

CIV/APN/14/91

IN THE HIGH COURT OF LESOTHO

In the application of:

THERESA SHAKHANE Applicant

and

ATTORNEY-GENERAL 1st Respondent
 PRINCIPAL SECRETARY FOR MINISTRY
 OF INTERIOR 2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 18th day of June, 1996.

The applicant herein filed, with the Registrar of the High Court, a notice of motion in which she moved the court for an order framed in the following terms:

- "(a) Declaring applicant's dismissal from the public service null and void.
- (b) Directing Respondents to pay applicant's salary with effect from the date of the purported dismissal.
- (c) Directing Respondents to pay the costs hereof.
- (d) Granting Respondents such further and/or alternative relief as this Honourable court may deem fit."

The founding and the answering affidavits were duly filed by the applicant and the Respondents, respectively. No replying affidavit was, however, filed by the applicant.

The facts disclosed by affidavits were common cause viz. that in 1977 the applicant was employed, on temporary month-to-month terms, as Immigration Assistant in the Ministry of Interior (now Ministry of Home Affairs) by the Public Service (Personnel). The applicant was, therefore, a public servant in the Government of Lesotho. The terms and conditions of her employment were spelt out in annexure "TS1", the letter of her contract. In April, 1986, the applicant was promoted to the position of Immigration Officer on the same terms and conditions.

Following her promotion, the applicant was, on numerous occasions, interdicted and re-instated. She finally received, from the Public Service, a letter dated 20th June, 1990 (annexure "TS10") advising her that she was removed from office by way of dismissal, in accordance with the provisions of rule 6 - 01(3) and 6 -01(b) of the Public Service Commission Rules, 1970.

In the contention of the applicant, her removal from office by way of dismissal was unlawful in one,

from office by way of dismissal was unlawful in one, or the other or all, of the following respects:

- "(a) The authority that purported to remove me from office by way of dismissal has no powers in terms of Rule 6-01(3):
- (b) In terms of the afore-mentioned Rule 6-01(3) the proper person to dismiss me is the minister having been advised by the Public Service commission and relying on objective grounds:
- (c) My dismissal is not in accordance with the law.

Wherefor, the applicant asked for relief as prayed in the notice of motion.

On behalf of the Respondents, Bereng Sekhonyana deposed to the answering affidavit in which he averred that he was the Principal Secretary for the Ministry of Interior. He denied the applicant's contentions that his dismissal was not in accordance with the law, and the authority that removed him from office by way of dismissal had no powers to do so.

It is significant to observe that the applicant was removed from office by way of dismissal under the provisions of rule 6-01 of the Public Service Commission Rules, 1970.

Rule 6-01 reads, in part:-

- "(1) A head of department may propose in writing to the (Senior Permanent Secretary), for reference to the Commission the removal of an officer from office or his reduction in rank or salary on one or more of the following grounds -
- (a) that he has been convicted of a criminal offence, and that disciplinary proceedings under Part 5 are unnecessary or inappropriate;
 - (b) that he is unfitted for his duties;
 - (c) that he is incapable of carrying out his duties efficiently;
 - (d) that he has attained the age prescribed in section 12(2) of the Public Service Order, 1970;
 - (e) that the public interest so requires;
 - (f) that his work or conduct while on probation or trial has been unsatisfactory;
 - (g) that the terms of his contract or temporary appointment so provide;
 - (h) that an office that is one of two or more similar offices, has been or is to be abolished, and that it is necessary to determine which one of the officers holding them should be removed from office.
- (2) The head of department shall supply information in support of his proposal and he shall apply for directions concerning the procedure to be applied. He shall report to the (Senior Permanent Secretary) for reference to the commission the result of the application for that procedure.
- (3) The commission may after the completion of any proceedings under directions given under

paragraph (2) advise that the minister should -

- (a) order that no further action be taken in the matter; or
- (b) order that the officer's salary or rank or both his salary and rank be reduced to an extent specified; or
- (c) order that the officer be removed from office by way of dismissal or compulsory retirement or permission to retire or otherwise.

4."

It would appear that prior to 29th January, 1990, a proposal for the removal of the applicant and her colleague from office was made by the Head of Department. The proposal could not be acted upon due to lack of following the correct procedure. Consequently, in his answering affidavit, the deponent averred that on 17th May, 1990, the Head of the Ministry of Interior addressed to Public Service (Personnel) a savingram (annexure "1") which reads, in part:

"Recommendation for Removal from office:
Miss Theresa Shakhane.

Forwarded for your processing are fully completed forms G.P.126 and information in support of the proposal for removal from office of Miss Shakhane who has proved to be unfitted for her duties and the public interest so requires.

Please act urgently as the matter has been

pending due to lack of following the correct procedure."

According to the completed form G.P.126 and the information in support of the proposal to remove the applicant from office, the Public Service (Personnel) was informed that since the middle of 1989, the applicant and another of her colleague had been associating with men driving in a car bearing foreign registration numbers; theft or loss of blank passport books were found to be rampant at their office; at about 7.45 p.m. on 19th October, 1989, the applicant and her colleague were detained, together with notorious South African males with criminal records, by the South African police officers at Ficksburg Border Post. When they were search, the applicant and her colleague were found to be in possession of five (5) blank Lesotho local passport books. One of the two South African male criminals accompanying the applicant and her colleague had a Lesotho International passport Number B775965 issued to him by the applicant herself on the same date, 19th October, 1989. All the passport books were immediately seized by the South African police officers and subsequently sent to the Intelligence Service Branch of the Royal Lesotho Mounted Police. In the opinion of the deponent, the applicant and her colleague constituted a security risk and the public interest demanded that they be removed from public service forthwith.

The completed form G.P.126, together with the information in support of the proposal to remove the applicant and her colleague from office, was placed before the Public Service Commission which advised, per annexure "2":

" The commission having received from the Head of Department a proposal that the officers be removed from office under Public Service Commission Rules 6-01 (1)(e) on account of misuse of Government property, advised under Public Service Commission Rule 6-01(2) and in the light of the Appeal Court judgment in CIV/APPEAL NO.6 of 1984 that the officers be notified that their retirements in the public interest are contemplated on the grounds to be disclosed to them by the Head of Department and that they be given a reasonable time within which to reply."

It would appear that in compliance with the advice given in annexure "2" above, the head of Department addressed, to the applicant, a letter in which he communicated the intention to retire her from office for reasons disclosed in the completed form G.P. 126 and the accompanying information in support of the proposal to remove her (from office). Instead of answering it, the applicant referred the letter to his attorneys of record who tendered a reply. In the opinion of the Head of the Department the reply did not address the issues raised in his letter to the applicant. It instead raised legal technicalities which were not relevant to this matter. Consequently, a report of the result of the application of the

procedure followed in the proposal for the removal of the applicant from office was, on 22nd May, 1990, sent, per annexure "3", to the Public Service Commission for its consideration and advice to the Minister responsible for the public service. On 23rd May, 1990, the Public Service Commission convened and advised, per annexure "4" :

"... the commission having considered representations submitted by the Head of Department advised under Public Service Commission Rule 6-01(3) that the officer be removed from office by way of dismissal under Public Service Rule 6-01(b)."

The advice of the Public Service Commission was on 28th May, 1990, placed, per annexure "4", before the Minister responsible for the public service who, on the same day (28th May, 1990), approved the removal of the applicant from office by way of dismissal in terms of the provisions of rule 6 - 01(3) (c) read with rule 6 -01 (b) of the Public Service Commission Rules, 1970.

All that was required to validly remove the applicant from office by way of dismissal, in terms of the provisions of rule 6 - 01 of the Public Service Commission, 1970 was compliance with the procedure set out.

From the foregoing, I am of the view that, by and large, there had been substantial compliance with the procedure set out under rule 6 - 01 of the Public Service Commission Rules, 1970 for the removal of the applicant from office by way of dismissal. The applicant's prayer that her dismissal from the public service be declared null and void must, therefore, fail.

That, in my opinion, disposes of the whole application and I do not propose to deal with the rest of the prayers in the notice of motion as that will be a purely academic exercise.

The application is accordingly dismissed. with costs.



B.K. MOLAI

JUDGE

18th June, 1996

For Applicant : Mr. Malebanye

For Respondent : Mr. Letsie.