

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 94/2007

In the matter between:

PATRICK THEMBA SUKATI

Applicant

and

PRINCIPAL SECRETARY FOR THE

MINISTRY OF EDUCATION

THE PRINCIPAL SECRETARY OF

PUBLIC SERVICE & INFORMATION

THE CIVIL SERVICE COMMISSION

THE ATTORNEY GENERAL

1ST Respondent

2nd Respondent

3rd Respondent

4th Respondent

CORAM:

P. R. DUNSEITH : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR APPLICANT : C. BHEMBE

FOR RESPONDENT : S. MALINDZISA

RULING ON POINT IN LIMINE – 17/10/2008

1. The Applicant has applied to the Industrial Court for determination of an unresolved dispute arising from the termination of his services by the 3rd Respondent on 27th October 2005.

2. In his application the Applicant is claiming reinstatement to his employment as a public officer and payment of back pay from 27th October 2005.

3. The Respondent has raised a point in limine in its answering papers in the following terms:

“The Applicant accepted the decision of the 3rd Respondent terminating his services and further initiated legal proceedings in pursuit of benefits arising from that termination, under Industrial Court Case No. 606/2006. By that conduct he acquiesced to the decision of the 3rd Respondent and therefore cannot turn around and challenge the same decision he accepted. His acquiescence thereto precludes him from challenging the decision.”

4. It is common cause that when the Civil Service Board terminated the Applicant's services, it directed that he be paid all his terminal benefits including pension.

5. The Public Services Pensions Fund thereafter calculated the benefits due to the Applicant. He was given a calculation sheet which represented that he would be paid a lump sum of E206,862-92 and receive a gross monthly pension of E3,447-72

6. After a year had elapsed and none of these benefits has been paid, the Applicant instituted legal proceedings in the Industrial Court under Case No. 606/2006 for an order directing the Government and the Public Service Pensions Fund to pay the benefits as

calculated.

7. This application was opposed by the Respondent. The Public Service Pensions Fund raised the defence that it was incompetent for the Civil Service Board to direct that the Applicant be paid all his terminal benefits including pension because the Public Service Pension Regulations provide that an officer dismissed from the public service shall only be entitled to a refund of his pension contributions. The Civil Service Board conceded in its own opposing papers that it acted ultra vires in directing that the Applicant be paid his terminal benefits including pension.
8. It is apparent from the papers filed in Case No. 606/2006 that the Applicant had not previously been informed by the Civil Service Board that it was repudiating its own directive that he be paid all his benefits including pension.
9. Confronted by the refusal of the Respondents to pay the benefits which they themselves had calculated, the Applicant elected to withdraw his application and report an unfair dismissal dispute to CMAC, claiming reinstatement.
10. The Applicant accepted the termination of his services strictly on the basis that he was to be paid all his benefits as directed by the Civil Service Board. Since it later transpired that he was not to receive the promised benefits, and that the decision of the Civil Service Board was ultra vires and void, his acceptance was likewise a nullity. He was at liberty to challenge his dismissal and seek reinstatement. Indeed, the question arises whether his dismissal stands at all, after the Civil Service Board retracted its

previous decision that he be dismissed with payment of all terminal benefits including pension. It is not however necessary for the court to decide this issue at this stage of the proceedings.

11. Not only is there no merit in the Respondent's point in limine, we consider that it is extremely vexatious of the Government to raise such an issue. The Applicant was misled into believing that he was entitled to payment of terminal benefits and put to the wasted time and expense of suing for such benefits in Case 606/2006. For the Respondent to now rely on those wasted proceedings as a ground for opposing the present application is an abuse of the process of the court.

12. The Respondent's point in limine is dismissed with costs on the attorney-client scale.

The members agree.

PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT