



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 2064 OF 2012
DAVID NZUE.....CLAIMANT
VS
TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

Introduction

1. In an award dated 11th July 2014, I made the following orders:

- a. The Claimant's re-deployment/demotion from the position of Head Teacher is hereby quashed and set aside;
- b. The Claimant's interdiction by the Board of Governors, Kitui School and the resultant warning letter dated 2nd November 2010 are hereby quashed and set aside;
- c. The Respondent is directed to reinstate the Claimant to the position of Head Teacher without loss of benefits, promotions and incremental credits within the next three months from the date of this award;
- d. The Respondent is directed to calculate and pay the Claimant's salary and allowances for the entire period he was on interdiction;

2. In compliance with the aforesaid orders, the Respondent reinstated the Claimant to the position of Head Teacher. The parties however failed to agree on the benefits, promotions and incremental credits due to the Claimant, hence this ruling.

The Claimant's Submissions

3. The issue in contention has to do with the Job Group at which the Claimant was reinstated to the position of Head Teacher, following the orders of the Court. The Claimant submits that he ought to have been reinstated at Job Group 'P' with all attendant benefits and incremental credits.

4. This assertion is informed by the position taken by the Claimant that the unlawful demotion from the position of Head Teacher had denied him promotions, benefits and incremental credits. Additionally, the Claimant submits that he would have benefited from promotions effected by presidential directives in 1994 and 1996 thus attaining Job Group 'M' by June 1996.

The Respondent's Submissions

5. In response, the Respondent submits that promotions in the teaching service are regulated by Schemes of Service, Code of Regulations and internal circulars issued from time to time. In this regard, the Respondent sought to draw a distinction between common cadre establishment which avails teachers automatic promotions based on performance and length of service and competitive process which applies to all promotions beyond Job Group 'L' . Under the latter category, promotions to Job Groups 'M','N','P','Q' and 'R' are based on approved establishments and are only awarded after rigorous interviews and selection process.

6. While conceding that all serving Head Teachers were promoted following a presidential directive in 1994, the Respondent denies the issuance of a similar directive in 1996. Further, the Respondent submits that by the time the presidential directive of 1994 was issued the Claimant was not in the teaching service, having been released on his own request, to work for a private institution. He could not therefore benefit from the promotion awarded to Head Teachers when he was away.

7. At any rate, the Claimant was promoted to Job Group 'K' on 1st July 1994 and even if the Court were to find that he was entitled to promotion following the presidential directive of 1994, he would only be entitled to one month's salary adjustment since the presidential circular took effect on 1st June 1994.

Ruling by the Court

8. The single issue for determination by the Court is whether the Claimant is entitled to promotions beyond Job Group 'L' at which he was reinstated to the position of Head Teacher on 30th April 2015.

9. The Claimant states that he is entitled to automatic promotions up to Job Group 'P' at the very least. The Respondent on the other hand maintains that positions beyond Job Group 'L' being outside the common cadre establishment, can only be awarded through a competitive process. By a letter dated 10th March 2003, the Respondent had notified the Claimant of this requirement.

10. A Scheme of Service for Graduate/ Approved Teachers produced by the Claimant did not disclose the mode of promotion to the different Job Groups. However, by its letter dated 10th March 2003, the Respondent had made the process of awarding promotions to Job Group 'M' through interviews clear.

11. Indeed, the Claimant seems to have been aware of this fact because he had applied for promotion, was interviewed but was unsuccessful. As long as employers operate within the law, courts will not interfere with existing schemes of service.

12. The Claimant further argues that he was denied promotions effected through presidential directives issued in 1994 and 1996. The Respondent admits that that all serving Head Teachers were promoted following a presidential directive in 1994 but goes on to state that the Claimant was not entitled to this promotion since he had left the teaching service at the time. I have looked at the correspondence surrounding the Claimants engagement with and departure from Academic Services Limited and find that the arrangement was in the nature of a secondment.

13. This, coupled with the finding of the Court that his demotion from headship was unlawful entitles him to the promotion awarded to all Head Teachers in 1994. On this account, I agree with the Respondent's submission that since the Claimant was automatically promoted to Job Group 'K' one month after the presidential directive, the incremental loss is only one month to which he is entitled.

14. The Respondent denies the existence of another promotion by presidential directive in 1996 and the Claimant did not produce any evidence in support of his assertion in this regard. As held by **Githua and Korir JJ** in ***Kenneth Njoroge v Attorney General and Another [2012] eKLR*** a decree that is not documented or followed up with administrative action is not binding.

15. For the foregoing reasons, I find the Claimant's claim that he is entitled to automatic promotion up to

Job Group 'P' to be without basis and proceed to dismiss it. He is however entitled to one month's incremental credit arising from promotions awarded to Head Teachers by presidential directive in 1994, which the Respondent is hereby directed to pay to him.

16. Each party will bear their own costs.

17. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF AUGUST 2015

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JUDGE

Appearance:

Mr. Mwang'ombe for the Claimant

Mr. Anyuor for the Respondent