

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.2452/99

In the matter between:

JOSEPHINE MLOTJWA

APPLICANT

AND

TEACHING SERVICE COMMISSION

1st RESPONDENT

ATTORNEY GENERAL

2nd RESPONDENT

CORAM:

MATSEBULA J

FOR THE PLAINTIFF:

FOR THE DEFENDANT:

RULING

On the 22nd October 1999 the Applicant moved a notice of application for the following relief:

1. That 1st Respondent pays Applicant her retirement benefits;
2. Costs of application.

The notice of application was accompanied by an affidavit by the Applicant herself. In her affidavit she stated inter alia that she had way back in 1993 applied for early retirement from the services of

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First Respondent. She annexed a letter dated 13th January 1993. She was doing this so that she does not lose her benefits accumulated over a period of time.

On the 22nd April 1993 First Respondent responded and requested Applicant to furnish certain documents. This was obviously to enable First Respondent to consider the Applicant's application. The letter of the 22nd April 1993 is annexure "B" and I will deal with it below.

On the 12th July 1995 Applicant wrote a letter to the Ministry of Education and complained that a certain Mr. Muir had responded negatively to her application and that she then applied to the Principal Secretary by way of appeal who also responded negatively to her application. She further appealed to Education Committee. Here again a negative response was given. She was then appealing to the Minister to decide the matter.

On the 16th February 1999, the First Respondent addressed a letter to the Applicant's attorneys and gave a detailed account of why Applicant's application was unsuccessful. Reference was made to the provisions of the Teaching Service Act which clearly sets out the requirements for an early retirement and these are set out in paragraph 2 and they read as follows:

We refer to your numerous correspondence to us on this matter and we apologise for the failure, neglect to respond to them. Our reason is that we believed this matter had formally been put to rest between ourselves and Mrs. Mlotshwa and your client.

Paragraph 1 It was clearly explained to Mrs. Mlotshwa when she took the so-called early retirement that

the rules under the Teaching Service Act provides that no teacher could be allowed to retire from the Service unless she's been in the pensionable service for a

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period of 10 years or more and has attained the age of 45 or more. And that being a woman she must advance as her reasons for early retirement being the fact that she has just married or was about to marry and must also have the approval of the Director of Education.

I must state here that none of these exceptions apply to the Applicant and in the circumstances I cannot see how any interpretation of statutes can assist her in the face of a clear and unambiguous provisions of the Act. There is no merit in the application and application is dismissed with costs.

J.M. MATSEBULA

JUDGE