

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 110/2002

In the matter between:

AARON FAKAZI KUNENE

APPLICANT

and

PRINCIPAL SECRETARY MINISTRY OF

AGRICULTURE AND CO-OPERATIVES

1ST RESPONDENT

CHAIRMAN - CIVIL SERVICE BOARD

2ND RESPONDENT

ACCOUNTANT GENERAL

3RD RESPONDENT

ATTORNEY GENERAL

4TH RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR APPLICANT:

COLLIN NTIWANE

FOR RESPONDENT:

SYLVIA MASEKO

JUDGEMENT

08/05/02

The Applicant worked as an Inspector of works in the Fire and Emergency Department earning a salary on Grade 10 prior to his appointment and promotion to the post of Workshop Manager on Grade 12 on the 7th July, 1999.

The letter of promotion is annexure 'AP1' to this application and such promotion was backdated to April 1999.

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The promotion followed an application by the Applicant and subsequent interviews.

The Applicant after the promotion received a letter dated 27th October 2000 advising him that the Civil Service Board had withdrawn such appointment with effect from 31st October 2000 because the High Court in Case No. 1796/2000 had ruled that the promotion / appointment was irregular.

The appointment had been challenged by the Applicants who were not successful in their bid to be appointed to the post. The court order and the letter are annexed to the Application marked 'AP3' and 'AP2' respectively.

The Principal Secretary in the Ministry of Agriculture on the 10th October, 2000 requested the Civil

Service Board to appeal against the High Court decision as he considered the Applicant qualified and competent for the post he had been promoted to.

The Respondent neither appealed the decision nor did it seek an alternative posting for the Applicant, This notwithstanding, it continued to pay the Applicant until he received a letter dated 22nd March, 2002 from the Ministry of Agriculture and Cooperatives advising him that the Ministry would discontinue his salary with effect from the 1st April, 2002.

Once the appointment/promotion of the Applicant was set aside by the High Court on the 14th September, 2000 he automatically reverted to his previous position with the Fire Department.

The Applicant was never dismissed as a civil servant and he continues to tender his services as per his previous appointment.

The Ministry of Agriculture ought to have regularized the Applicant's promotion after it was served with the court order by conducting the recruitment process afresh but instead, it continued to pay the Applicant in disregard of a court order on Grade 12.

The Respondents have not filed any Opposing Affidavit but have raised legal objection to the Application on the basis that the promotion was declared irregular and was set aside by the High Court hence the Applicant

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is not entitled to an order directing the government to pay him his monthly salary on Grade 12.

Whereas, the court agrees with the objection by the Respondent, it is also true that the Applicant remains an employee of the Respondent as previously employed at the Fire Department on Grade 10. So long as he continues to tender his service, the Respondent should and is bound to continue paying him on Grade 10 scale.

The Applicant should not be penalized at all for irregularity committed by the Respondent.

In the result and in terms of the prayer; further and/or alternative relief, the 2nd and 3rd Respondents are ordered to continue paying the Applicant on the position he holds at Grade 10 with the Fire and Emergency Department.

The Respondents are condemned to costs of this Application.

The Members Agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT

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