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Teaching Service Act, 1982

Act 1 of 1982

Legislation as at 1 December 1998

FRBR URI: /akn/sz/act/1982/1/eng@1998-12-01

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PDF created on 21 February 2024 at 16:32.

Collection last checked for updates: 1 December 1998.

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Teaching Service Act, 1982

Act 1 of 1982

Commenced on 2 May 1983

[This is the version of this document at 1 December 1998.]

An Act to repeal and replace the Unified Teaching Service Act, 1962 and to establish a Teaching Service Commission.

Part I – preliminary

1. Short title

This Act may be cited as the Teaching Service Act, 1982 and shall come into operation on such date as the Minister may, by Notice in the *Gazette*, appoint.

2. Interpretation

In this Act, unless the context otherwise requires—

“**appointment**” means the conferment of an office in the teaching service on a person and includes a probationary appointment, a promotion, a temporary appointment and an acting appointment;

“**Commission**” means the Teaching Service Commission established by [section 9](#);

“**Director**” means the Director of Education;

“**member**” means—

- (a) in relation to the Commission, a member of the Commission and includes the Chairman, an Acting Chairman and a temporary member appointed under [section 12](#); or
- (b) in relation to the teaching service, a member of such service;

“**Minister**” means the Minister responsible for Education;

“**service**” means the teaching service established by [section 3](#).

Part II – Establishment of Teaching Service and powers of Minister and Director

3. The Teaching Service

There is hereby established a service to be known as the Teaching Service which shall be governed by this Act.

4. Membership of Service

Every person employed or intending to be employed as a teacher in Swaziland and who on or after the coming into operation of this Act—

- (a) has successfully completed a course for teachers and has been awarded a qualification approved by the Director for purposes of teaching; or
- (b) is in possession of a University degree, diploma or other similar qualification approved by the Director for teaching purposes; or

- (c) holds an honorary teacher's certificate or has been awarded an honorary teacher's certificate by the Minister; or
- (d) is a teacher to whom the Unified Teaching Service Act, 1962 applies in terms of section 3 of the said Act;

shall, on application to the Director and upon being registered as such, become a member of the service.

5. Only members to be appointed to teaching posts

No person who is not a member in accordance with [section 4](#) shall, on or after a date determined by the Minister by Notice in the *Gazette*, be appointed to a teaching post except with the written consent of the Director.

6. Membership not to be construed as public office

- (1) The membership of any person in the service shall not, per se, be construed as conferring a public office upon a member.
- (2) In this Act, the expression "public office" has the same meaning as in the Public Service Act, 1981.

7. Powers of Minister in relation to the service

- (1) For the purposes of giving effect to the objects set out in [section 3](#) and other provisions of this Act, the Minister may make regulations prescribing—
 - (a) the qualifications and other matters relating to the teaching profession;
 - (b) the terms and conditions of service of the members of the service or in the teaching profession generally;
 - (c) the administration and management of the service or the teaching profession;
 - (d) any other matters conducive or incidental to the effective implementation of this Act.
- (2) The Minister may exempt any person from any of the provisions of this Act or any Regulations made thereunder.

8. Functions of the Director

In addition to any other powers, the functions of the Director shall be—

- (a) to promote and maintain appropriate standards of qualifications and other matters in the teaching profession;
- (b) to ensure the uniformity and harmony of the terms and conditions of service in the teaching profession;
- (c) to facilitate the administration and management of the teaching profession;
- (d) to promote any other objects conducive or incidental to the attainment of the objectives set out in this section.

Part III – The Teaching Service Commission

9. Establishment and composition of Teaching Service Commission

There is hereby established a body to be known as the Teaching Service Commission which shall consist of a Chairman and not less than three other members appointed by the Minister after consultation with the Prime Minister and on such terms and conditions as the Minister may determine.

10. Qualification for membership

A person shall not be qualified for appointment as a member of the Commission if—

- (a) he holds a public office or is a Minister, Deputy Minister or Assistant Minister or a member of Parliament; or
- (b) he is declared bankrupt or is an undischarged bankrupt in accordance with the law of any country; or
- (c) he has been convicted by a court of any offence involving dishonesty or moral turpitude in respect of which he has been sentenced to a fine or imprisonment;
- (d) he has been certified insane or of unsound mind;
- (e) he is a member of any body which, in the opinion of the Minister, is a staff association, a trade union or has as its object or one of its objects the control or influence over salaries, wages or other terms and conditions of service of any class of employees.

11. Term of office of members of the Commission

- (1) A member of the Commission shall vacate his office—
 - (a) at the expiration of three years from the date of his appointment or at any earlier time which may be specified in the instrument by which he was appointed; or
 - (b) if any circumstances arise that, if he were not a member, would render him unqualified for appointment as a member; or
 - (c) upon giving three months' notice of his resignation in writing and at the expiration of such notice; or
 - (d) if the Minister, after consultation with the Prime Minister, directs that he be removed from office for inability to discharge the functions thereof (whether such inability arises from infirmity of body or mind), for misbehaviour or for any other reasonable cause.
- (2) A member of the Commission shall not be removed from office except in accordance with subsection (1).
- (3) Subject to [section 10](#), a member of the Commission shall be eligible for re-appointment if he is qualified for appointment.

12. Vacancies and temporary appointments

- (1) If the office of Chairman of the Commission is vacant or the Chairman is, for any reason, unable to perform the functions of his office, the Minister may appoint any of the members to act as Chairman.
- (2) If the office of a member of the Commission is vacant or any member is, for any reason, unable to perform the functions of his office, the Minister after consultation with the Prime Minister, may appoint a person qualified to be a member, and any person so appointed shall, subject to [section 10](#) continue to act in such office until the office is filled or until the member is again able to perform the functions of his office or until the appointment is revoked by the Prime Minister.
- (3) The provisions of [section 11\(2\)](#) shall not apply to a person appointed to act as Chairman or as a temporary member of the Commission.

13. Oath or affirmation by members, etc.

- (1) A member of the Commission shall, on first appointment, take an oath or make an affirmation in the form set out in the Schedule or in such other form as may be prescribed by the Minister.

- (2) The Secretary and such other officers of the Commission as the Chairman may require so to do shall, on first appointment, take an oath or make an affirmation in the form set out in the Schedule or in such other form as may be prescribed by the Minister.
- (3) An oath or affirmation by a member shall be administered by a judge of the High Court and an oath or affirmation by the Secretary or any other officer of the Commission shall be administered by the Chairman.

14. Powers and functions of the Commission

- (1) Subject to this Act and any other law, the Commission shall have the power to appoint persons to hold office in the teaching service or to act in such office (including the power to make appointments on promotion and to confirm appointments), to exercise disciplinary control over persons holding or acting in such office and to remove from office persons so appointed.
- (2) The Commission may, in writing or by Notice in the *Gazette*, delegate subject to any such conditions as it may think fit, any of its functions under this Act to any of its members any member of the service or to any public officer either generally or in any particular case or class or cases:

Provided that nothing in this subsection shall be construed as precluding the Commission from itself performing any function delegated to any other person if the Commission has prior to the performance of such function or at any other time before the final determination of the matter in question by the person to whom such function has been delegated, informed that person that it intends to exercise or is exercising such function.
- (3) The Commission may, in the performance of any of its functions appoint any person or a body of persons to assist it in the discharge of such function and any such person or body of persons shall, for that purpose, have the powers and privileges set out in sections 15 and 19.

15. Other powers of the Commission

In the performance of its functions, the Commission may—

- (a) require any member of the service or any other person to attend and give information or evidence before it, concerning any matter which it is required to consider and may require the production of any documents relating to any such matter by any person attending before it or whom, in writing it requires to do so;
- (b) obtain information or advice from any public officer;
- (c) do all such other things, including the taking of evidence on oath and the administration of such oaths, as are incidental or conducive to the exercise of its functions.

16. Powers of Commission in relation to pensions, etc.

- (1) This section applies to any benefits payable under any law relating to the grant of pensions, compensation, gratuities or other like allowances to persons in respect of their service in the teaching service or to the widows, children, dependants or personal representatives of such persons in respect of such service.
- (2) Without prejudice to any other law, where any benefit to which this section applies may be withheld, reduced in amount, or suspended, such benefit shall not be withheld reduced in amount or suspended without the approval of the Commission.

17. Secretary to the Commission

The Minister shall appoint a secretary to the Commission.

18. Proceedings of the Commission

- (1) The quorum for any meeting of the Commission shall be the Chairman, or any person acting as Chairman, and two other members.
- (2) Subject to subsection (1) and any Regulations made under this Act, the Commission may regulate its own procedure.

19. Protection of Commission and members from legal proceedings

- (1) The question whether—
 - (a) the Commission has validly performed any function vested in it by this Act;
 - (b) any member of the Commission or any other person or body of persons has validly performed any function of the Commission delegated to such member or other person or body of persons under this Act; or
 - (c) any member of the Commission or any other person or body of persons has validly performed any other function in relation to the work of the Commission or in relation to any function as is referred to in paragraph (b);shall not be inquired into in any court.
- (2) Every member of the Commission shall have such and the like protection and privilege in case of any action or suit brought against him for any act done or omitted to be done in the *bona fide* execution of his duties as is by law given to the acts done or words spoken by a Judge of the High Court in the exercise of his judicial office.

20. Communications of Commission to be privileged

No person shall in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between the Commission or any member or officer thereof and any other person or between any members or officer of the Commission, in exercise of or in connection with the exercise of the functions of the Commission, unless the Chairman consents in writing to such production or disclosure.

21. Commission not to consider irregular representations

In the performance of the functions of the Commission, the Commission, a member thereof, the secretary or any other officer thereof or any person or body of persons exercising functions delegated or entrusted by the Commission, shall not take into account any representations made otherwise than in accordance with this Act, any regulations made thereunder or any other matter prescribed in pursuance of the objects of this Act.

22. Annual reports

The Commission shall, not later than three months after the end of each financial year or such longer period as the Minister may in writing permit, submit to the Minister a report of its activities relating to that financial year.

Part IV – Offences and penalties

23. Offence to influence Commission

- (1) Without prejudice to any other law, any person who—
- (a) otherwise than in the course of his official duty improperly, whether directly or indirectly, by himself or by any other person and in any manner whatsoever influences or attempts to influence any decision of the Commission; or
 - (b) in connection with the exercise by the Commission of its functions or duties wilfully gives to the Commission any information which he knows to be false or does not believe to be true or which he knows to be false by reason of the omission of any material particular,
- shall be guilty of an offence and on conviction liable to a fine of E1,000 or twelve months' imprisonment or both:
- Provided that nothing in paragraph (a) shall be construed as prohibiting any person from giving a certificate or testimonial to any applicant or candidate for any public office or from providing any information or assistance upon a request made by the Commission.
- (2) For the purposes of this section, the term “Commission” includes any member of the Commission, the Secretary and any person or body of persons exercising any of the functions of the Commission.

Part V – Pensions and other terminal benefits

24. Application of Part V

- (1) This Part shall apply to every person who—
- (a) immediately before the 1st April, 1970 was a depositor in the Unified Teaching Service's provident fund established by the Unified Teaching Service Act, 1962 and who would have continued to be a depositor on and after the 1st April, 1970; or
 - (b) is a member in accordance with [section 4](#).
- (2) For the purpose of computing the length of pensionable service of a person under this Act, the period during which a person was a depositor in the Unified Teaching Service Provident Fund established by the Unified Teaching Service Act, 1962 or the period thereafter, or both, as the case may be shall be taken into account.

25. Interpretation of Part V

In this Part, unless the context otherwise requires—

“**admission date**” means the date on which a person became or becomes a member in accordance with [section 4](#);

“**beneficiary**” in relation to a member, means—

- (a) a spouse of the member; or
- (b) in the absence of a spouse, a child including an adopted child and a step-child; or
- (c) in the absence of any of the persons referred to in paragraphs (a) and (b), the executor of the deceased member's estate or the person who, according to Swazi law and custom, is entitled to inherit the estate of a deceased person; or
- (d) in the absence of any person referred to in paragraphs (a), (b) and (c) a person nominated by a member in writing addressed to the Director;

“**normal retirement date**” means the last day of the month in which a member attains the age of fifty-five years;

“**compulsory retirement date**” means the last day of the month in which a member attains the age of sixty years;

“**final pensionable salary**” means the average of a member’s pensionable salary on the last five anniversaries of his admission date immediately prior to the date of his retirement;

“**pension**” means the amount, whether payable periodically or otherwise, which accrues to a member on retirement;

“**pensionable emoluments**” means a member’s salary and such other payments as may be prescribed by the Minister;

“**Pensionable service**” means the period of service of a member which may be taken into account for the purposes of computing his pension.

26. Entitlement to pension on retirement

Subject to this Act a member shall, on retirement, be entitled to receive from the Government a pension of an amount equal to one-eightieth of the average of the total salary earned during the last five years of his pensionable service prior to his date of this retirement:

Provided that, except as otherwise provided in [section 27](#), no member shall be allowed to retire from the service unless he has been in service for ten years or more.

27. Entitlement to pension on early retirement or on other grounds

- (1) A member may at any time retire from the service—
 - (a) on grounds of ill-health certified by a medical board appointed by the Minister in consultation with the Minister for Health that such member is incapable of discharging the duties of his office and that the incapacity is likely to be permanent; or
 - (b) if, having been in pensionable service for ten years or more he has attained the age of forty-five years; or
 - (c) on the abolition of his office, on reduction of establishment or on grounds of redundancy; or
 - (d) on compulsory retirement for the purpose of facilitating improvement in the organization of the Service by which greater efficiency or economy may be effected; or
 - (e) if his Services are terminated in the public interest; or
 - (f) if, being a woman who has completed ten or more years of pensionable service and with the approval of the Director, for the reason that she has married or is about to marry.
- (2) A member who retires under this section shall be entitled to a pension at the rate prescribed in [section 26](#).

28. Mode of payment of pensions

A member entitled to a pension under this Part shall be paid such pension in monthly instalments commencing on the first day of the month immediately following the month of his retirement and on the first day of each month thereafter:

Provided that if the monthly payment does not exceed sixty Emalangeni, the Director may make such payment in two instalments in every month.

29. Commutation of pension, etc.

- (1) Subject to any Regulations made under this Act, a member may, on his retirement elect—
 - (a) to receive an amount not exceeding one-third of his pension in cash and periodic payments thereafter or, if the annual pension does not exceed sixty Emalangeni, the whole amount of his pension; or
 - (b) to receive in lieu to the pension to which he is entitled under this Act, such other pension of equivalent actuarial value on his own life as he may select provided that the terms of such other pension shall not be less favourable than those applicable to a pension awarded in accordance with this Act; or
 - (c) to surrender a portion of his pension in order to provide for a deferred pension of actuarial value equivalent to such pension payable to a beneficiary of his during the life of such dependant:

Provided that no member may surrender such portion if by so doing such deferred pension will exceed in value the remaining portion of the pension payable to him:

Provided further that such deferred pension shall be payable to the beneficiary in monthly instalments on the first day of the month immediately following the month in which the member's pension ceases up to the first day of the month in which the beneficiary dies.

- (2) If a member retires on or after attaining the age of forty-five years but before the normal retiring date he may opt to receive, in lieu of a pension, a policy of whole-life or endowment assurance.

30. Payment of death gratuity to beneficiary

- (1) This section applies in respect of a member who is not entitled to a pension under any other provisions of this Act and who dies in the service.
- (2) If a member to whom this section applies dies, the Minister may grant to the beneficiary of such member a gratuity of an equal to one year's pensionable emoluments or such other amounts as may be prescribed by regulations made under this Act.
- (3) Nothing in this section shall be construed as affecting any person's rights to workmen's compensation under any law.

31. Non-assignability of pension or gratuity

No pension or gratuity or any right relating thereto may be ceded, assigned, pledged, hypothecated or otherwise disposed of, sequestered or encumbered.

32. Arrangements with insurance companies, etc.

- (1) The Minister may with the approval of the Minister responsible for Finance, enter into an agreement with an insurance company or a financial institution for the purpose of providing for the payment of pensions and other benefits referred to in this Part.
- (2) The agreement entered into on the 12th day of June, 1975 between the Minister and the Commercial Union Assurance Company of South Africa Limited and any agreement with the successors to such agreement shall be deemed to have been made under this section.

Part VI – Repeal and consequential provisions

33. Repeal of Unified Teaching Service Act, 1962

The Unified Teaching Service Act, 1962 is hereby repealed.

34. Payment to depositors under the Unified Teaching Service Act, 1962

- (1) Notwithstanding the repeal of the Unified Teaching Service Act, 1962 the Government shall pay to every person who was a depositor in the Unified Teaching Service's provident fund established by the Unified Teaching Service Act, 1962 and on application by such person addressed to the Principal Secretary to the Ministry of Education, the sum of all deposits, bonuses and interest accrued to the credit of such depositor up to the date of coming into operation of this Act.
- (2) A person who does not apply for payment under subsection (1) shall have the sum of his deposits, bonus and interest preserved by the Government under the same terms as those applicable to the Unified Teaching Service Provident Fund until he retires in accordance with this Act.
- (3) Where a depositor has died or cannot be found, the sum referred to in subsection (1) shall be paid to his beneficiary in accordance with this Act.
- (4) Notwithstanding any payment made under this section, the period during which a person who is a member was a depositor in the fund shall be taken into account in computing the period of his pensionable service for the purpose of determining whether such person or any beneficiary is entitled to a pension or gratuity under this Act.

35. Continuation of pending proceedings, etc.

Notwithstanding the repeal of the Unified Teaching Service Act, 1962 on the date of coming into operation of this Act, all proceedings (whether disciplinary or of any other nature) and all other matters pending before any officer or authority in respect of a person who was a member of the service or depositor under that Act shall be continued or otherwise dealt with by the Commission in accordance with this Act and any regulations made thereunder.

Schedule (Section 13)

(Oath or affirmation for due execution of office)

I _____ do swear (or solemnly affirm) that I will well and truly serve King _____ his heirs and successors, in the office of (*here insert the description of the office*).

So help me God.

(*To be omitted in affirmation*).