

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 MCR at the Public Body. In a letter dated 28th December 2022 bearing Ref No ... addressed to the Appellant by Respondent, he was informed that his retiring benefits may be reduced by an amount as may be approved by the then Ministry of Public Service, Administrative and Institutional Reforms.

The Respondent objected to the appeal and raised 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;
- (iii) The Appellant has requested that his pension be reduced by one fourth and that a gratuity equal to 12½ times the amount of the reduction so made be paid in lieu; 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.

Counsel for Respondent called a witness from the to produce the relevant documents confirming that effectively Appellant has duly signed the option form requesting for a reduced pension to be paid to him as stated in the letter dated 28th December 2022 as mentioned above. The latter also confirmed that Appellant is actually drawing his monthly pension.

Under cross examination, the witness agreed that it took some two to three months to compute the amount payable as pension. Under re-examination, he stated that Appellant signed the option form voluntarily.

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 MCR. 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. She also submitted that the remedies sought namely the quashing of the Respondent's decision would be pointless and would serve no practical purposes. She 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.....”. She moved 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 Section 3 of the Public Bodies Appeal Tribunal 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 submitted that the pension that the Appellant is actually drawing is an accrued right by virtue of his past services provided for in his employment and does not affect his right to appeal against the decision of the Respondent to retire him in the interest of the Public Service.

He was of the opinion that the word “Public Officer” should not be given a literal meaning but rather a purposive approach should be adopted. He argued that if this approach is adopted, it is clear that the Appellant still satisfies the test of being a Public Officer. He added that it is undeniable that a disciplinary sanction has been taken against him in the form of retiring him in the interest of the Public Service. The Tribunal should look for the purpose of the legislation before interpreting the words. He further

submitted that the true intention of the Legislator is to be found by using the “purposive approach” not only to iron out any absurdity but also to find out what interpretation is to be given to the Act to make more “common sense”.

He moved that the *Plea in Limine* be set aside and the Appeal to proceed on the merit.

Ruling

The crux of the matter in this case is that the Appellant opted for a reduced pensions and was paid same while at the same time maintaining the appeal. Pensions in the public service is governed by the Pensions Act of 1951. It should be pointed out that pensions accrued while holding a post in the public service is not an absolute right as clearly mentioned in Section 5 of the Pension Act. The Supreme Court Case of **Tyack v Air Mauritius Ltd & ors 2010 SCJ 257** which was cited refers to the private sector and is not subject to the provisions of the Pensions Act.

Further 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.

For the purpose of clarity, subsection 2 is also produced which reads as follows:

- (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 on the first instance to benefit from retirement pension. The Appellant, having signed the option form for a reduced pension and duly cashed his pension, 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.