



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NYERI
CAUSE NO. 56 'B' OF 2013
(NAIROBI CAUSE NO. 1784 OF 2011)

KUDHEIHA.....CLAIMANT

VERSUS

B.O.G NGARU GIRLS SECONDARY SCHOOL.....RESPONDENT

JUDGMENT

1. The claimant in these proceedings is represented by her Union who by a memorandum of claim dated 17th October, 2011 seeks compensation for her dismissal from employment over allegations of leaking official information to outsiders, inciting PTA members and giving false information to the public about the respondent's Principal, Deputy Principal and BOG members.
2. The claimant for her part claims that she was entitled to payments as per civil servants circulars on salaries and allowances as per Legal Notice No. 262 dated 26th August, 1993 and proceeded to demand that her exit compensation be calculated taking into account unimplemented civil service schemes for several years and for 2008 which was in force during her termination. Basing her calculation on these schemes, the claimant demanded Kshs.614,363 as her correct exit package.
3. The respondent on its part has refuted the computation of the exit package by the claimant arguing that she was not a civil servant but an employee of the BOG hence the schemes of service issued by the Public Service Commission could not apply to her. Instead the respondent calculated the claimant's dues in accordance with clause 6(ii) of the CBA between the claimant's Union and the Ministry of Education and offered her the sum of Kshs.355,461/60.
4. On 17th December, 2013 when the matter came for hearing before me I gave the direction that since issue in dispute seems to be on the amount payable to the claimant, there was need to have the matter proceed to trial on that issue only.
5. Mr. Muthuri for the respondent and the Union representative appearing on behalf of the claimant however opted to file submissions on the issue of the formula for calculating the claimant's exit pay.
6. As already stated above, whereas the claimant insists that her exit pay ought to be calculated taking into account schemes of service for public servants issued from time to time and more particularly for 2008 when she was terminated, the respondent on its part argues that the claimant was not an employee of PSC but rather the respondents BOG hence the schemes of service issued by PSC from time to time did not apply to her.
7. The only issue for the determination by the court therefore is whether the claimant was an employee

of the respondent's BOG or not. And if so, whether as an employee of the BOG, she could benefit from PSC circulars issued from time to time on schemes of service, for employees in her cadre.

8. By a letter of appointment dated 1st September, 1987, the claimant was appointed as a Copy typist in the service of the Board of Governors Ngaru Secondary School with effect from the date of the letter. Her salary scale is stated K 744 x 30 – K 864 x 36 – K 104 x 42 – K 1170.

9. The above scale was revised by the collective bargain agreement between the Ministry of Education under whose docket the respondent fell and the claimant's Union.

10. According to the CBA, the claimant's scale was revised to K 594 x 24 – 714 p.a.

11. From the foregoing it would seem clear that the claimant was appointed by the respondent's BOG and not the Public Service Commission. Further her terms and conditions of service were as spelt out in her letter of appointment revisable from time to time through the CBA between the Ministry of Education and her Union.

12. The terms of service were however subject to Legal Notice number 262 of 1993 issued by the Minister of Education pursuant to Section 33 of the Education Act.

13. The notice provided that persons belonging to a professional cadre and employed by the board shall be employed on such terms and conditions of service similar to those recommended for equivalent posts in the Civil service and as per applicable scheme of service.

14. From the foregoing, the court would only interfere with the calculation of the claimant's exits pay if it is established as a fact that her remuneration was not in compliance with legal notice number 262 of 1993 cited above. Further any such interference would only cover the period after August, 1993. That is to say, since the claimant was employed in 1987, the circulars referred to in the legal notice would only apply to her from the effective dates stated in the respective circulars.

15. From the foregoing and relying on the legal notice number 262 of 1993, the court reaches a finding that although the claimant was not an employee of Public Service Commission but that of the BOG of the respondent, her terms and conditions of service, if not already, ought to have been similar to those recommended for equivalent posts in the Civil Service and as per the applicable scheme of service but with effect from the effective date stated in the said circular.

16. The following heads of claim are not disputed except for their quantum:

- (i) *Service gratuity.*
- (ii) *Salary arrears (from the month of December, 2009 and January, 2010).*
- (iii) *Annual leave for 74 days.*
- (iv) *3 months salary in lieu of notice.*

The only additional claim the claimant makes is for ½ salary arrears for the month of November, 2009, salary arrears (difference between actual salary paid and recommended scale as per legal notice number 262 of 1993.).

17. The claimant has exhibited circulars for the years 2004 – 2008. No allegation or evidence has been exhibited to show that such circulars existed prior to 2004. The court will therefore only order for a comparative analysis of the actual salary paid to the claimant with effect from end July, 2004 and the recommended level as per the 2004 circular and subsequent circulars until 2008 and any difference between salary actually paid and the recommended level be paid to the claimant for the period covered by circulars.

18. In conclusion, the court orders as follows:

(i) The claimant be paid service pay for 22 years at the rate of one month's salary for each complete year of service.

(ii) The claimant be paid 3 months salary in lieu of termination notice.

(iii) The claimant be paid 74 days salary in lieu of leave.

(iv) The District Labour Officer Kirinyaga re-conciliate this dispute afresh but limited to the following issues:

(a) *a comparative analysis between the actual salary paid to the claimant between 30th July, 2004 and 8th January, 2010 vis-a-vis the circulars issued by Public Service Commission in the same period recommending salaries for employees of similar cadre as the claimant and any deficit paid to the claimant.*

(b) *The issue of house allowance be inquired into and if salary paid did not include house allowance, the same be calculated and paid to the claimant up to a maximum of 6 years.*

(c) *The issue of arrears of salary for the month of November, 2009 be inquired into and if not paid, the same be paid to the claimant.*

(v) Either party be at liberty to apply to court for any additional directions.

(vi) This matter be mentioned in sixty days from the date of the judgment to record final orders.

19. It is so ordered.

Dated at Nyeri this 11th day of February, 2014.

NELSON ABUODHA J.

JUDGE

Delivered in open Court in the presence of Sophia Njiru for the Claimant and in the presence of Mr. Muthuri for the Respondent.