

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 106/98

In the matter between:

ETHWELL MATSEBULA

APPLICANT

and

SWAZILAND GOVERNMENT

RESPONDENT

CORAM

NDERI NDUMA:

PRESIDENT

NICHOLAS MANANA:

MEMBER

JOSIAH YENDE:

MEMBER

For Applicant:

Mr. E. Hlophe

For Respondent:

Ms. B. Duma

JUDGEMENT

27/1/2000

In his application for the determination of an unresolved dispute the Applicant prays for an order setting aside his demotion and reinstating him as a head teacher with effect from 4th December 1995 and that the court directs the respondent to calculate and pay him his salary arrears with effect from the 4th December 1995 plus interest at 9% per annum on the back pay.

The Applicant in his testimony told the court that he was employed by the Teaching Service Commission of the respondent in 1981 and was in continuous employ of the Respondent until the present.

That on the 6th December 1995, the Applicant was demoted from his position as Head teacher to be a Deputy Head teacher with effect from the 4th December 1995, on the grounds that the Applicant had misappropriated a sum of E22,546.01.

An audit had been conducted at the school the Applicant headed, and an audit report was submitted to the Teaching Service Commission on 13/11/95. Pursuant to the demotion, the Applicant was also ordered to repay the amount of

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E22,546.01 which amount was continuously deducted from the Applicants monthly salary. The letter that advised the Applicant of the aforesaid decision was dated the 6th December 1995 and therein was also contained a directive to transfer the Applicant to Musi Primary School as Deputy head teacher.

The Applicant protested to the Teaching Service Commission by a letter dated the 15th December 1995, against the decision the commission had taken against him on the grounds that;

(1) The Audit report dated 13th November 1995 was incomplete, unsatisfactory and it did not take into consideration all relevant documentations.

(2) The report did not make provision for the unavailable receipts which the Applicant had promised to provide at a later date as the same were not at his office when the auditors visited the school.

The Teaching Service Commission did not reply to the Applicant's letter. However, on the insistence and persistence of the Applicant, the Principal Secretary in the Ministry of Education requested the Financial Controller in the Ministry of Education to look into the audit report that had been prepared by his subordinates.

As a consequence thereof the financial controller reviewed the Audit report of the Holy Rosary Primary School, headed by the Applicant and according to Exhibit 'B' readied the following conclusion;

(1) Certain receipts had not been taken into account in the internal audit report of 13th November 1995 which amounted to Emalangeneni 15,965.47 for the year 1994. After taking into consideration these additional receipts the revised unaccounted for cash for the year 1994 was reduced from 17,369.08 to 1403,61.

(2) For the year 1995, receipts initially not considered totalled to Emalangeneni 5155.56 against unaccounted for cash of Emalangeneni 5176.93 according to the report of the 13/11/95. Consequently, unaccounted for cash for the year 1995 was reduced to Emalangeneni 21.49 etc.

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(3) According to the report of the financial controller, the total unaccounted for cash therefore amounted to E1425.10 as compared to the initial unaccounted for amount of E22,546.01.

The decision by the Teaching Service Commission to demote the Applicant was based on the audit report dated the 13/11/95. Following the demotion as we noted, the Applicant was also surcharged against his monthly salary the total unaccounted for amount of E22,546.01.

The Respondent has not been able to contradict the Applicant's evidence regarding the audit review by the financial controller. It is therefore inescapable that the Applicant can only be held accountable for the sum of the unaccounted for cash in the sum of E1425.10. Accordingly the Respondent is directed to refund all the monies deducted from the Applicant as repayment of the unaccounted for cash save for a sum of E1,425.10.

The report of the financial controller dated the 21st March 1997 was made after the Applicant had appeared before the Teaching Service Commission and therefore the Commission was not able to take it into consideration in arriving at the decision it did against the Applicant especially as regards the Applicant's demotion and transfer.

It would be inappropriate for the court to consider the new evidence and substitute the Commission's decision with its own, however, it is a matter of common sense that the Commission may have arrived at a different decision had the report of the financial controller been available for their consideration when they decided the fate of the Applicant.

We deem it to be in the interest of justice that the disciplinary hearing against the applicant be commenced denovo by the Teaching Service Commission.

Concerning the failure by the Applicant to report to Musi Primary School after he had been transferred the court is completely unsympathetic to the Applicant's case. The Applicant was to have reported to Musi Primary School as from the month of February 1996 but up until the 1st of February 1997, he did not perform any duties for the Respondent as he had not reported to the new school as directed.

The Respondent in our view was justified in stopping his salary with effect from the 1st of February 1997 and the subsequent recovery of all the salary earned by the Applicant for the period he was away from work.

It is often slated that two wrongs do not add up to a right. The Applicant should have known better and pursued his cause without abstaining from his normal duties. We have arrived at this conclusion after clue consideration of the available evidence by both parties and after considering all the circumstances of the case.

In conclusion, the court orders the following;

- a) That the Teaching Service Commission commence a disciplinary hearing denovo against the Applicant in the light of the financial controller's report daled the 21st March 1997. That the hearing is to be commenced and concluded before the 30th March 2000.
- b) That the Respondent refund all the monies deducted from the Applicant's salary in respect of the unaccounted for cash in the sum of E22,540.01 save for the sum of E1425.10.
- c) That no salary arrears is recoverable by the Applicant for the days he did not report to work pursuant to the decision of the Teaching Service Commission to transfer him.

There will be no order as to costs.

The Members agree.

MATHEWS NDERI NDUMA

JUDGE PRESIDENT