

IN THE INDUSTRIAL COURT OF SWAZILAND

HELP AT MBABANE

CASE NO. 77/2000

In the matter between:

COLLIN SHONGWE

APPLICANT

And ATTORNEY GENERAL N.O.

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. P.R. DUNSEITH:

FOR APPLICANT

MISS T. GUMEDZE:

FOR RESPONDENT

JUDGEMENT

3/11/00

The applicant was employed by the Swaziland Government and appointed to the permanent and pensionable establishment in 1992 as a court interpreter on Grade 8.

As from 1st December 1992 the applicant has been performing the duties and functions of a senior court interpreter at the High Court of Swaziland. He was attached to the office of the then Chief Justice, David Hull and has been performing duties and bearing the responsibilities of a senior court interpreter at Grade 9, but remunerated at Grade 8.

It is common cause that a senior court interpreter is paid on Grade 9 salary scale. It is also not in dispute that respondent persisted in paying the applicant on Grade 8.

According to applicant he raised a grievance, As a result respondent purported to resolve on 27th May 1999 by formally appointing the applicant to the position of senior interpreter with effect from 1st December 1998,

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Applicant contends that his appointment to Grade 9 should be backdated to 1st December 1992 being the date of assumption of duties and responsibilities of a senior court interpreter and that he be paid his back pay accordingly.

Respondent through RW1 told the court that applicant could not be paid at the scale of Grade 9 because there was no vacant position of Grade 9 at the High Court at the relevant period. He told the court that when applicant was appointed court interpreter on Grade 8 there was no vacant post at the Magistrate court. When the post of court interpreter at the Magistrate court became vacant in 1992 the redeployment of applicant to the post could not be effected since the Chief Justice at the time did not allow the said redeployment because he was pleased with applicant's work performance. He insisted that he should stay and perform the said duties.

Respondent further avers that the applicant could not be elevated or promoted to the post of senior court

interpreter then as there existed no vacant post of senior court interpreter at the High Court.

The question that has to be answered is as follows;

Is it fair to allow employees to act on higher positions without compensation for such added responsibilities?

Applicant from 1992 worked as interpreter for the Chief Justice. The office of the Chief Justice is thy most senior judicial office in the land. As such, this office has added responsibilities than ordinary judicial office. The clerk in such an office has to be more mature and exercise due care befitting such an office. This is what the applicant did. According to RW1 the Chief Justice did not want to part ways with applicant. This was because of his work performance which, according to him was good.

However, most unfortunately such work performance was not accompanied by due compensation in terms of salary. Applicant was paid below the scale of those who performed equal work as him.

In our considered view it is unfair, as it amounts not only to abuse of human resources but exploitation of same, to allow employees to perform the job functions of a more senior position and paid less than other colleagues who perform the same work level.

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It is reasonable in our view for the employer to remunerate the employee working in higher position similarly and as though he was employed in that position from the date he was engaged in such a higher position.

Applicant had asked the court to order respondent to backdate the appointment of applicant as senior court interpreter as from 1st December 1992. We cannot see our way through such an order because this court has no power to appoint civil servants but this is the sole prerogative of the Civil Service Board.

Having taken into account the above considerations we make the following order:

That the applicant be paid his back pay for underpayment as from 1st December 1992 to 30th November 1998, being the difference between Grade 8 and Grade 9 (including all increments and benefits accruing during such period).

Payment to be made on or before the 15th day of November 2000. Members have concurred. No order as to costs.

KENNETH NKAMBULE

JUDGE (INDUSTRIAL COURT)

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