

When a letter of appointment gives an indication that a temporary appointment on a day to day basis can give rise to an employment on a casual basis, the Tribunal considers that it is the starting point of an appointment process and that it therefore has jurisdiction to hear an appeal.

The Appellant was a GER at the Municipal Council of He has lodged an appeal with this Tribunal following his "*Termination of employment which was on a temporary day to day basis*" by the Respondent.

His grounds of appeal were as follows:

- “1. The LGSC was wrong to consider that a civil debt could be a ground to terminate my employment*
- 2. The Chief Executive had recommended no disciplinary action*
- 3. The termination is unfair and unreasonable*
- 4. The fact that I have not satisfied a judgment debt, not being a criminal offence cannot lead to the termination of my employment*
- 5. The LGSC had no power to terminate my employment on grounds which had no relation to my employment*
- 6. (My employer) should have used other remedies to obtain payment of its debt instead to influencing LGSC to terminate my employment*
- 7. A civil debt cannot lead to the loss of the appellant’s employment”*

The Respondent has raised a point of law *in limine litis* as follows:

“Respondent moves that the present appeal be set aside in as much as the Tribunal has no jurisdiction to entertain the present appeal given that the decision against which Appellant is appealing relates to the termination of Appellant’s temporary appointment as GER on a temporary day to day basis, and does not in any way pertain to an appointment exercise nor to a disciplinary action taken against him”.

This point of law was argued before the Tribunal. Counsel for Respondent leaned on two judgments in support of his objection in law, namely (1) the case of M.M. Jolicoeur and Ors v/s Public Bodies Appeal Tribunal ipo PSC before the Supreme Court (Record No 109262) and (2) the determination of this Tribunal itself in the case of PSM v/s Public Service Commission (Det 32 of 2016).

In the case of Jolicoeur and Ors there was a group of General Workers who were employed in the Rodrigues Regional Assembly and they were dismissed from employment. These General Workers were offered *“temporary employment as General Worker on a month-to-month basis for a period of up to 12 months in the Rodrigues General Assembly”* but it was also stipulated in the letter to them that their employment was *“liable to termination by one month notice on either side and would not give rise to any claim to a permanent appointment in the Government service”*. These General Workers had appealed to this Tribunal following their dismissal. The Tribunal gave a Determination. Some of these General Workers applied for Judicial Review before the Supreme Court. The Supreme Court in its judgment found that the Tribunal had no jurisdiction on the matter as this related to *“the termination of the applicants’ temporary employment. It did not in any way pertain to an appointment exercise nor to a disciplinary action against the applicants”*.

The case of PSM referred to the dismissal of the person from the post of temporary REC for which he appealed to this Tribunal. In this case the person was offered employment and it was made clear to him that *“Your employment will take effect as from the date of assumption of duty and will be on a purely temporary day-to-day basis and will not give you any claim to permanent appointment in the Local Government Service. The appointment may be terminated without notice or compensation in lieu of notice”*. The Tribunal in its determination made reference to the Supreme Court ruling in Jolicoeur and Ors and decided in its determination that the Tribunal had no jurisdiction in the matter.

Counsel for the Appellant in the present appeal referred to the Public Service Commission Regulations and to the definition of appointment which referred to, inter alia:

“(a) the conferment of an office of emolument in the public service, whether or not subject to subsequent confirmation, upon a person not in the public service.”
(Regulation 3(1)(a))

Counsel for Appellant argued, therefore, that the Appellant was appointed to the post even if he was in a temporary day-to-day capacity. This was an appointment exercise for which the Tribunal had jurisdiction.

The question of whether somebody has been appointed when he/she is taken on board on a temporary day-to day or month-to-month basis has been thrashed out by the Supreme Court judgment mentioned above. However, the term appointment is still confusing. In the point of law raised by the Respondent it refers to the “Appellant’s temporary **appointment** as GER ...” (emphasis ours). In the letter that was given to PSM it was said that “*The **appointment** may be terminated without notice or compensation in lieu of notice*”. (emphasis ours).

This said, it is clear that in the case of Jolicoeur and Ors and PSM they were clearly told in the letters to them that their employment could be terminated without notice or with one month notice. The case is different when it comes to the present Appellant. In the letter to him, he was told that he was offered employment as GER for a six months period in the first instance. He was also told that he would be on “*a purely temporary day-to-day basis and will not give you any claim to permanent appointment in the Local Government Service. The employment may be terminated without notice or compensation in lieu of notice*”. It was the stereotyped proviso in all temporary day-to-day employment offers.

However, in the case of the Appellant he was told in the same letter that “*Consideration will be given to your employment on a casual basis subject to you being favourably reported upon at the end of your temporary period.*”

In the event that you are employed on a casual basis/appointed on transfer to the Permanent and Pensionable Establishment, your guaranteed salary shall be the initial of the scale...”.

The question that the Tribunal ponders upon is whether the temporary employment in this case is not the starting point in the appointment process, given that it contains an indication of the next steps in the employment conditions. The case here is different from those of Jolicoeur and Ors and PSM where the employment could be simply and squarely discontinued with no promise of more substantive employment. It is on this premise that the Supreme Court gave its ruling.

The Tribunal tends to feel that given the circumstances of the case the appointment exercise had started and that its jurisdiction is not ousted in this case. The Tribunal will hear the appeal on its merits.