

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 553/08**

In the matter between:

**MOSES MATSEBULA**

**Applicant**

and

**MINISTER OF EDUCATION**

**Respondent**

**CORAM:**

**P. R. DUNSEITH JOSIAH YENDE**

**PRESIDENT**

**NICHOLAS MANANA**

**MEMBER**

**MEMBER**

**FOR APPLICANT FOR**

**RESPONDENT**

**M. SIBANDZE L. DLAMINI**

**JUDGEMENT-4/03/09**

- (a) The Applicant has applied to the Industrial Court for an order that he be confirmed as a Head Teacher.
- (b) He was employed by the Teaching Service Commission in 1996 to teach mathematics and science at High School level. In 1999 he was promoted to be the Deputy Head Teacher of a High School. In 2001 he was appointed as Acting Head Teacher at Nkiliji Secondary School.
- (c) The Applicant alleges that he served at Nkiliji as Acting Head Teacher for a period of 5 years, and during that period the school was upgraded to be a High School. The Applicant applied to be confirmed as a Head Teacher, but instead he was transferred to be a Deputy

Head Teacher at Hlutse High School.

- (d) The Applicant reported a dispute to CMAC on 28 March 2006, claiming arrear acting allowance for the period he served as Acting Head Teacher, and confirmation as Head Teacher.
- (e) After conciliation, the dispute was resolved and a memorandum of agreement was signed by the parties recording the settlement of the dispute in the following terms:

*"The parties hereby agree that the Respondent will pay to Applicant any back pay resultant from being paid on the wrong scale from date of confirmation as Deputy Head Teacher to date. The Applicant will not be confirmed as Head Teacher but he will upgrade his studies by obtaining a Diploma in Education whereat he will then be confirmed as Head Teacher. The issue of the transfer further is an administrative matter which will be discussed between the parties. The parties agree that this is in final settlement of this matter."*

- 6. The Applicant states that before registering with a university for a Diploma in Education he approached the South African Qualifications Authority (SAQA) to evaluate his existing qualifications. He submitted his certificates and transcripts and requested that his qualifications be evaluated against South African qualification standards.

The Applicant possess the following qualifications:

- Primary Teachers Certificate awarded by the University of Swaziland.
- Bachelor of Science majoring in Elementary Education awarded by The Kings College, New York.
- Master of Science in Education awarded by Pace University, USA.

SAQA is the South African statutory qualifications authority. One of its functions is to oversee the implementation of the national qualifications framework, including taking steps to ensure that standards and registered qualifications are

internationally comparable.

SAQA evaluated the Applicant's qualifications in terms of South African Standards as equivalent respectively, to

- Diploma in Education
  
- Bachelor of Primary Education
  
- Master of Science in Education

The Applicant submits that the South African Standards applied by SAQA are equivalent to Swaziland Standards, and in terms of the SAQA evaluation he holds qualifications which are equivalent to, or better than, a Diploma in Education. He further submits that it would be illogical and unfair to compel him, for purposes of promotion in terms of the agreement of settlement, to obtain a Diploma in Education when to all intents and purposes he already possesses this qualification.

- (f) The Respondent has filed an answering affidavit made by Moses Zungu, the Executive Secretary of the Teaching Service Commission. Mr. Zungu alleges that the Applicant is trying to cut corners. He asserts that the Applicant is only qualified to teach Mathematics and Science at Primary level. He further states that the Applicant's Bachelor of Science majoring in Elementary Education only qualifies him to administer a pre-school or a primary school as Head Teacher.
  
- (g) Mr. Zungu submits that, in Swaziland, a Primary Teachers Certificate is not equivalent to a Diploma in Education. He also points out, correctly, that the evaluation of SAQA is not binding on the Ministry of Education in Swaziland.
  
- (h) In terms of section 4 of the Education Act, 1981 the function and authority to establish educational policy vests in the Minister of Education. In terms of section 7 (1) (a) of the Teaching Services Act, 1982 it is the Minister who is responsible for prescribing the qualifications relating to the teaching profession. He does so on the advice of the National Education Board - see section 7 (1) of the Education Act, 1981. It is the function of the Director of Education to

promote and maintain appropriate standards of qualifications in the teaching profession - see section 8 (a) of the Teaching Service Act, 1982.

- (i) The court is unable to find any provision in the Education Act, 1981 or the Teaching Services Act, 1982 which confers any power or authority on the Teaching Service Commission or its Executive Secretary to prescribe, determine or evaluate the required standards of qualifications in the teaching profession in Swaziland. Nor is any such power or authority conferred by Chapter X of the Constitution. The court is accordingly perplexed as to why the Executive Secretary of the Teaching Service Commission has deposed to the Respondent's answering affidavit. He exercises no function nor purports to have any personal expertise which qualify him to express an opinion as to the evaluation or sufficiency of the Applicant's foreign qualifications.
- (j) Moreover, Mr. Zungu does not allege that he deposes to the answering affidavit on the authority or instructions of the Teaching Service Commission. He purports to derive his authority solely by virtue of his office as Executive Secretary. Such office is administrative and exercises no decision-making functions or powers.
- (k) The court has carefully studied the transcripts of the Applicant's university qualifications (which formed part of the record in previous related proceedings before the court in Case No. 519/2007) and also the SAQA Certificate of Evaluation. The Applicant has spent 8 years at university studying the theory and practice of education. We accept the Respondent's contention that the Primary Teachers Certificate, albeit a professional teaching qualification, is not equivalent to a Diploma in Education in Swaziland and does not by itself qualify the Applicant to teach at high school level. However the Applicant has a further academic qualification namely BSc degree majoring in Elementary Education which is undoubtedly superior to a Diploma in Education.

The Applicant's Elementary Education major does not in any way imply that he is only entitled to teach at elementary level. It means that specialized studies in the theory of elementary education formed part of his degree course.

In the course of his BSc degree the Applicant studied other courses which qualify him to teach science and mathematics at high school level. This is borne out by his employment by the Respondent as a high school science and mathematics teacher in 1996.

- (l) In addition to his BSc degree the Applicant has a Masters degree of Science in Education. This is a postgraduate degree wherein the Applicant specialized in administration and supervision, an achievement which eminently qualifies him to manage and administer a high school as head teacher.
- (m) In the judgement of the court the Applicant holds qualifications which are superior to a Diploma in Education. We agree with the Applicant that it would be illogical and unfair to require the holder of a Masters Degree in Education to study for a Diploma in Education.
- (n) It is unfortunate that neither the Director of Education, nor the Board of Education, nor the Honourable Minister applied their minds to the evaluation of the Applicant's qualifications. The Executive Secretary, with due respect to him, is patently unqualified and unauthorized to exercise individual judgement in the matter. It is not uncommon for Swazi citizens to obtain foreign qualifications which require educated evaluation, and it may be high time that the Respondent considers the establishment of an independent qualifications authority. In the meantime, the professional evaluations of SAQA are helpful.
- (o) In our view, the advancement of the Applicant's professional career has been unnecessarily obstructed by a lack of appreciation of the comparative value of the Applicant's academic qualifications and a willful failure to involve the authorized statutory functionaries in a proper evaluation process. This view finds expression in an award of costs.

21. We make the following order:

**(p) The Respondent is hereby ordered to confirm the Applicant as Head Teacher.**

**(q) The Respondent is pay the costs of the application.**