



CONCILIATION, MEDIATION AND ARBITRATION COMMISSION (CMAC)

HELD AT MBABANE

DSPT NO. MB203/05

In the matter between:-

HAPPINESS LINDA DLAMINI

Applicant

And

DEPUTY PRIME MINISTER'S OFFICE

1ST Respondent

P.S MINISTRY OF PUBLIC SERVICE &

INFORMATION

2nd Respondent

THE SECRETARY- CIVIL SERVICE BOARD

3rd Respondent

ARBITRATION AWARD

1. DETAILS OF THE PARTIES AND REPRESENTATION

The Applicant is Happy Linda Dlamini, a Swazi female adult currently employed by the Deputy Prime Minister's Office.

The Respondents are the Deputy Prime ministers' office, the Principal Secretary in the Ministry of Public Service and information and the Secretary of the Civil Service Board.

In this matter the Applicant was represented by the Mr. S. Simelane from Robinson Bertram and the Respondents by Ms Z. Mkhwanazi from the Attorney Generals chambers.

I explained the stages and the process to the parties in order to ensure that both parties are aware of what is required from them and what to expect from each other. The parties agreed to the procedure as explained, hence the procedure was utilized during the process accordingly.

2. BACKGROUND

The applicant is currently employed by the first Respondent as typist. She has been working in this position of a typist since the 31st March 1996. The dispute arose because the applicant claims to have been promoted to a position of the Tinkhundla Secretary by then Principal Secretary in the Deputy Prime Minister's Office on the 26th October 1999 which promotion was backdated to the 1st October 1999. She seeks the arbitrator to order that the Respondents should recognize the promotion and be compelled to adhere to the terms and conditions of the alleged promotion.

The respondents on the other hand aver that the purported letter which allegedly promoted the applicant to the position of Tinkhundla Secretary is not authentic. The respondents further allege

that the purported promotion was illegal as it was done outside the ambit of the Civil Service Board which is the one that is responsible for the recruitment and promotion of persons in the Civil Service including the Applicant.

3. ISSUES IN DISPUTE

The issues that are in dispute are the validity and legality of the applicants "promotion" and whether the Respondents failure to promote her conduct amounts to an unfair labour practice.

The question that I have to determine is whether the then Principal Secretary acted *ultra vires* his authority in promoting of the applicant to the position of Tinkhundla Secretary or whether the Respondents should recognize and effect the "promotion" with all its benefits.

4. SUMMARY OF ARGUMENTS AND EVIDENCE ON MERITS

The evidence was led was by the applicant herself on oath who stated that she is currently employed by the Deputy Prime Minister's office as a typist and has been so employed since the 31st March 1996. She stated that on the 29th October 1999 she was promoted to the position of Tinkhundla Secretary and that such promotion was effected by a letter written by the Principal Secretary in the Deputy Prime Minister's Office. It was her evidence that according to her belief the Principal Secretary had an authority to promote her and the other people that she was promoted with.

It was the applicant's further evidence that all the people who were also purportedly promoted by the said Principal Secretary also did not enjoy the benefits of the promotion. The applicant viewed this as an unfair labour practice as in her opinion the Principal Secretary was sanctioned by the Ministry of Public Service and Information to declare

the posts of Tinkhundla Secretary and fill them. In her opinion, this he did by promoting herself and some other employees.

It was the applicants further evidence that AFTER the promotion she went to the Civil Service Board for an interview for the post of Tinkhundla Secretary. She stated that she never received any response from the Civil Service Board about this interview.

Although the respondents did not call witnesses they filed certain documents in support of their case and defended the case in cross examination of the applicant. The documents that have an important bearing on the outcome of this case are the Civil Service Board Regulations of 1963 as well as Swaziland Government General Orders.

5. Analysis of Evidence

The applicant's case is founded on what she calls "an unfair labour practice" by the Respondent. This essentially means that the act of not validating the promotion by the former Principal Secretary by the Respondents is viewed as unfair to the applicant.

The applicant's case relies on a letter of promotion whose validity is in question. The Respondents have chosen to say that this document is not authentic.

On closer analysis of the respondent's argument it becomes clear that what is challenged is the **AUTHORITY** of the person who issued the document and not to the document itself i.e., not authenticity per se but the authority to issue the letter of promotion.

The Civil Service Board (General) Regulations under Act 34 of 1963 make it succinctly clear that all transfers, appointments, promotions, e.t.c of the Civil Service shall be conducted by the Civil Service Board. The said statute delegates the duties of the Board to specified Commissions and Heads of Department. Only those officers such as the police, teachers and judicial officers and others specifically mentioned are excluded from the purview of the Civil Service Board.

The applicant has argued that the position of Tinkhundla Secretary falls within the category of Civil Servants whose status of employment may be changed by a head of department such as the principal Secretary in this case. The Civil Service Board Circular No1 of 1994 was relied upon as the circular which ushers in the Post of Tinkhundla secretary as one of the posts which fall outside the ambit of the Civil Service Board and delegates authority to the Principal Secretary as a head of Department.

Further reference was made to General Order A.172 (3) as evidence that a Head of Department or Authorised officer is empowered to make a promotion such as the one in *casu*.

The circular referred to above clearly specifies that by operation of same, Heads of Departments were now empowered and authorized to change the status of permanent non-pensionable employees listed therein to pensionable ones in accordance with the procedures and conditions stated thereon.

The Applicant has chosen to read the General Orders in isolation, particularly Order NO. A .172 (3) which reads as follows:

"In the case of a vacant post which comes within the terms of General Orders A.101, A102 or A.105 a head of Department or authorized officer, as appropriate, shall be empowered to make a promotion or secondment without reference to the Public Service Commission...."

The proper interpretation of this Order would obviously entail the reading and noting the posts referred to in General Orders A.101, A102 and A.105. These are The Royal Swaziland police Force, The Correctional services, teachers and others but certainly not the Tinkhundla Secretary.

6. CONCLUSION

The doctrine of the *ultra vires* as argued by the respondent is certainly applicable in this case. The former Principal Secretary in this case by promoting the applicant exceeded his authority and acted outside the scope of the Civil Service Board which is vested with the statutory power to promote Civil Servants such as the applicant.

The legally established procedure for such a promotion was clearly violated as the letter of promotion itself was on the wrong form and the applicant sought to write an interview after her alleged promotion.

7. AWARD

It is my considered view that in totality of the facts and circumstances of this case, the respondents have discharged the burden on them and have clearly demonstrated that the promotion was unlawful and was of no force and effect.

In the premises, the application is dismissed.

**DATED AT MBABANE ON THE..... DAY OF
..... 2006**

SIBONGILE C. ZONDI

ARBITRATOR