



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

CAUSE NO 122 OF 2018

ISMAEL KORIRCLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION.....1ST RESPONDENT

TEACHER SERVICE COMMISSION ELGEYO MARAKWET

COUNTY DIRECTOR2ND RESPONDENT

J U D G E M E N T

1. By a memorandum of claim filed on 19th February, 2018, the Claimant averred that he was employed by the respondent as a teacher. On 30th December, 2015 he was deployed to Cheboi Secondary School to teach chemistry and Biology and subsequently promoted as the Deputy Head Teacher.
2. According to the Claimant, the respondent without any explanation transferred him to St. Patrick Secondary School- Iten and demoted him from his previous administrative position as the Deputy Head Teacher. He requested the respondent severally to retain him to his previous administrative position but in vain.
3. At the time of the alleged demotion the Claimant's salary was Kshs. 65,000/= per month and housing allowance of Kshs. 17,000/= as per the Teachers CBA of 2017.
4. The Claimant further averred that prior to the demotion he did not receive any warning or show cause as to warrant his demotion and transfer.
5. The Claimant consequently sought an order against the respondent to reinstate him to his previous administrative position and pay him his accrued benefits as particularized in the statement of claim.
6. The Claimant further sought damages for mental anguish and damage to reputation. The respondent on its part pleaded that the Claimant was employed on 1st June, 2002 and was posted to teach Biology and Chemistry at Kimwarer Secondary School and was later posted to several other stations to perform teaching duties.
7. By a letter dated 30th December, 2015 the Claimant was posted as Deputy Head Teacher to Chebai Secondary School where he was required to perform teaching and administrative duties.
8. According to the respondent, the deployment to the position of Deputy Head Teacher was not a promotion but a mere deployment to perform administrative duties. There were no monetary or other additional benefits attached to the position hence the Claimant was to continue earning the same salary and allowance as he earned before deployment.
9. Sometimes in October, 2016 while the Claimant was at Chebai Secondary School performing his duties as Deputy Head Teacher, student's through the student's council raised concerns touching on his performance both as a teacher and administrator.
10. Subsequently and in a bid to address the issue, the school administration and the teachers met with the students council who presented their grievances. The deliberations were fruitful and normalcy returned to the school until 25th January when at about 5.00 am there was student unrest which resulted in the Claimant being chased from the school by students.

11. Following the unrest, investigations were conducted which revealed that the main cause of the unrest was the Claimant's performance and impending transfer of the principal. The investigations team accorded the Claimant opportunity to rebut the allegations raised against him.
12. The investigation team finally concluded that there was extreme negative attitude towards the Claimant by the school community hence it was only appropriate that he be transferred to work in a new environment. The Claimant was consequently transferred to St. Patrick High School, Iten vide a letter dated 8th February, 2017. The respondent further pleaded that the Claimant could not be transferred from Cheboi in the same capacity as Deputy Head Teacher. As such transfer was subject to availability of vacancies which was non-existent at the time.
13. The Claimant served as a teacher within Elgeyo Marakwet County for about 7 months thereafter he requested for transfer outside the County. The Claimant thus asked to be posted to any of the six schools identified which were all in Uasin Gishu County. Through the said request the Claimant was deemed to have relinquished his previous administrative position in view of regulation 70(6) of the respondent's Code of Regulations.
14. The respondent denied the allegation that the Claimant's salary and allowances were withdrawn and averred that the Claimant was still earning his full salary and allowances as he did while a Deputy Head Teacher.
15. At the hearing the Claimant stated among others that he was currently teaching at Anerssan School in Burnt Forest and that he was employed on 2nd June, 2012 and issued with a letter of appointment. He further stated that by the time of trial of the suit, he had been a teacher for 17 years and that he had since been promoted and was now at job group M. Once he was promoted as Deputy Principal in 2015. It was his evidence that he was familiar with the TSC promotion procedure and that he met the qualification and that was why he was promoted. He however received a demotion letter on 27th February, 2017. He was taken back to class and later deployed to St. Patrick Iten.
16. According to the Claimant, he was never given reasons for the demotion contrary to regulation 70 of the respondent's Code of Regulations for Teachers. He was never summoned over any issue before TSC and was never served with any show cause letter. He denied being the cause of unrest at Chebai High School. The cause of the unrest was that the Principal had been transferred. The Principal accused him at the local MP as responsible for the transfer. He denied he was going to take over as Principal.
17. The student's raided his house and threw away his things on the road. It was his evidence that he appealed against the transfer to the County Director but never got any response. He stated that as Deputy Principal his salary was like any other teacher before 2016 but a CBA was subsequently concluded giving principals and their deputies a higher pay. He was demoted before the CBA but when it was being negotiated, he was already a Deputy Principal hence he should have benefited from it as a matter of course.
18. In cross-examination he stated that he had seen the investigations report and it implicated him over the unrest but did not agree with the same. It was his evidence that promotion referred a move from one grade to another and that it did not refer to promotion in administrative positions.
19. He further stated that he never complained to TSC over the two schools rejecting him. His salary was not affected when he was redeployed back to class.
20. The Claimant's second witness Mr. Onesmus Kiplimo stated that the Claimant was his teacher at Cheboi in 2017. On 25th January, 2017 a teacher by the name Omondi came and woke up the school Captain at around 12.00 midnight. They went out and took a while when the Captain came back at 4.00 am he told him the Principal had been transferred and the Claimant was to take over. He was asked to cooperate and return the Principal. They took tea at around 5.00 am and attended the parade where the Principal told the students he had been transferred and the Claimant was responsible. The school captain then told them to evict the Claimant from the school. They demonstrated against the Principal's transfer. They went to the local shopping Centre where they stayed until 7pm. When they came back to the school for supper, they were told the Principal had bought for them a goat and bread for the good work done.
21. In cross-examination he stated that he had no evidence to show he was a student at Cheboi. He further stated that he was famous because he could mobilize other students. He refused to participate in the strike.
22. The respondent's witness Ms Mary Wanjiku Kentu informed the Court she was a retired TSC County Director and that she used to be at Elgeyo Marakwet. She knew the Claimant. She adopted her written statement as the evidence in chief.
23. It was her evidence that she used to be in charge of recruitment, transfer, monitoring of teacher's performance and maintaining data. The Claimant was redeployed after there was unrest at Cheboi High School. There was investigation into the incident and a report has been filed in court. It was found that there were reports reaching the students that the Principal was being transferred. There was also dissatisfaction with Claimant's performance. The Principal knew he was being transferred but there was not yet official communication to the school. It was resolved to transfer the Claimant to another school even as the Principal prepares to hand over in order to leave. She therefore transferred the Claimant to St. Patrick's Iten and that the transfer was deployment and there was no change in salary or job group. It was her evidence that she interacted with the Claimant after the transfer. He was not happy with St. Patricks Iten and requested to be transferred to Eldoret Polytechnic but told him that was beyond her mandate since Eldoret Polytechnic was in Uasin Gishu County.
24. She denied knowledge of the letter of appeal by the Claimant and stated she could have given the Claimant an official response.
25. In cross-examination she stated she never summoned the Claimant but released a team to investigate the matter and further that she had no previous adverse report against the Claimant.
26. According to her, the Claimant was transferred for security reasons since the students had evicted him from the school. Further the

Claimant was deployed to Cheboi as a Deputy Principal. The duties of Deputy Principal were teaching and administration. Cheboi had no Deputy Principal back then.

27. After review of pleadings documents in support and or opposition of the claim, the issues that stand to be decided are whether the Claimant upon being transferred from Cheboi High School to St. Patrick Iten as classroom teacher was a demotion or not and whether if the Court should find that the transfer was a demotion what would be the appropriate order to make. Whereas the bulk of the evidence adduced concentrated on the reason for which the Claimant was transferred from Cheboi, that is not the heart of the matter before me.

28. Such evidence would have been useful if the Claimant's transfer was as a consequence of a disciplinary process. According to the respondent, the transfer was occasioned by the hostile environment prevailing at Cheboi after the students rioted and forcefully evicted the Claimant from the school.

29. By a letter dated 30th December, 2015 (appendix 1 respondent's documents), the Claimant was transferred to Cheboi Secondary School as a Deputy Head Teacher and to teach Chemistry and Biology. The letter is headed "deployment of deputy head teacher" which implies the Claimant was already a deputy principal or concurrently appointed while at St. Stephen Koitugun Secondary School from where he was transferred to Cheboi.

30. The transfer letter assigned the Claimant responsibilities including teaching subject of specialization and taking charge of all aspects of institutions administration in the absence of the head of the institution.

31. Upon transfer to St. Patrick Iten, the Claimant dropped the administrative title of Deputy Principal and became a regular class teacher. The reason the respondent gave was that there was already a deputy principal at St. Patrick's. It is perhaps for this reason that the Claimant shortly upon being deployed to St. Patrick sought transfer to Eldoret Polytechnic and gave the reason for seeking transfer as to go to an institution that is commensurate to "my earlier position (administrative) that I held before being transferred to St. Patrick's"

32. The respondent's witness stated that this request could not be acted upon by the County Director and could only be actioned by the TSC Secretary at the Headquarters. The Claimant's transfer was in the meantime re-routed from St. Patrick's to Arnesen's High School to teach Biology /Chemistry. The letter once against did not assign the Claimant any administrative duties.

33. Whereas the respondents contended that the administrative position held by the Claimant did not attract any additional compensation, a position admitted by the Claimant, it elevated him a little above his teaching colleagues by conferring upon him leadership duties. This therefore created in him a legitimate expectation that he could be promoted to the next grade with better compensation.

34. Whereas the respondent argues that by asking to be transferred from St. Patrick's to the preferred schools he relinquished his administrative duties, this cannot be the correct position. The Claimant's transfer from Cheboi to St. Patrick's was not out of his own request but a decision taken by the respondent in order to address the hostile working environment the Claimant found himself in after the student's of Cheboi rioted over the transfer of the Principal which they blamed on the Claimant.

35. Furthermore, the Claimant in his seeking transfer from St. Patrick's was specific as observed earlier, that he wanted to be in an institution that was commensurate with his earlier position (administrative) before being transferred.

36. Rule 70(3) of the respondent's regulations which it relied on to argue that by asking to be transferred the Claimant relinquished his administrative position does not yield that interpretation. First, the Claimant never initiated his transfer from Cheboi as observed earlier. Second when the Claimant sought to be transferred from St. Patrick's he was already conscious of the fact that he had been stripped of his administrative duties hence sought to be transferred to an institution where they could be restored.

37. Thirdly regulations 70(3) states that The Commission may redeploy a teacher who has been deployed to any administrative position, within an educational institution to perform normal teaching duties were the teacher: -

- (a) Is unable to perform the functions of the office held.
- (b) Is incompetent or neglects administrative duties.
- (c) Continuously posts declining examination results.
- (d) Has poor financial management skills.
- (e) Neglects or fails to maintain proper records.
- (f) Is the subject of investigations for one, offence under the regulations or
- (g) Performs any other act in the opinion of the Commission, justifies redeployment

38. The respondent in material laid before me or evidence did not accuse the Claimant of any of the infractions listed under rule 70 (3) above. His transfer was simply to resolve the hostile working environment occasioned by the intended transfer of the principal of Cheboi.

39. To this extent the Court finds and holds that the transfer of the Claimant from Cheboi to St Patrick's was a demotion without taking the Claimant through due process and confronting him with allegations against him as contemplated by regulation 70(3).

40. Both the Claimant and the respondent are in agreement that by the time the Claimant was appointed Deputy Principal /Teacher, the administrative position never attracted additional compensation. This position has however since changed through the revision of the respondent's regulations governing appointment of teachers to administrative positions and the CBA which has since been negotiated and registered between the respondent and the relevant union.

41. For this reason, no monetary compensation will be ordered in favour of the Claimant however the Court hereby orders that the Claimant be reinstated or promoted to his administrative position which he held while at Cheboi Secondary School.

42. There will be no order as to costs.

43. It is so ordered.

Dated at Eldoret this 12th day of **January** 2021

Abuodha Jorum Nelson

Judge

Delivered this 12th day of **January** 2021

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge