

IN THE HIGH COURT OF SWAZILAND

Civ, Case No. 1614/95

In the matter between:

SARAH NDWANDWE N.O. Applicant

and

THE PRINCIPAL SECRETARY MINISTRY

OF WORKS AND CONSTRUCTION 1st Respondent

THE ATTORNEY GENERAL 2nd Respondent

THE CIVIL SERVICE BOARD 3rd Respondent

THE MASTER OF THE HIGH COURT 4th Respondent

CORAM: S.W. Sapire A.C.J.

FOR THE APPLICANT Mr. S.C. Dlamini

FOR THE RESPONDENTS Mr. P. Simelane

Judgment

(3/5/96)

The applicant Sarah Ndwandwe has instituted these proceedings in her capacity as executrix in the estate of the late Timothy N. Maseko who died on 9 December 1992.

He was survived by his widow and four children and was at the time of his death employed as a labourer on a temporary basis on a specific project by the Ministry of Works and Communications. In bringing this application, the applicant seeks order directing the Civil Service Board to "confirm one Timothy N. Maseko in his appointment

2

in the Swaziland Civil Service posthumously". Consequent upon such an order, the applicant also seeks an order directing the Accountant General of Swaziland Government to pay the death gratuity of Timothy N. Maseko in full.

It appears that at the time of his death, the deceased earned a monthly salary of E874.00; and the Government paid an amount of E2,562.72 being the death gratuity to which the deceased became entitled when his services terminated. The applicant believes that in terms of Government Regulations, the death gratuity should at least have been equal to the annual salary of the deceased which would have been the amount of E10,488.00.

In arguing the matter no reason was made to the Government Regulations on which the claim is based. My own reading of the Regulations does not reveal any basis for the entitlement of the deceased either to be confirmed in a temporary appointment nor is there any basis for him to be paid

a death gratuity.

The applicant made reference to Section 32 of the Employment Act 1980 which provides that where an employee is engaged on a probationary basis, no probationary period to exceed three months.

This section has no application in the present matter because the deceased was not ever-employed on a probationary period but was merely engaged on a temporary basis for a specific project. This is clear from the advice addressed to him of his appointment. Although the deceased remained so employed for a period of eight years, he was never in line to be confirmed in any post. Even if this is inequitable, there is no basis in which the matter can be redressed at this time.

Regulation 32(2) of the Civil Service Board (General) Regulations 1963 similarly has no application to the present case because the deceased was never on probation.

3

For these reasons the application is dismissed with costs.

S.W. SAPIRE

ACTING CHIEF JUSTICE