



**IN THE INDUSTRIAL COURT OF SWAZILAND**

**JUDGMENT**

**Case NO. 201/11**

In the matter between:

**SIMEON SIMELANE**

**Applicant**

**and**

**ACCOUNTANT GENERAL  
CIVIL SERVICE COMMISSION  
ATTORNEY GENERAL**

**1<sup>st</sup> Respondent  
2<sup>nd</sup> Respondent  
3<sup>rd</sup> Respondent**

**Neutral citation:** *Simeon Simelane v Accountant General, Civil Service Commission, Attorney General (201/11) [2014] SZIC 45 (October 09, 2014)*

**Coram:** NKONYANE J,  
*(Sitting with G. Ndzinisa & S. Mvubu  
Nominated Members of the Court)*

**Heard submissions:** **09 SEPTEMBER 2014**

**Judgment delivered:** **09 OCTOBER 2014**

**Summary:**

*The Applicant is an Accountant in the Treasury Department. He has not been promoted to a senior position for more than twenty years. He applied to the Court for an order that he be promoted to the position of Principal Accountant.*

*Held---The decision to promote or not to promote an employee is the prerogative of the employer. The Court can only interfere if it is shown that there is an illegality or irregularity in the exercise of the managerial prerogative of the employer.*

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**JUDGMENT 09.10.14**

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1. The Applicant is an adult Swazi male of Sidwashini, Mbabane in the Hhohho District. He was first employed by the Swaziland Government on the 26<sup>th</sup> October 1984 as an Assistant Accountant.
2. He was promoted to the position of Accountant in 1987. He has not been promoted since that year. Up to this present day he is still holding the position of Accountant. It therefore means that he has held the same position for about twenty seven years now.
3. This state of affairs caused the Applicant to feel that he was being overlooked by the employer. He accordingly requested his employer to consider him for promotion to a senior position. He did not get a

favourable response from the head of department, the Accountant General. The Applicant then requested the Civil Service Commission to intervene, there was no positive outcome however.

4. The Applicant therefore lodged a dispute with the Conciliation, Mediation and Arbitration Commission (CMAC). The dispute was not resolved and a certificate of unresolved dispute was issued by the commission.
5. The Applicant has now instituted the present legal proceedings for determination of the unresolved dispute. The Applicant is seeking an order in the following terms;

*“1. Reversal of the transfer from Internal Audit back to the Treasury Department (Accountancy cadre).*

*2. Promotion to the post of Principal Accountant within the Accountancy cadre backdated from 1<sup>st</sup> April 2006.*

*3. Costs of suit.”*

6. The Applicant’s application is opposed by the Respondents on whose behalf of a Reply was duly filed. The Applicant thereafter filed a Replication.
7. The evidence led in court revealed that the Applicant was employed by the Swaziland Government on 26<sup>th</sup> October 1984 as an Assistant

Accountant. He was promoted in 1987 to hold the position of Accountant. That was his last promotion up to this present day. He told the court that he has never appeared before any disciplinary panel. He has not received any complaint from the employer about his performance. In 1999 he faced criminal charges. He was stationed at the Ministry of Agriculture and Co-operatives. He was accused of having paid non-civil servants. No internal disciplinary hearing was held by the employer. The Applicant was however suspended. He challenged his suspension before the Industrial Court. The suspension was lifted and he was paid his arrear salaries and his full monthly salary was re-instated.

8. The criminal case never saw the light of the day. The charges were eventually withdrawn by the State.
9. The Applicant told the court that junior officers have been promoted ahead of him. He said he wrote letters to the Accountant General asking if he had any weak points. He said he never got a response from the Accountant General. In October 2008 he wrote a letter to the Civil Service Commission for its intervention. He said in March 2009 he was called to appear before the Civil Service Commission to state his case. The Accountant General was also present in that meeting. The Accountant General asked for some time to go and look at the Applicant's file. The Applicant said instead of getting a response from the Accountant General, he was transferred to the Audit Department in April 2009.

10. The former Accountant General testified before the Court. She told the court that the transfer of the Applicant was not victimization, but was a routine exercise as all accountants were transferred after every three years from one duty station to another. The Applicant complained about being posted to the Audit Department because he was an accountant. He was eventually transferred back to the Treasury Department however, together with other officers who also did not like to be stationed at the Audit Department.

11. The Applicant told the court that he is qualified to hold the post of Principal Accountant. He said he has the relevant academic qualifications and experience. He told the court that whilst working in Foreign Service and stationed in Brussels, he enrolled with a university there and he obtained a Bachelor of Science degree. Locally, his highest qualification is a Diploma in Accounting and Business Studies from the University of Swaziland. During cross examination the Applicant told the court that there are two vacant posts of Principal Accountant in the Treasury Department. When it was put to him that the posts have already been filled because recommendations have already been made to the Civil Service Commission by the Internal Promotions Board, the Applicant told the court that the Civil Service Commission has not yet made the appointments.

12. Indeed, RW2 Fanisile Mabila, the current Accountant General told the court that they have already forwarded names of the recommended candidates to the Civil Service Commission, and that the Civil Service

Commission seldom refused to confirm the names of the recommended candidates. During cross examination RW2 told the court that they last deliberated on the issue of the Applicant in May 2014. She also told the court that the Internal Promotions Board does give reasons for not recommending a candidate to Civil Service Commission if it is approached by the aggrieved party.

13. RW1, Khabonina Mabuza, also told the court that they did deliberate on the issue of the Applicant in May 2014. When she was asked if the Applicant qualifies to be a Senior Accountant, she agreed that he does.

#### 14. ANALYSIS OF THE EVIDENCE AND THE LAW APPLICABLE.

When the trial commenced in this matter the court was informed that the Applicant was abandoning prayer 1 as he was no longer in the Internal Audit Department, but was transferred back to the Treasury Department. The only matter left for the court's determination therefore is prayer 2, being the promotion to the post of Principal Accountant backdated from 1<sup>st</sup> April 2006.

15. In the pleading, there was no mention as to why the promotion should be backdated to 1<sup>st</sup> April 2006.

16. The Applicant is seeking an order that he be promoted to the post of Principal Accountant backdated to 1<sup>st</sup> April 2006. The court has no authority to promote civil servants. That authority is vested in the

Civil Service Commission in terms of section 187 (1) of the Constitution of the Kingdom of Swaziland. The section provides that;

*“Subject to the provisions of this constitution or any other law, the power of appointment (including acting appointments, secondment, and confirmation of appointments) promotion, transfer, termination of appointment, dismissal and disciplinary control of public officers shall vest in the Civil Service Commission.”*

17. The court can interfere only in cases of unfair labour practice, for example, where the applicant employee alleges and proves that he is not promoted because he is being victimized or discriminated against by the employer. The present application however is couched in general terms. The court did point this out to the Applicant’s attorney with the view that the Applicant would consider to either amend his papers or withdraw the application and file fresh papers. That did not happen however.

18. When the Applicant appealed to the Civil Service Commission, the Commission replied by letter dated 04<sup>th</sup> August, 2010 which reads thus;

**“RE : APPEAL FOR A PROMTION-YOURSELF**

*The above matter refers.*

*I am directed to inform you as I hereby do, that the Commission deliberated on your application wherein you appealed for a promotion. You are advised that your request will be presented by the Accountant General in the Internal Promotions Board of the Department where recommendations for promotions are being considered.*

*Grateful for your cooperation.*

S. N. NKAMBULE

FOR : EXECUTIVE SECRETARY-CIVIL SERVICE  
COMMISSION

19. After this letter, and if the Accountant General had not done what the Civil Service Commission said should be done, the Applicant should have filed an application before the Court for an order compelling the Accountant General to place the request before the Internal Promotions Board. It is the Internal Promotions Board that makes the recommendations for promotion to the Civil Service Commission. The Applicant told the Court that he was not aware if the Internal Promotions Board exists at the Treasury Department. RW1 Khabonina Mabuza however told the Court that the Board is in existence. The Applicant has failed to show the Court why he should be entitled to by-pass the internal procedures of the employer and come to Court to ask for promotion.



20. The Applicant is not presently acting in the position of Principal Accountant. His case is therefore distinguishable from that of **Nikiwe Nyoni v The Acting Commissioner of Anti- Corruption Unit and Others Case No. 164/05 (IC)**. In that case the Applicant applied to the court for an order, inter alia, directing the employer to confirm her to the position of Principal Accountant. She had been holding the position on an acting basis for more than six months. Her claim was based on the provisions of the Government General Orders to the effect that an employee on acting capacity must be confirmed in that position upon expiry of six months. The Court granted the application.
21. The court has no authority to interfere with the Government internal procedures relating to promotion of civil servants unless there is an illegality or irregularity. These procedures are contained in the Government General Orders and the Civil Service Board (General) Regulations.
22. Taking the evidence before the court as a whole, it cannot be denied that the circumstances of this case do raise some questions. How does it happen that someone holds the same position for more than twenty years. However, on the Applicant's papers as they are presently drafted, and the evidence led before the Court, the Court is unable to grant the order sought by the Applicant. The Applicant's attorney argued that this Court has the power to make any order it deems reasonable. The provisions of section 8(4) of the Industrial Relations

Act should not, however, be interpreted so as to mean that the Court should actually assist a litigant appearing before it.

23. Taking into account all the evidence before the court the submissions by both counsel, the circumstances of the case, the court will make the following order:-

- a) The application is dismissed.
- b) There is no order as to costs.

The members agree.

**N. NKONYANE.**  
**JUDGE OF THE INDUSTRIAL COURT OF SWAZILAND**

For Applicant : Mr S. Mngomezulu  
(Mngomezulu Attorneys)

For Respondents : Ms F. Magagula  
(Attorney – General’s Chambers)