

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 56/2002

In the matter between:

KINGSLEY HLANZE

APPLICANT

and

ATTORNEY GENERAL

1st RESPONDENT

THE TEACHING SERVICE COMMISSION

2nd RESPONDENT

THE CHAIRMAN, ST. MARY'S SCHOOL

COMMITTEE

3rd RESPONDENT

DIOCESAN EDUCATION OFFICE

4th RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR APPLICANT:

J. MASEKO

FOR 1st & 2nd RESPONDENTS:

T. DLAMINI

FOR 3rd & 4th RESPONDENTS:

S. KUBHEKA

JUDGEMENT

26/06/02

The Applicant seeks an interdict to restrain the Teaching Service Commission and the Management of St Mary's School from transferring him to Ejubukweni Primary School. By the time the application was lodged on the 27th February, 2002 the Applicant had already been transferred by a letter dated 13th February, 2002 written by the Executive Secretary of the Teaching Service Commission.

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St. Mary's School is a Roman Catholic Mission school that is aided by Government by the provision and supply of teachers. It is not a Government maintained school.

The Manager of the school and the Grantee is Sister Deirdre O'Neill and the Teaching Service Commission has minimal role in the administration of the school.

It is in this light that Sister O'Neill requested the Teaching Service Commission to transfer the Applicant as a result of a serious breakdown of relationship between herself and the Applicant and between the Applicant and his members of staff especially the Deputy Headmaster.

On the 15th August, 2001 she had met the applicant and advised him of her intention to seek his transfer

in the interest of all the parties concerned and the school in particular.

On the other hand the Applicant alleges that the sole reason why he was being transferred was to cover up the misappropriation of school funds by the Chairman and Committee of the school, with who he was at loggerheads.

That the Committee had alienated him from the Manager and Grantee of the school and misled her into initiating the transfer in bad faith.

He singled out the Chairman, Calvin Msibi and the Secretary Johannes Malindzisa as the people that had orchestrated his purported transfer.

He annexed to the application cheques marked B1, B2, B3 and B4, which he alleges were issued for wrongful purpose by the School Committee. He added that the Committee had frustrated his efforts to call a parents meeting to avoid this issue being addressed, and the transfer was in furtherance of their intend to ensure that the issue dies naturally.

The Manager of the school in her Answering Affidavit denies such misappropriation and purported cover up and asserts that it was in the interest of all parties that the Applicant was transferred to ensure smooth running of the school.

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From the correspondence placed before court especially annexure 'AG6', 'AG7' and 'AG8', it is apparent that there was friction between the Grantee of the school and the headteacher (Applicant) and between the Applicant and his deputy.

This culminated in the writing of 'AG9' on the 29th November, 2001 to the Secretary, Teaching Service Commission wherein she referred the dispute to the Teaching Service Commission.

By a letter dated the 7th February, 2002 the Applicant was invited to appear before the Teaching Service Commission on the matters raised by the management of the school.

The conflict between the Applicant on one hand, the Grantee, the members of Staff and the school Committee on the other hand was addressed and the Commission asked the applicant to accept a transfer in the interest of the school and all parties.

On the same date the applicant wrote annexure 'E' to the application applying for a transfer from St. Mary's Primary school to Matsapha Government school, in Manzini Region. Subsequent thereto, and on the same date, the Applicant was transferred to Ejubukweni Primary school as headteacher by the Teaching Service Commission. The letter of transfer is annexure 'A' to the Application.

The following day, the 14th February, 2002 the Applicant wrote annexure 'F' purporting to withdraw the request for a transfer upon getting advice from his attorneys.

In summary the applicant was transferred by the Teaching Service Commission after a hearing and a written request by himself that he be transferred from St. Mary's school.

Evidently, due to the breakdown of vital relationships between the Applicant and the Management and Staff of the School, it was in the interest of the school that the applicant was transferred.

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The reasons advanced by the applicant for wanting to stay at St. Mary's School are ill advised in the court's view and could only perpetuate a total collapse of the administration of the school, to the detriment of all concerned.

That there maybe a case of misappropriation of school funds, is neither here nor there, for the purpose of determining whether it is presently in the interest of justice that the transfer be implemented.

The Applicant has failed to establish a clear right to the relief sought. The inconvenience he may suffer by having to relocate to another school is far out weighed by the prejudice the school would suffer if the present wrangling is allowed to continue.

It is the prerogative of management upon following established procedure to effect transfers in the interest of the school.

Whereas employees are entitled to a hearing prior to a transfer being effected, in this case, the meeting convened by the Teaching Service Commission satisfied the requirement, though it was not elegantly done.

Employers should be reminded that transfers ought not to be treated as a disciplinary measurer but should only serve an administrative function for better and at times for worse, depending on the real intention and purpose of effecting the particular transfer by the employer. Cases of good employees, being transferred so as to improve other institutions are not unknown.

An employee cannot claim a right to stay in one station in perpetuity but his concerns should be addressed in such cases by way of a hearing and in appropriate cases by compensation for hardship suffered while in the process of transferring. Circular No. 1 of 1995, and in particular regulation 24 (i) thereof states that the Teaching Service Commission may at any time as and when circumstances require, transfer a teacher from one school to another. This circular was a result of an agreement between the Ministry of Education and the Swaziland National Association of Teachers on the implementation of regulation 24 of the Teaching Service Regulations of 1983, as contained in Legal Notice 126 of 1995.

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It is important also to note that part of the Agreement and in particular point 5, recognizes, transfer of teachers in exceptional circumstances. The Applicant had been at St. Mary's school for more that 24 calendar months and was eligible for a transfer in terms of the Agreement

Annexure 'D' to the Application (Circular No. 1/84) is irrelevant to the issue at hand, as is concerned with normal transfers and in any event the circular had already been superceded by Circular No. 1 of 1995.

In the result the application must fail in its entirety.

There will be no order as to costs.

The members agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT

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