

IN THE HIGH COURT OF LESOTHO.

In the Application of :

ALICE TISETSO KHOATHANE Applicant

and

THE MANAGER, MATLAPANENG A.M.E.
PRIMARY SCHOOL - SEBITIELE MONYAKE ... Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 10th day of November, 1986.

The applicant herein has moved the court for an order framed in the following terms:

- "1. That the Respondent be ordered to pay applicant all applicant's monthly emoluments outstanding since January, 1984;
2. That the Respondent be ordered to pay costs of this application at Attorney and client scale;
3. The applicant be granted such further and alternative relief."

The application is opposed and affidavits have been filed by either parties. It emerges from the affidavits that on 1st August, 1981, applicant and the manager of Matlapaneng Primary School (herein after called Respondent) entered into a written contract whereby the latter employed the former as a teacher at the school. The terms of employment were clearly spelled out in their written contract, annexure "A". In terms of annexure "A" the applicant was to be paid a monthly salary.

According to the applicant the Respondent had not paid her monthly salary since January, 1984 despite the fact that she had, all the time, been teaching at the school.

2/ She averred that

She averred that it was apparent that Respondent's attitude was that he had dismissed her as a teacher at Matlapaneng Primary School and yet no such dismissal had ever been communicated to her.

According to Respondent on 27th September, 1983, the applicant was in fact written a letter annexure "F" advising her that her employment as a teacher at Matlapaneng Primary School was terminated on three months' notice with effect from 30th September, 1983. By her letter of 20th October, 1983, annexure "g", applicant acknowledged receipt of Respondent's letter of 27th September, 1983, (annexure F) although she disputed the legality of her dismissal. At the end of December, 1983 applicant's period of notice expired and in January 1984 she was no longer a teacher entitled to receive any salary at Matlapaneng Primary School. Respondent conceded, therefore, that as from January, 1984 the applicant was not paid any monthly salary.

It is significant to note that although annexure "A" does not directly deal with the question of dismissal that is, however, indirectly covered by the provisions of Clause 3 thereof. The clause reads:

- "3. Both parties to this agreement acknowledge that in matters which are not dealt with in this contract, the provisions of the Education Order 1971 and the Teaching Service Regulation 1974, as amended from time to time, will apply to this agreement as though specifically set out therein".

Although applicant denied knowledge of her dismissal and communication thereof her letter of 20th October, 1983 (annexure "g") leaves no doubt whatsoever that she did receive Respondent's letter of 27th September, 1983 clearly advising her of the dismissal. She was not, therefore, being honest with this court in her averment that the notice of dismissal was never communicated to her. I accept as the truth Respondent's version that on 27th September, 1983 applicant's employment as a teacher at Matlapaneng Primary School was terminated on three months' notice with effect from 30th September, 1983.

The salient question is however whether or not the Respondent was lawfully empowered so to do. In my view the answer is in the affirmative for Regulation 6 of the Teaching Service Regulations 1974 clearly provides, in part:

"6(1) There shall be implied in every permanent contract -

- (i) a condition that the contract may be terminated by the manager or the teacher at any time after giving not less than three month's written notice of intention to terminate the contract or on payment of three months salary in lieu of such notice ending in December.

Provided that a permanent contract may be terminated at any time by written mutual agreement between the manager and the teacher;

- (ii) a condition that the contract may be terminated by the manager at any time -
 - (a) on one of the grounds of misconduct referred to in regulation 27; provided that the procedure outlined in regulation 28 has been observed;"...

Assuming the correctness of my view that Respondent could lawfully terminate, as he did, the contract on three months' notice in accordance with the provisions of Regulation 6 of the Teaching Service Regulations 1974 it must be accepted that when her period of notice expired at the end of December, 1983, the applicant ceased to be a Teacher at Matlapaneng Primary School. That being so, the Respondent was perfectly entitled to stop paying her monthly salary from January, 1984.

That is, however, not the end of the story for in her founding affidavit, the applicant further deposed that on 30th April, 1985 she had appealed against the Respondent's decision dismissing her as a teacher. The appeal was heard and upheld by the Teaching Service Board on 6th May, 1985 - See annexure "B" to the founding affidavit.

It was contented in argument that the appeal against the decision of the Respondent was terribly out of time for in terms of the provisions of Regulation 38(1) of the Teaching Service (Amendment) Regulations, 1983 such appeal had to be lodged within one month from the date when a copy of the Permanent Secretary's statement was posted to the teacher in terms of Regulation 6. The Teaching Service Board should not, therefore, have entertained the appeal.

I do not necessarily agree. Regulation 42 of the Teaching Service Regulations 1983 clearly empowers the chairman of the Board to extend the time stipulated by the regulations for doing any act. He may well have extended the time for lodging the appeal and entertained it notwithstanding that the time stipulated for lodging the appeal had already expired.

It may be mentioned at this stage that an affidavit by one Arthur Vincent Moruthoane was also attached to Respondent's answering affidavit. From what can be gathered from his affidavit, Mr. Moruthoane is the School Secretary for the A.M.E. Schools. He requests a review of the decision/proceedings of the Teaching Service Board and for leave to be joined as co-Respondent in the present proceedings. In my view, a request such as the one contemplated by Mr. Moruthoane has to be made by way of application and not just an affidavit. In the result, I am unable to concede to his request.

As has been pointed out earlier, applicant's appeal against Respondent's decision dismissing her as a teacher at Matlapaneng Primary School was upheld by the Teaching Service Board. According to Annexure "E" a letter of 28th January, 1986 addressed to the Respondent by the Secretary of the TEaching Service Unit, the decision of the Board was approved by the Minister.

That being the case, the provisions of Regulation 33(4) of the Teaching Service (Amendment) Regulations, 1983 must be complied with. The Regulation reads:

5/ "(4)

"(4) If the Board upholds a teacher's appeal, the manager shall pay him his full salary from the date of his dismissal to the date the Board made its decision, and 3 months' salary in lieu of notice, or reinstate him in his post with full salary from the date of his dismissal, and where the appeal is dismissed, the teacher shall be paid up to the date of his dismissal from the service."

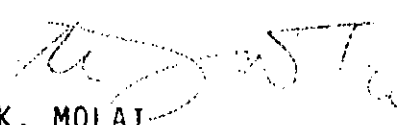
(My underlining)

I have underscored the word "shall" in the above cited regulation to indicate my view that the provisions thereof are mandatory. Although applicant said she had been teaching at the school since January 1984, the Respondent denied this and deposed that another teacher had in fact been engaged in the place of the applicant.

I do not believe that after she had been dismissed and another teacher engaged in her place the applicant could have lawfully continued teaching at the school. In my view the applicant is again being dishonest with this court on this point.

However, as her appeal against the Respondent's decision to dismiss her has been upheld by the Teaching Service Board the application must succeed and the applicant awarded the relief in terms of the provisions of subregulation (4) of regulation 33 of the Teaching Service (Amendment) Regulations, 1983.

In the circumstances the order that I make is that applicant must be paid her full salary from January 1984 to the date the Board made its decision plus 3 months' salary in lieu of notice. The Respondent must also pay the costs of the application but not on attorney and client scale.


B.K. MOLAI,
JUDGE.

10th November, 1986.

For Applicant : Mr. Nthethe,
For Respondent : Mr. Pitso.