

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 247/08**

In the matter between:

**SHINEGIRL MOTSA**

**Applicant**

and

**THE CIVIL SERVICE COMMISSION**

**1<sup>st</sup> Respondent**

**THE PRINCIPAL SECRETARY  
MINISTRY OF FOREIGN AFFAIRS**

**2<sup>nd</sup> Respondent**

**THE ATTORNEY GENERAL**

**3<sup>rd</sup> Respondent**

**CORAM:**

**P. R. DUNSEITH:            PRESIDENT**

**JOSIAH YENDE:            MEMBER**

**NICHOLAS MANANA:        MEMBER**

**FOR APPLICANT:            ADV. L. MAZIYA  
(instructed by T. L. Dlamini & Associates )**

**FOR RESPONDENT:         M. VILAKATI**

**J U D G E M E N T - 4/07/08**

1. The Civil Service Commission dismissed the Applicant from the Civil Service with loss of all benefits on the 18<sup>th</sup> April 2008.

2. The Applicant has applied to the Industrial Court for the review of the proceedings of the Commission and the setting aside of the decision to dismiss her.
3. The Applicants alleges that she was not given an opportunity to make representations before the Commission in her defence because she was not given proper notice of the hearing.
4. The Applicant was, prior to her dismissal, an employee of the Swaziland Government under the Ministry of Foreign Affairs & Trade.
5. In 2000 the Applicant was appointed Consul General in Johannesburg, South Africa by the Minister of Foreign Affairs and Trade, with all the legal rights, privileges and immunities pertaining to such office,
6. On 22<sup>nd</sup> March 2004 the Applicant was suspended from duty on half pay by the Civil Service Board (as the Commission was then called). The letter of suspension was transmitted to the Applicant through her attorneys.
7. On 13 December 2006 a CMAC arbitrator ordered that the suspension be set aside and the Applicant paid her full salary in arrears. The arbitrator directed the Government to institute a disciplinary enquiry against the Applicant within a reasonable time.
8. The Principal Secretary in the Ministry of Foreign Affairs instituted a departmental preliminary investigation to establish whether a disciplinary enquiry should be held, as required by Regulation 41 of the Civil Service Board (General) Regulations of 1973.
9. The letter inviting the Applicant to attend the preliminary departmental enquiry was delivered to her at her parental home in Siteki.
10. The Applicant refused to attend the departmental enquiry, claiming through her attorneys that the delay of four years before instituting a disciplinary process was unconstitutional. She also instituted an application in the High Court to review and set aside the direction of the CMAC arbitrator that a disciplinary enquiry be held within a reasonable time.
11. The preliminary departmental enquiry proceeded in the absence of the Applicant, and the Principal Secretary concluded that formal charges of misconduct should be

preferred against the Applicant. He duly transmitted formal charges to her, giving her 14 days to state any grounds upon which she relied to exculpate herself.

12. The charge sheet was delivered to the Applicant at her parental home at Siteki. Her attorneys thereafter wrote to the Principal Secretary requesting that the departmental investigation be stayed pending finalization of the High Court review application, in response, the Applicant's attorneys were advised to direct their correspondence on the matter to the Attorney-General.

13. There is no evidence that the Applicant's attorneys thereafter raised the matter with the Attorney-General. It has been argued for the Applicant that she was entitled to assume that her request for a stay of disciplinary process had been granted. We don't agree. The Principal Secretary of Foreign Affairs and Trade had scrupulously followed the procedure laid down in Regulations 41 and 42 of the Civil Service Board (General) Regulations. He was under no legal obligation to stay the disciplinary process, nor did he give the Applicant or her attorneys any reason to believe that he had agreed to a stay.

14. The Principal Secretary duly reported the matter to the Commission, which decided that a formal disciplinary enquiry should be conducted into the allegations of misconduct against the Applicant.

15. On 1<sup>st</sup> November 2007 the Commission invited the Applicant to attend a disciplinary hearing before the Commission on 13<sup>th</sup> November 2007. The invitation was addressed to the Applicant "thro' Principal Secretary, Ministry of Foreign Affairs & Trade". The Ministry sent its driver to deliver the letter at the Applicant's parental homestead in Siteki.

16. The Applicant did not attend on the 13<sup>th</sup> November 2007 and another hearing was convened for the 18<sup>th</sup> April 2008. An invitation was again sent to the Applicant through the Principal Secretary, who caused his driver to again deliver the invitation at the Applicant's parental homestead.

17. It is common cause that the Ministry's driver on both occasions did not find the Applicant at her parental home, and he left the invitations to the hearing with her mother. The mother states under oath that on both occasions she informed the Ministry's driver that the Applicant was resident in Johannesburg, that she did not agree to accept service on behalf of the Applicant, and that any correspondence for the Applicant should be delivered to her attorneys.

18. On 20<sup>th</sup> March 2008 the Applicant's mother wrote a letter to the Principal Secretary. The letter states in unequivocal terms that the Applicant is not staying at her parental home; that the Applicant resides at her marital home in Johannesburg; that the mother is not authorized to accept service of letters addressed to the Applicant; and that any correspondence for the Applicant should be delivered to her at her marital home in Johannesburg or at the offices of her attorneys in Mbabane.

19. This letter was received by the Principal Secretary on 10<sup>th</sup> April 2008, some eight (8) days prior to the disciplinary hearing.

20. When the disciplinary hearing commenced on 18<sup>th</sup> April 2008, the Applicant was not present. It was incumbent on the Commission to satisfy itself that the Applicant had received proper notice of the disciplinary hearing. It is reasonable to assume that the Principal Secretary placed the letter from Applicant's mother before the Commission. If he did not do so then vital information was irregularly withheld from the Commission and this in itself would vitiate the proceedings. The letter makes it clear that the Applicant had not received notice of the hearing.

21. The Applicant's refusal to participate in the preliminary departmental investigation cannot be construed as a waiver of her right to attend the disciplinary hearing before the Commission.

22. The court has given consideration to the question whether the Applicant waived her right to receive notice of the disciplinary hearing by failing to notify her employer of her current contact details and address. This question was not argued by the Respondents and insufficient factual background has been placed before the court - for instance, as to the events which occurred after the Applicant's suspension in 2004 pertaining to the Applicant's employment status -to establish such a waiver.

23. An employee must be given the opportunity to attend his/her disciplinary enquiry. This requires that all reasonable steps be taken to give notice of the enquiry to him/her.

24. In view of the contents of the letter from Applicant's mother, the Commission had a duty to take reasonable steps to make the Applicant aware of the disciplinary enquiry - either by service upon her attorneys, or at her marital home in Johannesburg. It is hard to believe that the Applicant could not be located in Johannesburg with the assistance of the Swaziland Consulate where she previously served, but in the absence of any address for personal service then service upon her attorneys would have sufficed.

25. The Commission did not make any further attempt to give notice to the Applicant, and she was denied the opportunity to attend at the hearing. This was a breach of the audi alteram partem rule.

26. The Applicant has raised a second issue, namely that her appointment as Consul General may only be terminated by the Head of State in terms of section 188 (2) of the Constitution.

27. In our view, this issue is irrelevant to the present application. The appointment of the Applicant to the office of Consul General is independent of her employment as a civil servant. The present application concerns her dismissal as a civil servant, not the termination of her appointment as Consul General.

28. We make the following order:

**(a) The decision of the Civil Service Commission to dismiss the Applicant from the employ of the Swaziland Government is set aside.**

**(b) The matter is remitted to the Civil Service Commission so that the disciplinary hearing may commence de novo, upon reasonable notice to the Applicant through the office of her attorneys.**

29. The Applicant is not without fault in the matter. As an employee she is expected to keep her employer informed of her contact details. In the premises, we direct that each party should pay its own costs of the application.

**PETER R. DUNSEITH**  
**PRESIDENT OF THE INDUSTRIAL COURT**