

No. D/22 of 2023

If a candidate is eligible and considered for the post, he is fully entitled to be appointed if he satisfied the other criteria of selection

The Appellants are challenging the decision of the Respondent to appoint the Co-Respondents to the post of SWI ("Post") in the Local Government Service.

The Scheme of Service for the Post dated ... provides that the Post is to be filled by selection from officers in the grade of WI reckoning at least two years' service in the grade and possessing:

(A) A Diploma of the University of Mauritius in either Civil Engineering or Mechanical Engineering or Electrical Engineering.

OR

The National Diploma in Applied Mechanical & Electrical Engineering awarded by Mauritius Institute of Training and Development.

OR

The National Diploma in Building Services Engineering awarded by Mauritius Institute of Training and Development.

OR

The National Diploma in Civil Engineering awarded by Mauritius Institute of Training and Development

OR

The National Diploma in Electrical and Electronic Engineering awarded by Mauritius Institute of Training and Development.

It is also stated under NOTE 1:

Inspector of Works in post as at ... will also be considered for appointment to the post of SWI.

Both Appeals are consolidated and only one determination will be delivered.

Case of Appellant No 1

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

His GOA are as follows:

- More Qualified
- More Experience and Skills
- Performed well at interview level
- No adverse report

Appellant expatiated his GOA in his SOC and averred that he was appointed WA on ... and subsequently as WI since He listed several duties that he carried out as WI.

He is a holder of a: -

- a. National Diploma in Civil Engineering since ...
- b. Bachelor of Engineering in Civil Engineering with First Class Honours since ...
- c. GCE A levels/GCE O level/ School Certificates
- d. Diplôme Approfondi de Langues françaises

Under experience, he added that before joining the Local Government Service, he worked at:

- a. Gamma Material Ltd as Laboratory Technician
- b. Phoenix Beverages Ltd as Trainee Engineer and Draughtsman
- c. Cola Maurice as Site Supervisor
- d. Veerapen Bookmaker as Teller
- e. Le Pieter Both Co as Mason
- f. IBL Logidis Ltd as Préparateur

The Appellant also averred that he believes that he exceeds the core requirements for the post of SWI since he has over two years' experience in the grade

of IW and he possesses a Bachelor's degree which is above the Diploma level requirement for the post.

Under Cross Examination, he admitted that the Co-Respondents were already WI before he joined the Local Government Service. He stated that he took into consideration his previous experience in the private sector to claim that he had more experience than the Co-Respondents.

Case of Appellant No 2

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

His GOA are as follows:

- More Qualified
- More Experience and Skills
- Performed well at interview level
- No adverse report

Appellant No 2 expatiated his GOA in his SOC and averred that he joined the Local Government Service (Respondent) in He was appointed WA on ... and subsequently WI on He averred that he meets the core qualification as well as the requirement laid down under Note 1 of the Scheme of Service. He had 15 years of experience as WI and possesses a diploma in agriculture and a certificate of achievement in prosecution duties.

He also averred that he has performed assignment of duties as SWI on several occasions and he considered that he has a good personality, a good communication and interpersonal skills and good organisational skills.

Under Cross Examination, he did not agree that he was qualified under Note 1 but under Qualification A as he is in the possession of an equivalent certificate from the MQA. However, he agreed that those who were qualified under Note1 were also eligible

for interview. He stated that he did well at the interview but could not know how others performed. He also agreed that the Co-Respondents were also assigned duties of SWI.

Case of Respondent

The representative of the Respondent solemnly affirmed as to the correctness of the Statement of Defence (SOD). The Respondent averred that the qualifications requirements for the post of SWI is as per the Scheme of Service. In addition, candidates should also possess:

- (i) Good communication and interpersonal skills;
- (ii) Organisation skills; and
- (iii) Supervisory and leadership skills

Thirty candidates submitted their applications and 24 of them were called for interview. The candidates were assessed on the following criteria: -

- (a) Experience
- (b) Personality
- (c) Communication and interpersonal skills
- (d) Knowledge of the job.

Respondent also averred that Appellant No 1 has only 8 years' experience as WA and WI and that only experience acquired in the Local Government Service is considered by the Respondent, whereas Appellant No 2 was eligible to apply for the post under Note1. Respondent admitted that Appellant No 2 had been assigned for short periods the duties of SWI several times during the period ...

Respondent added that all procedures have been scrupulously followed and the appointments of the Co-Respondents to the posts of SWI were made in accordance with regulation 13(1)(b) of the Local Government Service Commission Regulations 1984.

Under Cross Examination, the representative of the Respondent maintained that candidates qualified under part A or under Note 1 are all fully qualified and eligible for the post. She did not agree that qualification specified under part A is the core criterion

for the post. She also did not agree that the Note 1 is only meant as eligibility for consideration only. She stated that due consideration was given for higher qualification. She agreed that academic qualification is important for candidates who are qualified under part A.

Case of Co-Respondent No 1

Co-Respondent No 1 submitted an SOD and solemnly affirmed as to its correctness. He averred that he joined the Local Government in ... and was assigned the duties of WA from ... and was confirmed in the same post on.... He was further assigned duties as WI since ... and was subsequently confirmed in the post as from He had also been assigned duties as SWI on several occasions for short periods during the period ... to He also averred that he has 17 years of experience as WI in the Local Authority. He prays the Tribunal to set aside the appeals and maintain his appointment.

Case of Co-Respondent No 2

Co-Respondent No 2 solemnly affirmed as to the correctness of his SOD. He averred that he was assigned duties of WI since ... and subsequently appointed as Inspector of Works on.... He possesses 18 years of experience as WI and had several times been assigned duties for short periods from March 2014 to April 22. He averred that he possesses good communication and interpersonal skills, organisational skills, and supervisory and leadership skills. He prays the Tribunal to set aside the appeal.

Case of Co-Respondent No 3

Co-Respondent No 3 solemnly affirmed as to the correctness of his SOD. He averred that he worked as WI since ... but was appointed as such in.... He possesses 18yrs of Experience in the grade of Inspector of work and that he is qualified under part A as well as under Note 1 of the Scheme of Service. He was assigned duties of SWI on several occasion from 2009 to October 2021 which includes an assignment for more than one year from April 2018 to June 2019. He moved that the appeal be set aside.

Case of Co-Respondent No 4

Co-Respondent No 3 solemnly affirmed as to the correctness of his SOD. He averred that he has 15 years of service as WI and also possesses the National Diploma in Civil Engineering awarded by MITD. He averred that he possesses good communication and interpersonal skills, organisational skills, and supervisory and leadership skills. He prays the Tribunal to set aside the appeals.

Case of Co-Respondent No 5

Co-Respondent No 5 solemnly affirmed as to the correctness of her SOD and averred that she was appointed as WI on She has also been assigned the duties of SWI on various occasions during the period January 2020 and December 2021. She moved that the appeals be set aside.

Case of Respondent No 6

Co-Respondent No 6 solemnly affirmed as to the correctness of his SOD. He averred that he was assigned the duties of WI as from 10th October 2003 and subsequently appointed in the same post as from 5 January 2005. He was assigned the duties of SWI on different occasions during the period August 2010 to July 2023 including two assignments from period 19th August 2010 to 8th June 2012 and 31 August 2015 to 11 September 2018. He moved that the Appeal be set aside.

Determination

The Tribunal has given careful consideration to proceeding of the hearing as well to the submission of Counsel of both sides. All documents produced were also analysed.

Ground 1 of both Appellants

More Qualified.

There is no doubt that the two appellants are more qualified academically than the Co-Respondents but the Respondent is bound to act as per the Scheme of Service. It is also recognised that the Co-Respondents were fully eligible for the post as they were qualified under Note 1 provided in the Scheme of Service as mentioned above.

Counsel of the Appellants concentrated his case on the mere premise that they are more qualified and that qualifications provided under part A are core criterion. He suggested that the Appellants must be given more consideration because they were more qualified than the Co-Respondents. We do not share this view. The Tribunal failed to understand his logic that the Co-Respondents who were qualified under Note 1 were only eligible for consideration. If a candidate was eligible and considered for a post, he is fully entitled to be appointed to the post if he/she has satisfied all other criteria of the selection. The more so, the Scheme of Service clearly mentioned under Note 1 that Inspector of Works in post as at 30 June 2008 will also be considered for **appointment** to the post of SWI. (Emphasis is ours)

Determination 02/17 was produced by Counsel of Appellants in support of his contention. In this case, there was also a note inserted in the Scheme of Service in the same manner as the present case. It was the contention of the Appellants in that case that they should be treated *paripasu* with other candidates holding academic qualification. This was not denied as far as their eligibility was concerned. There was no mention in the determination that those candidates holding higher academic qualifications should be privileged to the detriment of those candidates qualified under the Note. It is a fact that the Tribunal observed that the marks allocated for qualification were overwhelming but it did not find any flaw in the selection process. The markings sheet was examined and the Tribunal noted that Appellant No 1 scored higher marks for his higher qualification. Therefore, Determination 2/17 is clearly distinguished from the present matter.

The Tribunal finds nothing wrong when the Co-Respondents were appointed after having been qualified under Note 1. Therefore, this Ground failed.

Ground 2 of Appellants No 1 and 2

More Experience and Skills.

Appellant No 1 explained that he worked in various positions in the private sector prior to joining the Local Government Services. The attention of Counsel for the Appellant was drawn that experience gathered outside the Local Government Service

could not be considered and that there is already a determination and a Supreme Court Judgement to this effect. However, Counsel insisted to examine Appellant on this issue.

Counsel for Respondent produced Determination 13/19 and the case of **Jumun v PBAT 2015 SCJ 31** to that effect. The Tribunal therefore reiterates its previous determination to the effect that only experience gained in the Local Government Service should be considered. Therefore, we hold that there is no merit in Ground 2.

As regard Appellant No 2, this ground was not canvassed and therefore the ground failed for both Appellants.

Ground 3 and 4 of both Appellants

Performed well at interview and had no adverse report.

This Tribunal will not substitute itself for the interviewing panel as regards how a candidate perform at the interview. It is the interviewing panel and not this Tribunal which has listened to the candidates.

These 2 grounds are not grounds of appeal perse and are set aside.

All grounds having failed, the Tribunal set aside the appeals.