

Experience has not been assessed.

Appellants appealed against the decision of Respondent to appoint the Co-Respondent for the post of “**Deputy Director**” in the ... Department of the Public Body.

Appellant No. 1’s case

Appellant No.1 solemnly affirmed as to the correctness grounds of appeal (**GOA**) and her statement of case (**SOC**). Her GOA are as follows:

- “1. There is no Director, ... Department to give report of the professionalism of all candidates***
- 2. The interview panel did not consist of a professional in the field of the ... (The Director of ... Department)***
- 3. I am more experienced than Mrs. I am working under the Deputy Director, ... Department.***
- 4. There is no Qualifications mentioned in the existing Scheme of Service of Deputy Director, ... Department.***
- 5. The is no Director, as Head of Department to gauge the work and experience of all candidates for the post of Deputy Director, ... Department”) SIC “***

She further expatiated on her GOA in her SOC to the effect that she joined the ... Department in the year 1992 and was promoted to the post of Government ... in 2003 and thereafter promoted as Senior Government ... in 2016.

She also averred that she has been acting as Lead Government ... for the period 03/01/2020 to 10/01/2020 and during 03/11/2020 to 20/11/2020. During that period, she acted as head of section and successfully managed to co-ordinate and manage the work of both the technical and professional cadre in line with Duty No. 2 of the

Scheme of Service for Deputy Director. She also averred that she has been providing guidance, coaching and mentoring to subordinate staff. She further averred that the Respondent shall take into account Regulation 14(1)(c) of the Public Service Commission Regulations. Moreover she also averred that the appropriate person to give a report on the professional performance of a candidate is a Director and since 2017 no Director had been appointed. Furthermore, she averred that none of the member constituting the interview panel was a professional who had the ability to judge a candidate in the relevant aspect. She also mentioned that she has more experience than the Co-Respondent as she has been working under the supervision of a Deputy Director for more than 10 years, shouldering higher responsibilities of ... over larger geographical regions over the island and also acted as expert witness for cases before various Courts. She finally averred that there is no mention in the Scheme of Service for Deputy Director that one should hold higher qualification as a criterion.

Under cross examination, she stated that she was found eligible for an interview for the selection exercise and at the time of the selection exercise she was a Senior Government.... She was made aware that she had a favourable report and agreed that given there was no Director, she was assessed by a Deputy Director. She did not agree that someone who has been in touch with the ... Department, namely as a Desk Officer in the department to be part of the interview panel. She stated that regarding her experience, she has attended many more cases compared to the Co-Respondent and that she does not know whether the panel took her experience into consideration while assessing her suitability. Finally, she did not agree that Co-Respondent performed better than her in the interview.

Appellant No. 2's case

Appellant No 2 solemnly affirmed as to the correctness grounds of appeal (**GOA**) and her statement of case (**SOC**). Her GOA are as follows:

“1. There is no Director, ... Department to give report of the professionalism of all candidates

2. The interview panel did not consist of a professional in the field of the ... (The Director of ... Department)

3. I am more experienced than Mrs..... I am working under the senior most Deputy Director, ... Department. The latter had been the Acting Director of the ... Department for more than five years

4. There is no Qualifications mentioned in the existing Scheme of Service of Deputy Director, ... Department.

**5. The is no Director, as Head of Department to gauge the work and experience of all candidates for the post of Deputy Director, ... Department”
SIC**

She further expatiated on her GOA in her SOC to the effect that a Director has a professional qualification reaching to the Fellowship Member of the Royal Institute of Chartered SVRS in the relevant field that he is aware of the standard and working ability of the candidate and any report emanating from people unqualified in the field cannot be considered. Further, she averred that none of the member of the interview panel was a Chartered ...SVRS who had the ability to judge a candidate in the relevant aspect. She also averred that she is more experienced than the Co-Respondent to the effect that she has more than 30 years of experience in the ... Department and has been assigned duties of Lead Government ... on different occasions as follows:

- (i) From 26.11.2018 to 09.12.2018
- (ii) From 24.06.2019 to 05.07.2019
- (iii) From 15.01.2020 to 31.01.2020
- (iv) From 14.09.2020 to 22.09.2020
- (v) From 23.11.2021 to 03.12.2021

She averred that during these periods, she was responsible for the work of the whole section where she had to supervise jobs of professional (Chartered ... SVRS) and Technical Staff. She also averred that she had been involved in several mega road projects in the North, Compulsory Acquisitions of land for the Metro Express project and that she had been acting as Expert Witness for a lot of cases before Boards of Assessment, Supreme Court, Assessment Review Committee. She further averred that given that criterion 'qualifications' is not mentioned in the Scheme of Service, any higher qualification is not a criterion to select someone for the post of Deputy Director. She also averred that PSC regulation 14(1)(c) should be taken into consideration by the Respondent.

Under cross examination, she confirmed that she is contesting the nomination of the Co-Respondent and that she participated in a selection exercise as she was found

eligible for the post as per the Scheme of Service. She also stated that as Senior Government ..., she is answerable to the Director of the relevant Department but the post of Director is vacant since 2017. However, as matter stands, she reports to a Deputy Director. She further stated that she is not aware that the latter had given her a good appraisal.

She further agreed that in the absence of a Director, there is a Responsible Officer who is the SP of the public body but in her opinion the latter does not possess the qualification of a professional valuer from the Royal Institution of Chartered SVRS. She also stated that she is not aware of the number of cases where Co-Respondent has appeared in view of her expertise. She further stated that in certain fields of relevant work, she has more experience than the Co-Respondent. She agreed that experience is only one of the criteria to be taken into consideration for the selection exercise.

Appellant No. 3's case

Appellant No.3 solemnly affirmed as to the correctness grounds of appeal (**GOA**) and her statement of case (**SOC**). Her GOA are as follows:

- “1. I am more experienced and senior to Mrs. ...having been appointed Senior Government ... and Lead Government ... on 22.04.2002 and 22.09.2004 respectively. On the other hand, Mrs. ... has been appointed Senior Government ... and Lead Government ... on 10.11.2004 and 06.10.2015 respectively.*
- 2. I have always been above her in hierarchy being the senior most Lead Government*
- 3. Mrs. ... has worked under my guidance and supervision at a point in time.*
- 4. Moreover having assumed full responsibility of the post of Deputy Director for an aggregate of period of more than 17 years (nearly half period of my career), it is evident that I have even more experience than any of the candidates who have not acted as Deputy Director for such a long period.*
- 5. I have always carried out additional duties entrusted to me well, both professional and administrative though these were not specified in my schedule of duties.*

6. *My actingship as Deputy Director has been constantly renewed on every occasion since the past 17 years and there has been no adverse report or what so ever to terminate same. It is to be noted that, even when the post of Deputy Director was not funded in the budget, management made special case to recommend my continued actingship thus recognising importance of my work and capabilities.*

When I have been found capable to shoulder the higher responsibilities for so long, I fail to understand how my junior gets appointed instead to the post of Deputy Director which I consider to be very unfair.

7. *As an Acting Deputy Director I was appraised by the Responsible Officer who is an officer of the administrative cadre. However, the other candidates have been appraised by an officer of the professional cadre, the latter having the necessary competence to assess our professional work.*

8. *In the absence of a Director at the ... Department non routine duties are not been allocated fairly and equitably and also without taking into account the hierarchy.*

9. *No member from the panel of interviewers at the Public Service Commission had the competence to assess on our professional aspects. "SIC*

She further expatiated on her GOA in her SOC and averred that she was appointed as Assistant Government ... in 1996, as Government ... in 1999, as Senior Government ...in 2002 and subsequently as Lead Government ... in 2004. She also averred that she has been acting as Deputy Director for an aggregate period of more than 17 years as follows:

06.09.2004	26.11.2004	2 months 20 days
01.05.2005	21.08.2016	12 years 4 months
22.08.2016	17.02.2017	App 6 months
18.02.2017	13.06.2017	App 4 months
14.06.2017	23.06.2017	9 days
24.07.2017	08.08.2017	16 days
04.09.2017	18.10.2017	1 month 14 days
18.12.2017	29.12.2017	12 days
03.01.2018	09.03.2018	17 days

26.02.2018	09.03.2018	11 days
03.04.2018	13.04.2018	11 days
23.07.2018	10.08.2018	18 days
16.08.2018	24.08.2018	9 days
22.10.2018	20.04.2019	6 months
21.04.2019	20.10.2019	6 months
21.10.2019	20.04.2020	6 months
21.04.2020	30.09.2020	6 months
01.10.2020	31.03.2021	6 months
01.04.2021	30.09.2021	6 months
01.10.2021	31.03.2022	6 months
01.04.2022	13.04.2022	13 days

She also averred that she has acted as Director for the period of 50 days from the 11.04.2011 to 30.05.2011 and that all this information was included when she applied for the post. In addition, she averred that the Co-Respondent has been working under her guidance when she was holding the post of Lead Government ... while acting as Deputy Director. She further averred that in the absence of a Director for the past five years, she was appraised by the Responsible officer who is an officer of the administrative cadre who is not aware of her professional duties.

Under cross examination, she agreed that the current post was through a selection exercise and not through promotion and that seniority is not the sole criterion but stated that she has been acting as Deputy Director for a stretch of 12 years and 4 months. She further stated that she is not aware as to whether the Co-Respondent has any adverse report regarding her work. She did not agree that the Co-Respondent did better than her during the interview.

Respondent's case

The Representative of the Respondent affirmed as to the correctness of the Statement of Defence (**SOD**). The Respondent expatiated on the SOD and averred that assignment of duties is given for administrative convenience and as such does not give rise to claim for permanent appointment to a higher post. It was further averred that the Respondent was empowered to constitute a selection panel in accordance with regulations 16 and 17 of the Public Service Commission Regulations 1967.

Moreover, the Respondent averred that experience is not the sole criterion in a selection exercise which was carried out amongst eligible candidates and consideration was given to the requirements of the post, the criteria of selection determined by the Respondent, performance at the interview and the provisions of Regulation 14(1)(c) of the PSC Regulations. The Respondent also produced the criteria of selection under which the candidates were assessed and which were as follows:

- (a) *Leadership and Managerial Skills*
- (b) *Planning and organizing skills*
- (c) *Team Building and training skills*
- (d) *Communication and Inter-personal skills*

Under cross-examination, she stated that Appellant No 3 has been assigned duties as Deputy Director since 2005 but it was on the ground of administrative convenience. She agreed that at the request of the Respondent, it is the Responsible Officer who recommends the person who will act as advisor on the panel and in this particular case, the person acting as advisor was from a different public body. She did not agree to the fact that the advisor on the interviewing panel did not have the necessary knowledge, skill and experience in the relevant field.

She agreed that there are four criteria as per the list submitted and taken from the Scheme of Service. She further stated that as per the Regulation 14(1) (c) of the PSC regulations that qualification, experience, merit and suitability before seniority should be taken into consideration. However, when questioned to the effect that the criterion "experience" has not been considered, she stated that this is determined by the Commission who has the power to come up with how they want to devise an interview process as well as to decide on the criteria of selection. She agreed that there is no mention of the criteria 'qualification' and 'experience' but stated that they have been assessed by the Respondent. She finally stated that the selection criteria do not have to explicitly reflect Regulation 14(1)(c).

In addition, the Assistant Manager, Human Resource at the relevant Department was called as a witness. She confirmed that there has been no Director at the relevant Department since 2017 and that the SP of the public body has been acting as Responsible Officer for the relevant Department. She also stated that the

period of actingship was for a period of six months but has been changed to one year at a stretch and, thereafter, extension can be sought.

Co- Respondents' case

Co-Respondent solemnly affirmed to the correctness of her Statement of Defence (SOD). She averred that she joined the relevant Department as Trainee ... Technician in 1992 was appointed as Government ... in 1999 and as Senior Government ... in 2004. She also averred that the duties performed by the Appellant are the normal duties assigned to any Government .../Senior Government Under cross examination, she agreed that Appellant No 3 was promoted before her. She did not agree that Appellant No 3 had more experience than her despite that she was appointed 11 years later as Lead Government..., that is in 2015 compared to the former who was appointed in 2004. She also stated that she had a working relationship with the Desk Officer with regards to budgetary measures.

Determination

The Tribunal has taken due consideration to the GOA, SOC as well as the SOD. It will deal with the issue of experience first.

Ground 3 (Appellant No 1 and Appellant No 2) and Grounds 1, 4 and, 6 (Appellant No 3)

These grounds refer to experience as contended by the Appellants.

It is trite law that in any selection exercise, the adherence of Regulation 14(1) (c) of the Public Service Commission 1984 is of utmost importance which reads as follows:

*“(1) In exercising its powers of appointment and promotion, including, subject to paragraph (5), promotion by selection, the Commission **shall-***

a...

b....

*(c) in the case of officers serving in the public service, take into account **qualifications, experience, merit and suitability** of the office in **question before seniority**” [**underlining is ours**]*

From the above, it is mandatory for the Respondent to be in compliance with the above regulation. Further, we note that the following were the Criteria of Selection submitted to the Tribunal:

- (a) *Leadership and Managerial Skills*
- (b) *Planning and organizing skills*
- (c) *Team Building and training skills*
- (d) *Communication and Inter-personal skills*

It is to be noted that the core criterion “experience” does not form part of the criteria of selection submitted to the Tribunal.

The Tribunal does not agree with the affirmation of the Representative of Respondent that the selection criteria does not necessarily have to explicitly reflect Regulation 14(1)(c) of the Public Service Commission Regulations.

In addition, the marking sheet was submitted to the Tribunal under special cover for our consideration where no mention of the criterion “**experience**” was made and therefore “**experience**” has not been assessed for all candidates. The Tribunal fails to understand how the Respondent assessed the experience of all candidates as affirmed by the representative of the Respondent when no such criterion exists in the criteria of selection.

The absence of such core criterion is a serious breach by the Respondent flouting its own regulations. The Tribunal refer to the oral judgments filed on the 03rd November 2023 in the cases **The Public Service Commission v The Public Bodies Appeal Tribunal SCR 120978, A Dreepaul v The Public Bodies Appeal Tribunal SCR 120974, Hemansing Choolhye v The Public Bodies Appeal Tribunal SCR 129075, Leeshree Danee Kalloo- Munnohur v The Public Bodies Appeal Tribunal SCR 120976, Tamooodeereen Kathapermall & Anor v The Public Bodies Appeal Tribunal SCR 129077.**

In the above cases, their Ladyships, Justice G.J.Manna and Justice K.D.Balaghee held that “***Her Ladyships, came across certain disturbing features pertaining to non-compliance of the PSC Regulation by the PSC more specifically PSC Regulation 14(1) and in those circumstances, Court quashes the decision of the PBAT and the whole selection exercise carried out by the PSC***”

Hence, it is clear that non-compliance of the Regulation 14(1) in any selection exercise and any appointment following same renders the whole election exercise flawed.

In light of the above, we find no need to consider the other grounds of appeal of all appellants and consequently the Tribunal quashes the appointment of the Co-Respondent under Ground 3 (Appellant No 1 and Appellant No 2), Grounds 1, 4 and, 6 (Appellant No 3) which have been proved and remit back the matter to the Respondent.