

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. CV 2005-00648**

**BETWEEN**

**ROBERT RAMSAHAI**

**Plaintiff**

**VS**

**TEACHING SERVICE COMMISSION**

**Defendant**

**Before the Honourable Mr Justice R. Narine**

**Appearances**

Mr. A. Ramlogan for the Claimant

Mr. K. Ramkissoon for the Defendant

**JUDGEMENT**

This is an application for Judicial Review. The Claimant seeks the following relief:

- (i) An order of certiorari to remove into this Honourable Court and quash the decision of the Teaching Service Commission (TSC) not to interview and/or consider the Claimant for promotion to the office of Vice Principal;**
- (ii) An order of mandamus directing the TSC to forthwith interview and/or consider the Claimant for promotion to the said office;**
- (iii) A declaration that the Claimant has been treated unfairly, contrary to the principles of natural justice and Section 20 of the Judicial review Act;**

- (iv) **An order remitting this matter to the TSC for it to reconsider the Claimant's application for promotion to the said office in accordance with the findings of the court pursuant to Section 21 of the Judicial Review Act;**
- (v) **A declaration that the decision of the TSC to disqualify the Claimant or refuse to interview him was irrational, illegal and unfair;**

The basic facts are not in dispute. The Claimant has been a teacher since 1973. By a Circular Memorandum dated 8<sup>th</sup> March 2005, the Permanent Secretary in the Ministry of Education advertised vacant posts of Vice Principal. The Claimant submitted an application for the post of Vice Principal in five schools. His application was submitted by the Ministry of Education to the TSC. He was not invited by the TSC to an interview which was held on 5<sup>th</sup> October 2005. By letter dated 25<sup>th</sup> October 2005, the Claimant's Attorney-at-Law wrote to the TSC to inquire about the reasons for the failure of the TSC to invite the Claimant to attend the interview. By letter dated 14<sup>th</sup> November 2005 the TSC replied, indicating that the Claimant did not have the required five years teaching experience after obtaining the Diploma in Education stipulated in the Circular Memorandum as at the closing date of the advertisement (8<sup>th</sup> April 2005).

In these proceedings the Claimant challenges the decision of the Defendant not to interview him or consider him for promotion to the office of Vice Principal, based solely on this reason.

### **SUBMISSIONS OF COUNSEL**

For the Applicant Mr. Ramlogan submitted inter alia:

- (1) The TSC, not the Ministry of Education possesses and exercises the jurisdiction to promote teachers. In exercising this independent

constitutional jurisdiction, the TSC is not bound to “slavishly” follow the procedure or criteria adopted by the Minister.

- (2) The Defendant misconstrued its powers and imposed an unlawful fetter upon its constitutional jurisdiction when it took the view that the Defendant has no statutory basis upon which it can waive such a requirement (See: paragraph 8 of affidavit of Ann Marie Andrews, Acting Human Resource Advisor II of the TSC, filed on 9<sup>th</sup> February, 2006).
- (3) The eligibility of an officer for promotion is a matter for the TSC, as opposed to the Minister.
- (4) The criteria to be considered by the TSC are set out in Reg. 18 which the TSC is obliged to follow.
- (5) The qualifications stipulated by the Minister is a relevant consideration, but is not a definitive consideration.
- (6) The TSC failed to consider the Claimant’s application for promotion because it took the view that he had failed to clear the first hurdle i.e. the post-graduate experience set down by the Minister in the Circular Memorandum dated 8<sup>th</sup> March 2005.
- (7) The TSC was duty bound to consider the fact that by the time the promotion interviews were scheduled, or when the actual promotions were made, the Claimant would have attained the requisite five years experience.
- (8) The relevant date from which to calculate the Claimant’s post-graduate experience is when he completed the course (i.e. June

2000) and not the date that the Certificate was issued (11<sup>th</sup> October 2005). If this approach is taken, he would have been about two months short of the five year requirement as at the closing date of applications (8<sup>th</sup> April, 2005).

- (9) In all the circumstances of the case the Claimant was not treated fairly by the TSC.

For the TSC Mr. Ramkissoon submitted inter alia:

- (1) At the time of the filing of these proceedings there was no “decision” made by the TSC, since the TSC did not have before it the information for it to consider in order to fill the position of Vice Principal in several of the schools for which the Claimant had applied. The application is therefore “premature”.
- (2) The Claimant did not satisfy the required teaching experience of five years after having obtained a Diploma in Education as at 8<sup>th</sup> April 2005, the closing date for applications.
- (3) For administrative reasons, a cut off date must be adhered to so as to allow both the Ministry and the TSC to complete their administrative procedures.
- (4) At its meeting on 28<sup>th</sup> September 2005, the TSC considered the Claimant’s application and determined that he had not satisfied the criteria as at the closing date. The Claimant was therefore not entitled to be interviewed, as there were other applicants who were qualified.

- (5) There are no exceptional circumstances or reasons why the TSC should have waived the five year post-graduate experience requirement for the Claimant when there were other persons who had satisfied the criteria.
- (6) The Regulations provide a mandatory procedure from which the TSC cannot deviate. These Regulations are embodied in a Schedule to the Constitution. By Legal Notice No. 88 of 1969, the Public Service Regulations were adopted by the Teaching Service Commission.
- (7) The criteria, qualifications and experience required for the filling of the office of Vice Principal (Secondary) were a product of negotiations, consultation and collaboration between the Claimant's representative Union and the Chief Personnel Officer from which the TSC cannot lightly unilaterally deviate.
- (8) Under Regulation 18(4) the TSC is obliged to consider "any specifications that may be required from time to time for appointment to the particular office".
- (9) There was no dearth of applications which would have invoked "the negotiated circumstance" under the Memorandum of Understanding entered into between the Union and the Chief Personnel Officer dated 2<sup>nd</sup> July 2004.
- (10) The TSC did in fact consider the Claimant's application.
- (11) The Minister has a clear statutory responsibility in laying down standards of recruitment for teachers and conditions of service

Standards of recruitment entail academic qualifications and other criteria.

- (12) The TSC cannot be expected to interview every applicant for the office, who though not qualified at the closing date, would have qualified at the time of interview.

### **THE LAW**

The Teaching Service Commission was created by section 124(1) of the Constitution of Trinidad and Tobago. Section 125 of the Constitution gives the Commission the power to appoint persons to hold or act in public offices in the Teaching Service established under the **Education Act** Chapter 39:01, and the power to promote, transfer and discipline persons holding or acting in such offices.

In **Thomas vs Attorney General of Trinidad and Tobago** (1982) AC 113 at 184, Lord Diplock expressed the view that the purpose of setting up independent commissions under the Constitution, (such as the Public Service Commission, Police Service Commission and the Teaching Service Commission) was to insulate members of the civil service, the teaching service and the police service in Trinidad and Tobago from political influence exercised directly on them by the government of the day.

The constitution itself provides detailed regulations governing the conduct and procedure of the Service Commissions. Chapter XI of the Public Service Commission Regulations deals specifically with appointments and transfers of teachers.

By The **Teaching Service Commission (Delegation of Power) Order** (Legal Notice No. 88 of 369) the Commission delegated power to the Permanent

Secretary of the Ministry to make and terminate acting appointments, and to exercise disciplinary control over certain acts of misconduct. The Order also recites that the Public Service Regulations have been adopted by the TSC.

While the Constitution envisages a definite role for the TSC, the **Education Act** Chapter 3901, sets out the role to be performed by the Minister of Education, in sections 3, 4, and 5.

**3. The powers conferred on the Minister by this Act shall be exercised so as to ensure -**

**(a) the promotion of the education of the people of Trinidad and Tobago, and the establishment of institutions devoted to that purpose by means of which he shall thereby contribute towards the development of the human resources, physical, mental, moral and spiritual of the community;**

**(b) the establishment of a system of education designed to provide adequately for the planning and development of an educational service related to the changing needs of the community;**

**(c) the effective execution of the education policy of the Government.**

**4. (1) The Minister is responsible for securing the purposes set out in section 3 and for the due administration of this Act and in the exercise of the powers conferred on him by this Act, the Minister may do all things necessary or convenient for the purpose of carrying out his responsibilities under this Act.**

.....

5. For the purpose of the performance of his responsibilities under this Act the Minister may-

.....

(c) make provision for the professional training of teachers for the entire system of public education, and lay down standards which are applicable to the recruitment of teachers, their training and conditions of service;

**Regulation 4** of the **Education (Teaching Service) Regulations** in the Schedule to the **Education Act** sets out the various categories of teachers from Principal to Pupil Teacher, within which grades may be established.

**Regulation 5** provides:

5. The minimum requirements for entry into, and for appointment to grades and posts in, the Teaching Service are subject to such modifications as may from time to time be considered necessary and expedient by the Minister.

It is clear then that the Minister has the power to prescribe the minimum requirements for a post in the Teaching Service. However, the TSC has the sole power (apart from acting appointments) to decide whether an officer should be promoted to a post. In making this decision the TSC must consider the matters specified in Regulation 18:

18. (1) In considering the eligibility of officers for promotion the Commission shall take into account the seniority, experience, educational qualifications, merit and ability, together with relative efficiency of such officers, and in the event of an equality of efficiency of two or more officers, shall give

consideration to the relative seniority of the officers available for promotion to the vacancy.

**(2) The Commission, in considering the eligibility of officers under subregulation (1) for an appointment on promotion, shall attach greater weight to-**

**(a) seniority, where promotion is to an office that involves work of a routine nature, or**

**(b) merit and ability where promotion is to an office that involves work of progressively greater and higher responsibility and initiative than is required for an office specified in paragraph (a)**

**(3) In the performance of its functions under subregulations (1) and (2), the Commission shall take into account as respects each officer-**

**(a) his general fitness;**

**(b) the position of his name on the seniority list;**

**(c) any special qualifications;**

**(d) any special courses of training that he may have undergone (whether at the expense of Government or otherwise)**

**(e) the evaluation of his overall performance as reflected in annual staff reports by any Permanent Secretary, Head of Department or any senior officer under whom the officer worked during his service;**

**(f) any letters of commendation or special reports in respect of any special work done by the officer;**

**(g) the duties of which he has had knowledge;**

**(h) the duties of the office for which he is a candidate;**

- (i) any specific recommendation of the Permanent Secretary for filling the particular office;
  - (j) any previous employment of his in the public service, or otherwise;
  - (k) any special reports for which the Commission may call;
  - (l) his devotion to duty;
- (4) In addition to the requirements prescribed in subregulation (1), (2) and (3); the Commission shall consider any specifications that may be required from time to time for appointment to the particular office.

#### **THE MAIN ISSUE**

The Claimant's main contention in this case is that the TSC failed to consider all the matters contained in Regulation 18. It imposed "an unlawful fetter" upon its own independent jurisdiction when it decided not to consider the Claimant's application any further having observed that the Claimant fell short of the five year post-graduate teaching experience as at the closing date for applications.

The evidence as contained in the affidavit of Ann Marie Andrews filed on 9<sup>th</sup> February 2006 is that the TSC met on 28<sup>th</sup> September, 2005. The TSC noted that the Claimant and other persons had not met the five year post graduate teaching experience qualification, and decided that the five applicants who had met the criteria contained in the Circular Memorandum of 5<sup>th</sup> March 2005 could be interviewed for the position. It further directed that the Permanent Secretary should inform the eleven other applicants including the Claimant that they did not satisfy the requirements for the office.

It is clear on the evidence that the TSC did not go beyond the threshold of the qualifications for the office, as contained in the Circular Memorandum. It did not consider the matters contained in Regulation 18.

In this case the Claimant has put forward a number of matters which the TSC ought properly to consider. Among these are:

- (1) The Claimant has received only grade ones in his confidential reports for the last five years. In all these reports he was marked “exceptionally well” (the first rank) for promotion.
- (2) The Claimant has been Head of Department since 1998. This means that he already possesses administrative experience.
- (3) The Claimant obtained an Executive Diploma in School Management and Leadership at the Institute of Business (UWI) 2003 – 2005.
- (4) He obtained a certificate in Computer Literacy from the National Energy Skills Centre Programme in 2000. He also pursued a course in Using Computer Technology in the Classroom in 2002 at the School of Continuing Studies U.W.I. in 2002.
- (5) He has held positions at Hillview College and in the Presbyterian Church which require administrative skills.
- (6) He participated in several special projects at the school, and in the church.
- (7) He has participated in numerous seminars and workshops in the field of education.

All these matters are relevant considerations which clearly escaped the attention of the TSC, because they decided to go no further, having observed that the Claimant did not possess the post-graduate teaching experience as at the cut-off date. The TSC ought to have considered these matters in the performance of its functions, in considering the eligibility of the Claimant for promotion. Sub-Regulation 18(3),(c),(d), and (e) make specific mention of any special qualifications or courses of training the applicant has undergone, and the evaluation of his overall performance as reflected in his annual staff reports. The TSC considered none of these matters.

Sub-regulation 18(4) mandated the TSC to consider any specifications that may be required from time to time for appointment to the particular office, “in addition to” the requirements prescribed in subregulation (1), (2) and (3). Unfortunately in this case, the TSC clearly did not consider the requirements prescribed in subregulation (1), (2) and (3). It stopped considering the claimant’s application at the point that it observed that the Applicant did not satisfy the specifications contained in the Circular Memorandum as at 8<sup>th</sup> April 2006. In other words, it appears that the TSC considered the last requirement under Regulation 18(4) first, and disregarded the matters which it is mandated to consider under Regulation 18(1), (2) and (3).

Mr. Ramkissoon has argued that for administrative reasons there must be a cut off date, so as to allow both the Ministry of Education and the TSC to complete their administrative procedures. Moreover, there were other applicants who satisfied the criteria contained in the Circular Memorandum, and there was no exceptional circumstance or reason for the TSC to waive the experience requirement for the Claimant. In addition, Mr. Ramkissoon submits that the qualifications and experience required for the office of Principal (Secondary) were a product of negotiations, consultation and collaboration between the representative Union and the Chief Personnel Officer from which the TSC “cannot lightly unilaterally deviate”.

The language used by Mr. Ramkissoon is interesting and perhaps reveals a little more than was intended. The point is that the TSC is an independent body which is created by the Constitution to carry out certain functions. It is not bound by any agreement worked out by the Union and the CPO. However, it will not disregard such an agreement. It is free “to deviate”, if it considers it appropriate to do so having regard to the matters it is obliged to consider under regulation 18. However, if it considers itself bound by specifications and criteria imposed by other bodies, and fails to consider the matters it is obliged to consider, then in my view, its decision will be subject to review.

One can hardly disagree with Mr. Ramkissoon that for administrative reasons there must be a cut off date for the receipt and processing of applications. However, in carrying out its functions the TSC cannot be bound by criteria and deadlines for the acquisition of qualifications and experience imposed by other bodies. The TSC being an independent commission must not allow itself to be restricted by actions or decisions of other bodies. For example there may be situations where an Applicant falls short of an experience requirement by a few days, but possesses qualifications and skills in other areas that far surpass those of the other Applicants. The TSC must clearly allow itself some degree of flexibility in considering the qualifications, experience and suitability for office of all applicants. As it turned out in this case, the Applicant had in fact acquired the required five years experience as at the time of the interview, having completed the diploma in education course in June 2000. Having regard to his unblemished confidential reports and his qualifications and experience, it seems to me that the TSC did not act fairly in his case by deciding not to invite him for an interview.

With respect to Mr. Ramkissoon’s submission that there was no exceptional circumstance or reason for the TSC “to waive” the experience requirement, in my view the question of waiver simply does not arise. The specifications contained in the Circular Memorandum constitute one matter for the TSC to

consider under Section 18 (4), in addition to the matters contained in subregulations (1), (2) and (3). The TSC is not required to consider a waiver of any qualification. What it has to do is to consider all relevant considerations, not simply one.

Finally, Mr. Ramkissoon submitted that the application was premature, since the TSC had not yet received information on which it could consider applications for the post of Vice Principal in Hillview College, St Augustine Senior Comprehensive, Couva Junior Secondary and Chaguanas Junior Secondary. The post at Naparima College had in fact been filled at the time of the filing of the application for judicial review. Since the TSC was not yet in possession of any information to consider these posts, there was no decision which could attract the Courts supervisory jurisdiction.

Having considered the submission, I am constrained to reject it. The decision that is being challenged in these proceedings is the decision not to interview and/or consider the Claimant for promotion to the office of Vice Principal.

The TSC has taken the view, in the case of filling the vacancy at Naparima College that the Applicant did not possess the requisite post graduate experience as at the closing date for applications (8<sup>th</sup> April, 2005), and took the decision not to invite him for an interview. If this is the thinking of the TSC, then it should apply to the filling of all the other vacancies. Accordingly in my view there is a decision of the TSC which is capable of being the subject of judicial review proceedings.

In the result, the claimant succeeds in this application. I will grant the following relief:

- (1) An order of certiorari to remove into this Honourable Court and quash the decision of the Teaching Service Commission (TSC) not to**

**interview and/or consider the Claimant for promotion to the office of Vice Principal;**

**(2) An order of mandamus directing the TSC to interview and/or consider the Claimant for promotion to the said office;**

**(3) A declaration that the Claimant has been treated unfairly.**

**(4) An order remitting this matter to the TSC for it to reconsider the Claimant's application for promotion to the said office in accordance with the findings of the court pursuant to Section 21 of the Judicial Review Act;**

**(5) A Declaration that the decision of the TSC to disqualify the Claimant or refuse to interview him was irrational, illegal and unfair;**

**(6) The Defendant will pay the claimant's costs certified fit for Advocate Attorney.**

**Dated the 12<sup>th</sup> day of April 2006.**

.....  
**RAJENDRA NARINE**  
**Judge.**