

No. R/06 of 2023

No pension, gratuity or allowance is granted to any officer except if the latter has retired from the public service. Likewise, the Tribunal has no jurisdiction to hear any appeal from a retired officer.

Appellant is challenging the decision of the Respondent to retire him in the interest of the Public Service. He was working as GWR at the Public Body. In a letter dated 30th December 2022 bearing Ref No JH/PF/2406 addressed to the Appellant by Respondent, it is clearly stipulated that the decision to retire him in the interest of the Public Service was taken as a result of his conviction by the District Magistrate of Port Louis on 7th October 2019 on the charges of '*Larceny breaking*' and '*Possession of Stolen Property*'. He was also informed that his retiring benefits may be reduced by an amount as may be approved by the Ministry of Public Service, Administrative and Institutional Reforms.

The matter was fixed to be heard on the merits and in the meantime, Respondent proposed an amendment to its Statement of Defence to include a *Plea In Limine* which read as follows:

The Respondent moves that the present appeal be dismissed, in as much as there is no longer any live issue in view of the fact that:

- (i) The Appellant is no longer a public officer;
- (ii) Retiring benefits have been duly paid to the Appellant; and

any decision taken by the Tribunal will be purely academic, the more so as the Appellant has failed to apply for a stay of the said decision to retire him.

There was no objection to the proposed amendment and the *Plea in Limine* was argued.

Counsel for Respondent called a witness from the Accountant General Office to produce the relevant documents to confirm that effectively Appellant has duly signed the option form whereby he exercised the option for a reduced pension to be paid to him, as stated in the letter dated 30th December 2022 as mentioned above. The latter also confirmed that Appellant is actually drawing his monthly pension.

Under cross examination, the witness agreed that the Appellant has not provided any discharge and release to the Respondent and that he has not absolved Respondent from its liability arising out of the decision of the Respondent to retire him in the interest of the Public Service.

Counsel for Respondent submitted that the Appellant, having retired from the public service and having already been paid his retirement benefits, is no longer a holder of a public office. Hence, he is no longer a public officer and cannot be reinstated to his post of General Worker. Since the Appellant is no longer a public officer and has already received the retirement benefits, the Appellant will not be able to revert to his former post anyway. So, any decision of the Tribunal in favour of the Appellant would not change anything for the Appellant as he is no longer a public officer. He also submitted that the remedies sought namely the quashing of the Respondent's decision would be pointless and would serve no practical purposes. He cited the case of **Ariranga Govindasamy Pillay, G.O.S.K v Honourable Prime Minister & ors (2017 SCJ 190)** where it was held:

“there must be a live issue to be tried and that the result of any decision on the merits eventually should not have the effect of being of only academic value, with no possible concrete result.....”. He submitted that the appeal should not proceed.

Counsel for Appellant replied that the decision of the Respondent to retire the Appellant in the interest of the Public Service was a punishment and falls within the jurisdiction of the Tribunal under S.3 of the Public Bodies Appeal Act 2008 and that it pertains to a disciplinary action. He submitted that the Appellant was a public officer before the Respondent exercised such disciplinary action. He also added that nowhere in the Constitution, the Public Bodies Appeal Tribunal Act 2008 and the regulations,

does the legislator exclude the jurisdiction of the Tribunal to hear and determine appeals being made by a public officer in relation to his retirement in the interest of Public Service. He cited **Ruling 01 of 2016** from the Tribunal as well as the Supreme Court case **Krishnaje O.A v Local Government Service Commission (2017 SCJ 387)** which dealt with the issue in question. He concluded that the Tribunal is fully empowered and has the jurisdiction to hear the appeal and that if the contention of Respondent to the effect that the Tribunal does not have jurisdiction to hear and determine appeals from public officers who have been dismissed is accepted, then that would mean that a public officer would not have any remedy against his dismissal from the public service, either before the Tribunal or the Supreme Court. It is to be noted that in the Supreme Court case of Krishnaje as cited above, leave for Judicial Review was refused on the ground that *“the applicant has failed to exhaust the alternative remedy available to him, namely the right of appeal provided under section 3(1) of the Public Bodies Appeal Tribunal Act”*.

He further submitted that the Appellant has not accepted his retirement in the interest of the public service by Respondent and is in fact contesting the decision of Respondent to take such punishment against him. He is of the opinion that the *Plea in Limine* raised by Respondent be set aside.

Ruling

The Tribunal notes that the Appeal was duly considered and fixed for merit as the decision to retire him in the interest of the public service falls under disciplinary actions. Ruling 01 of 2016 cited by Appellant’s counsel confirmed the reasoning in the present matter to the effect that the Tribunal has jurisdiction to hear matters relating to dismissal or retirement from the public service.

The crux of the matter in this case is that he opted for reduced pensions and paid same while at the same time maintaining the appeal. Pensions in the public service is governed by the Pensions Act of 1951.

Section 6 of the Act provides that only officers who has retired from the Public Service is entitled to pension and reads as follows:

(1) Subject to subsection (2), no pension, gratuity or other allowance shall be granted under this Act to any officer except on his retirement from the public service-

(a).....

(i).....

(ii).....

(iii).....

(iv).....

(b).....

(c).....

(d).....

(e).....

(f)

(g) In the case of termination of employment in the interest of the service as provided in this Act

(2) A gratuity may be granted to a female officer, in accordance with this Act, who retires on the ground of marriage on or after completing 5 years of pensionable service, whether the marriage took place before or after her appointment to the public service, or on the ground that she is about to marry, notwithstanding that she is not otherwise eligible under subsection (1) for the grant of any pension, gratuity or other allowance.

Therefore, it is clear that the Appellant should retire in the first instance to benefit from retirement pension. The Appellant, having signed the option form for a reduced pension and duly cashed his pension benefits, put an end to his status of public officer as he himself agreed to retire from the public service in order to obtain the pension benefit. As such the Tribunal has no jurisdiction to continue with the Appeal.

The *Plea in Limine* is well taken and is upheld. The Tribunal therefore set aside the Appeal.