

BODIES APPEAL TRIBUNAL

No. R/01 of 2015

In the matter of:-

Nanda Korada RAMUDU

Appellant

v/s

Public Service Commission

Respondent

and

1. CATHERINE Jean Sydney Emmanuel
2. LOKHUN Prakash
3. KUTHY Periasamy
4. AUBEELUCK Baldeo
5. RAMSAMY Seemadree
6. LALLOO Abdool Rashid

Co-Respondents

Ruling

Appellant has appealed against the appointment of the Co-Respondent No. 6 as Nursing Administrator on the basis that he has performed actingship whereas the Co-Respondent who is his junior has never performed any actingship.

Respondent's Counsel has raised a *plea in limine* to the effect that the present appeal should be set aside, in as much as any remedies which the Tribunal is empowered to give, will in the circumstances, be given in vain the moreso that the Appellant has already retired from the Civil Service. Counsel for Respondent filed a

letter dated 6 May 2014 confirming that Appellant retired on the ground of age on 27 November 2014. This was not contested.

Counsel for Respondent then referred to section 8(4) (a) - (d) of the PBAT Act 2008, which reads as follows:

8. Determination of Tribunal

...

(4) On hearing an appeal, the Tribunal may –

(a) confirm the decision of a public body;

(b) quash a decision of a public body and remit the matter back to the public body;

(c) where appropriate, remit the matter, subject to such conditions as it may determine, to the parties for further consideration by them with a view to settling the matter; or

(d) make such other order as it deems appropriate.

Learned Counsel stated that even if the appointment of the Co Respondent was to be quashed, the Appellant would not be able to re-apply, as he is not part of the Civil Service anymore. The position of the Appellant would therefore not be better.

PSC Regulations, No 19 (6) was also referred to regarding the suitability of the candidate.

Counsel further submitted that, since the appointment will be as from assumption of duty, and since the Appellant will not be able to assume duty anyway, the appeal should not proceed. The case of Planche v PSC & anor 1993 SCJ 128 was referred to where the Supreme Court held that:

“It seems to us that this application is incompetent if only for the reason that the question in issue is now purely an academic one. We can do no better than echo the dictum of Lord Justice Clerk Thomson in *McNaughton v McNaughton’s Trs.* (1953) SC 387, 392:-

“Our courts have consistently acted on the view that it is their function in the ordinary run of contentious litigation to decide only live, practical questions, and that they have no concern with hypothetical, premature or academic questions, nor do they exist to advise litigants as to the policy which they should adopt in the ordering of their affairs. The courts are neither a debating club nor an advisory bureau.”

Counsel for the Appellant reminded the Tribunal that Section 2 of the PBAT Act defines “appellant” as a public officer or a local government officer who has lodged an appeal before the Tribunal. This legal requirement was met at the time when the appeal was lodged on 18 November 2014 whereas he retired on 27 November 2014, i.e. nine days later.

The notification of the appointment of the Co Respondent was dated 3rd November, 2014 at which point in time the Appellant was, again, still a Public Officer. He then appealed within the time frame within which he was supposed to.

Referring to Section 8 (4) (d) of the PBAT Act 2008, Counsel for Appellant stated that the Tribunal has ample powers to give any relevant order.

Ruling

The Tribunal has carefully considered arguments put forward by both sides. It is not disputed that, at the moment the appeal was lodged before the Tribunal, the Appellant was a public officer and he had lodged his appeal within the right time frame provided for by the PBAT Act.

In the meantime, it is also not disputed that the Appellant retired from the civil service. The question that the Tribunal has to address is whether it can still hear the case despite the fact that:

- (a) confirming the decision of the PSC would not change anything for the Appellant
- (b) quashing the decision of the PSC and remitting the matter back to the public body would not change anything for the Appellant who has already retired and
- (c) where appropriate, remit the matter, subject to such conditions as it may determine, to the parties for further consideration by them with a view to settling the matter would not change anything for the Appellant as he has already retired.

The Tribunal is also empowered to make any such other orders as it may deem fit. No matter what those other orders are, the fact is that the PBAT cannot substitute itself for the PSC and cannot appoint a party to the post. It can only, as has been stated in the case of *PSC v PBAT*, in the presence of *Mrs Wong Chow Ming* (2011 SCJ 382), enquire into the merits of the decision of the PSC.

The Tribunal is aware that often officers appeal because they only want to know why they have not been appointed so that they can prepare themselves better when the next opportunity arises. This will not be the case as the Appellant has already retired from the service. On the other hand, if the Tribunal decides to quash the appointment exercise, the Appellant will not be able to compete also. In either case, hearing the appeal on the merits will be a purely futile exercise for the Appellant.

The appeal is set aside.

S. Aumeeruddy-Cziffra (Mrs)
Chairperson

Wong So
Member

P. Balgobin-Bhojrul (Mrs)
Member

Date:

Note: This case is not being treated confidentially as there has been a motion for Judicial Review before the Supreme Court by the Appellant. All information relating to the case was made public as the Supreme Court, unlike the PBAT, does not deal with such motions in camera. Since the case was withdrawn, the Determination of the Tribunal stands good.