follows:

- “1. Years of Service*
- 2. Years of experience*
- 3. Seniority and qualification*
- 4. Meritocracy*
- 5. Discrimination*
- 6. Assignment of Duties to the post of PHN*

7. Injustice and fairness

8. Experience and knowledge

9. Jurisprudence in case of application for judicial review in the case of SS Joomun v PBAT before the Supreme Court case 2020 SCJ 247 Record No. 114319” (SIC)

He further expatiated on his GOA in his SOC to the effect that he has been performing assignment of duties as PHN without any adverse report on several occasions, namely during the following periods:

01 August to 25 August 2005
01 October to 19 October 2007
17 July to 08 August 2008
15 June to 24 July 2009
16 June to 09 July 2010
12 April to 30 April 2011
13 October to 31 October 2014
26 October to 01 December 2017
05 March to 08 May 2018
22 April to 03 May 2019
18 October to 29 October 2021

He further added that he is more senior than the Co-Respondent.

Under cross examination, he stated that he was convened for an interview exercise which was held on the 09 August 2021. He did not agree that the procedures to appoint Co-Respondent were scrupulously followed and that the selection exercise was carried out in a fair and impartial manner. He, nevertheless, agreed that the appointment of Co-Respondent was made on the basis of the Scheme of Service, the latter's performance at the interview and also on experience. However, he did not agree that the Respondent took into consideration all the qualifications, experience and documentary evidence in as much as he stated that he is more qualified and has more experience than the Co-Respondent.

He further stated that he is not aware as to how the Co-Respondent did during the interview and he has more experience than the latter, given that he had been appointed as SHN before the Co-Respondent. He also agreed that eligible candidates were assessed on various criteria and not only on experience.

He did not agree with the fact that assignment of duties does not give a claim to a permanent appointment but rather gives experience to the person assigned with such duties.

Respondent's Case

The Representative of the Respondent affirmed to the correctness of the Statement of Defence (SOD). She expatiated on her SOD and averred that both Appellants and Co-Respondent were eligible for consideration for the post of PHN. The Co-Respondent was found more suitable after a selection exercise. She also averred that all relevant experience, knowledge of all candidates was taken into consideration by the Respondent and that the onus was on the Appellant to demonstrate the knowledge claimed to the Selection Panel. Further she averred that assignment of duties is done for administrative convenience and does not give any claim to appointment for higher grade as mentioned in the letter of assignment of duties.

Under cross examination, she stated that questions for the interview exercise are prepared by the selection panel. Furthermore, she confirmed that there is no adverse report neither on the Appellants nor the Co-Respondent. She added that it is the prerogative of the selection panel to decide about the markings and that seniority is not an overriding factor in a selection exercise.

Co-Respondent's Case

Co-Respondent solemnly affirmed to the correctness of his SOD where he averred that during his posting as SHN, he was called upon to act as PHN from 15 July 2018 to 08 November 2019 without any allowance and this had given him exposure to the duties of PHN without having any adverse reports. He further averred that he performed further assignment of duties as PHN from 08 November 2019 to 27 November 2019 and from July 2018 till March 2020. Over and above, he averred that he was assigned the duties of Assistant Chief Executive for the period between August 2021 to September 2021. He was not cross examined.

Determination

The Tribunal has taken due consideration to the GOA, SOC as well as the SOD and has decided to deal with the grounds of both appellants altogether as they are inter-related.

Ground 1 of Appellant No 1 and Grounds 1, 2, 3, 4 and 8 of Appellant No 2

The above grounds canvassed by both Appellants are based on experience, seniority and knowledge of the post. Firstly, it is not denied that the current exercise was done by selection and that the appointment was done in accordance with the scheme of service. Respondent averred that the experience, years of service as well as the qualifications of all candidates were taken into consideration and that seniority is not a conclusive element in a selection exercise. The markings produced to the Tribunal under confidential cover reflect same. These grounds fail.

Grounds 2 and 3 of Appellant No 1 and Ground 9 of Appellant No 2.

These grounds are not Grounds of Appeal per se and no evidence has been produced before the Tribunal to sustain same. These grounds fail.

Ground 5 of Appellant No 1 and Ground 6 of Appellant No 2

With regards to assignment of duties, it is noted that both Appellants and Co-Respondent have been entrusted with such duties but this does not give a claim for any appointment to a higher grade.

It may contribute to experience which the Respondent has taken care of in its markings. These grounds fail.

Ground 4 of Appellant No 1

It is averred and confirmed by Respondent that Appellant No 1 was not adversely reported. The Tribunal cannot probe further into it. This ground fails.

Ground 5 and 7 (Appellant No 2)

These two grounds referred to discrimination, injustice and fairness. The Tribunal has no jurisdiction to determine on the issues.

All grounds having failed, both appeals are set aside accordingly.