

CIV/APN/8/2001

IN THE HIGH COURT OF LESOTHO

In the matter between:-

**THE DIRECTOR – NATIONAL  
TEACHERS TRAINING COLLEGE  
MINISTER OF EDUCATION  
MINISTER OF FINANCE  
ATTORNEY GENERAL**

1<sup>ST</sup> APPELLANT

2<sup>ND</sup> APPELLANT

3<sup>RD</sup> APPELLANT

4<sup>TH</sup> APPELLANT

and

**LEREKO MPHUTLANE**

RESPONDENT

**JUDGMENT**

Delivered by the Honourable Mr Justice S.N. Peete  
on the 14<sup>th</sup> June, 2002

This is an appeal against the decision of the Maseru Subordinate Court which ruled in favour of the respondent directing that the then applicant (present respondent) be given a yearly and retrospective progression from the mid-point of new Grade F until he reaches the top notch of the same grade; it was also ordered that the Minister of Finance pay applicant's consequential arrears starting from the midpoint of new Grade F in the new structure with effect from 1<sup>st</sup> April 1998 to point 63 in the same grade. There were no reasons given in support of this decision. The Ministry of Public

Service from which the relevant Circulars regarding the salaries of the public servants was however not cited.

## **Background**

It was common cause that the respondent herein held the position of an assistant lecturer at the National Teachers Training College (NTTC) and enjoyed Grade 9-10. He is a holder of B.Sc (Ed) degree. He was originally employed on the 9<sup>th</sup> July 1990 and was confirmed on a permanent and pensionable establishment as from 8<sup>th</sup> July 1992. In his founding affidavit he states that

*“I reached the maximum point of my grade 9-10 scale in the year 1993-94 even though I have up to now not been promoted to a higher scale. My current salary is M3,685.00 (gross) per month.*

It was also common cause that on the 18<sup>th</sup> May 1998, the Ministry of Public Service (sic) issued a Circular No.9 of 1998 entitled –

### **“Introduction of Job Evaluation, Pay and Grading Structure for the Public Service”**

The purpose of this Circular was to inform all Government Ministries of the Government’s approval of a new grading which was to come into effect as from the 1<sup>st</sup> April 1998. The most salient feature of the new scheme was that the then current core civil service 20 grade structures was being replaced with a new 12 grade structure with broader bands of 12 notches per grade.

There was also a 10% across the board inflation adjustment on salaries, pensions etc.

On the 28<sup>th</sup> July 1998 the Ministry of Public Service issued yet another circular titled

*“Conversion Rules into New Pay and Grading Structure  
for guidance in converting into the new grading structure.”*

Of relevance to this appeal are what are termed “**overlapping**” and “**multiple**” grades. They are defined as follows:

**Overlapping grade** – where the old grading structure carries six to 12 points to form one grade and subsequently cuts across the two grades in the new structure, these grades begin at the mid-point of the new grade and ends at the midpoint of the next upper grade (e.g. Grade 7-8 involving point 37 in new grade D up to point 48 of new Grade E.”

**Multiple grade** – This refers to grade that existed in the old structure where the job grading involved more than one grade (e.g. Grade 5-6/7-8; 9-10/11; 10/12).

The relevant Conversion Rules read as follows:-

### **Rule 3**

Upon a general principle that conversion is on a point-to-point basis, in overlapping grades “*progression will only continue to the midpoint of the next upper grade (e.g. old Grade 7-8 starts at point 37 and ends at point 48 only).*”

### **Rule 4**

*“Rule 3 applies only to the overlapping part of the grade to move to the other side of the sledge, the procedure for appointment on promotion should be followed”*

The respondent admits in his founding affidavit that

*“... my own Grade 9-10 had been affected by that particular rule (3) which applies in respect of “Overlapping Grades”.*

It is common cause that the old Grade 9-10 starts from notch (point) 49 and scales to 60 and that this categorises the respondent in the new structure as being Grade E-F; this obviously is an overlapping grade and *Rule 3* is quite clear in stating that progression within such a grade will continue to the midpoint of the next upper grade “e.g. old grade 7-8 starts at point 37 and ends at point 48”).

Similarly, the old Grade 9-10 starts at 49 and scales up to 60. It should not progress beyond 60 without the holder being promoted into the upper grade.

In matters such as these, it must always be remembered that the grading of the wages in the civil service is a matter for the prerogative of the Minister responsible for the public service – see **Public Service Act 1995**, section 9; and **Attorney General v Makesi** – 1999-2000 LLR 306. The courts of law cannot without cogent reason interfere with such administrative processes.

It is the respondent's contention that the *rule 3* should be interpreted to mean that he "was entitled to shift to the mid-point of the New Grade F with effect from 1<sup>st</sup> April 1998 and progress to the midpoint of G (even without having been promoted). He says he has however been made to remain at Grade 9-10 "much to my prejudice" and in violation of his "clear right to have his salary increased as envisaged by the circular."

The crucial issue to decide is: where did the respondent fall under the new salary structure? Upon his own admission he enjoyed Grade 9-10 which in the old structure (pre- 1<sup>st</sup> April 1998) ranged between point 49 to 60 and it is common cause that the respondent was at point 60.

According to the new conversion rules, where the old grading structure carrying twelve points from one grade and subsequently "cuts across two grades in the new structure, these grades begin at the mid-point of the next upper grade and an example is given – Grade 7-8 involving point 37 in the new Grade D up to the point 48 of the New Grade E."

It not in dispute that the respondent's Grade is 9-10 and is therefore an "Overlapping" and not a "multiple" grade which straddles more than two grades. It is clear therefore that Grade 9-10 begins in the new structure at mid-point of E and ends at 60 which is the midpoint in F and under Rule 4

*... "To move to the other side of the sledge, the procedure for appointment on promotion should be followed."*

It stands to reason that in order for the respondent to proceed into G of the new structure, he can only do so only upon promotion to Grade 11-12 or F-G which even upon respondent's own admission is not the case.

On 31<sup>st</sup> March 2000 another Circular No.8 was passed regrading graduate entry level positions and according to this Circular the respondent's position was re-graded "F" thus putting the respondent in the bracket 55-66 as from 1<sup>st</sup> April 2000.

According to Mr Mosae, for the respondent, the 12 points which Grade 9-10 carries should start at 61 and should overlap into G and end at 70. I am unable to agree with this contention without changing the whole grading structure and which decision would affect not only the respondent but many civil servants in his category and many other categories.

I am of the view that much depends upon the proper interpretation to be given to Rule 3 which deals with overlapping grades. How then was Grade 9-10 to be converted into the new structure? As I pointed out during argument, this court is now being asked to perform what is essentially an

administrative function. Ministries and Departments were requested by the same Circular to issue casualty returns “showing those civil servants who have completed a minimum of 12 months at the maximum of their old grades.”

It is common cause that the respondent was at point 60 and could only proceed up to 66 under Grade F after the 1<sup>st</sup> April 2000 as per Circular 8 of 2000.

The learned magistrate did not give reasons for ordering the then respondents to allow the then applicant a yearly and retrospective progression from the mid-point of the new Grade F until he reached the top notch of the same Grade F. At no where does the final order state that the progression should overlap into Grade G.

Indeed, **Mr Putsoane** in his heads concedes that the respondent was entitled to progress from midpoint of new Grade F (which is 60 to 66 of the said Grade but only as from 1<sup>st</sup> April 2000.

The Final Order was wrong to the extend that it ordered that the respondent be paid arrears in the new structure with effect from 1<sup>st</sup> April 1998 and not from 1<sup>st</sup> April 2000. Casualty Return reflecting this should be made.

There is no order as to costs.



S.N. PEETE

JUDGE

For Appellants : Mr Putsoane

For Respondent : Mr Mosae