

IN THE HIGH COURT OF LESOTHO

CIV/APN/75/2013

In the matter between:

THABO SHALE

APPLICANT

And

COMMISSIONER OF POLICE

1ST RESPONDENT

ATTORNEY GENERAL

2ND RESPONDENT

JUDGMENT

Coram : Honourable Acting Justice E.F.M. Makara
Dates of Hearing : 13th March, 2013
Date of Judgment : 13th March, 2013

Summary

*Application for a review against the dismissal of an applicant by the Commissioner of Police - The Commissioner's power under **Sec 31 (1) (f)** to dismiss a police officer convicted of a criminal offence - A letter of dismissal from the police service written by the Human Resource Officer (HRO) without a clear wording that she had been instructed by the Commissioner to do so - Whether the authority entrusted upon the Commissioner in terms of **Sec 31 (1) (f)** is delegateable - The court's finding that the HRO lacked the authority to write the letter in her own capacity - The unlawfulness of the dismissal - The court's refusal to reinstate the applicant - order that the applicant be paid his salary from the date of the purported dismissal up to such time that he is served with a letter of dismissal clearly sanctioned by the Commissioner.*

CITED CASES

Mofolo J Thato v The Human Resource Department, Compol & A.G. - CIV/APN/254/09, Mamahali Molapo v Maseru City Counsel & Another - 1997 - 1998 LLR @ page 175.

STATUTES

Police Service Act No.7 of 1998

Urban Government (Amendment) Order 1992

MAKARA A.J

[1] This is a review application in which the applicant is seeking for a review, of the 1st respondent's decision to dismiss him from the Lesotho Mounted Police Service. He is on this basis, asking this court to make an order in terms of which it is ordered that:

- (a) The 1st respondent and/or officers subordinate to him are directed to dispatch the record – **CP/C/PF/11423** to the registrar of this court within fourteen (14) days of their receipt of the order;
- (b) The 1st respondent be directed to show cause why the purported dismissal of an applicant on the 18th February, 2010 from LMPS; shall not be reviewed, corrected and set aside;
- (c) The 1st Respondent be directed to cause Applicant's reinstatement with effect from February 2010;
- (d) The 1st Respondent to pay to the Applicant all arrear salaries due to him but for the wrongful dismissal;

[2] There was no *rule nisi* order made by this Court and therefore, no return date. The matter was, instead, immediately

scheduled for hearing on the 13th of May 2013. This was after the parties had filed all the requisite papers and therefore rendering the matter ready for hearing.

[3] The centrality of the applicant's case against the 1st respondent is that the latter has violated his fair trial rights in that he was unlawfully dismissed from the Police Service. In this respect, he charged that the Commissioner of Police had decided on these drastic measures against him, before he could make any counter representations as provided for under **sec 31 (1) of the Police Service Act No.7 of 1998**.

[4] The decision by the 1st Respondent was reached against the background of the criminal conviction of the applicant by the Magistrate Court for having accepted bribery. In sequel to the conviction, Senior Inspector Theko in her capacity as the Police Human Resource Officer, wrote a letter calling upon the applicant to show cause why he may not be interdicted from duty on full pay and directed that the response be furnished within seven days. The letter was authored on behalf of the Commissioner pursuant to the powers vested in him under **Sec 53 (1) of the Police Service Act**. It bears reference number **CP/C/PF/11423**, dated the 10th November 2008 and marked annexure **"TS1"**.

[5] The applicant duly filed his representation with the office of the Commissioner of Police. He, in essence, consented that he could be interdicted with full pay. The correspondence is dated

the 14th of November 2008 and it is marked annexure “**TS2**” to the founding affidavit.

[6] The Human Resource Officer acting on the directive of the Commissioner of Police, reciprocated to the applicant’s representation by writing a letter in which she informed him that the Commissioner has decided to interdict him from the Police Service with full pay. In conclusion, the letter directed the applicant to return the police uniform issued to him and that the DISPOL Leribe is detailed to report any shortages. The letter bears reference number **CP/C/PF/11423** and is dated 27th November 2008.

[7] The developments took a different turn when the Human Resource Officer T.D. Makhaketso, wrote a letter to the applicant inviting him to make a written representation as to why he may not in consequence of his conviction for bribery and the sentence thereof, the Commissioner of Police may not in the exercise of the powers entrusted upon him under **sec 31 (1) (f) of the Act**, dismiss him from the service. The representation was to be provided within seven (7) days from the date on which he had received the letter.

[8] It is, *ex facie* the papers before court, common cause that the applicant has not hitherto furnished the Commissioner with the representations in considerations.

[9] **Sec 31 (1) (f)** empowers the Commissioner of Police to dismiss an officer who is convicted of an offence other than an offence against discipline. It is clear to the court that the exercise of this power is exclusively entrusted upon the Commissioner and as such, it has to be exercised exclusively by himself.

[10] Human Resource Officer T.D. Makhaketso ultimately wrote a letter to the applicant per reference number **CP/C/PF/11423** dated 18th February 2010 bearing a heading **Dismissal from LMPS**. The content of this letter commands a determinative significance.

[11] Advocate Tlapana in realization of the technical importance of the content of the letter of dismissal, argued that the manner in which it is written, is not with certainty, reflective that it was executed per the direction of the Commissioner of Police as it is envisaged so, under **sec 31 (1) (f) of the Act**. He maintained that the wording in the letter must clearly be indicative that its authorship has been sanctioned by the Commissioner himself. The Counsel submitted on this basis that the Human Resource Officer lacked the authority to have written the letter in his own capacity as such. The impression given being that the letter was null and void and therefore has no legal force and effect. The end result being that the applicant has, up to now, not being lawfully dismissed from the service and, therefore, still entitled to arrear salaries from the date of the purported dismissal.

[12] Advocate Mok'hena for the Respondents vehemently counter argued that the words, "reference is made to your letter

CP/C/PF/11423 dated 20th August, 2009 and which you did not respond”, denotes that the letter of dismissal had been written pursuant to the instruction of the Commissioner. She sought to have this letter to be read in conjunction with the **TS4** letter dated 20th August 2009. Her position being, therefore, that the letter of dismissal had been written by the Human Resource Officer on behalf of the Commissioner of Police. She reinforced this argument with reference to the judgment of Her Ladyship Chaka-Makhooane J in **Mofolo J Thatho v The Human Resource Department, COMPOL & A.G CIV/APN/254/09**. The Learned Judge had in this case held that the letter of dismissal which had been written by the Human Resource Officer to the applicant in that case was valid.

[13] It transpired to this court that the said letter of dismissal upon which Her Ladyship had decided the matter, was unequivocally and with precision written in such a way that it was depictive of the fact that it had been sanctioned by the Commissioner of Police herself. The letter has in the clearest terms, acknowledged it that it originates from the Commissioner in the exercise of the powers vested upon him under **sec 31 (1) (h) of the Act**. The section relates specifically to absenteeism from duty without prior permission for a continuous period of more than 21 days.

[14] In *casu*, the letter of dismissal does not unequivocally and expressly acknowledge it that its authorship is directly traceable from the instruction of the Commissioner. In the understanding

of the court, it is indispensable that the letter for the dismissal of the applicant must on the face of it, be seen to have been authorized by the Commissioner himself in exercising the authority vested upon him under **sec 31 (1) (f)** . It should not in any manner, whatsoever, be perceived to have been simply written by the Human Resource Officer acting in her own capacity.

[15] The **sec 31 (1)** powers which include those under **sec 31 (1) (f)**, are not delegateable and as such, they must be seen to have been exercised by their repository after addressing his mind to the merits of the case. This does not in any manner, whatsoever, suggest that the Commissioner cannot instruct his subordinate to execute the letter on his behalf, provided that his instructions to have it written are, therein, duly acknowledged.

[16] The instant letter of dismissal is analogously, defective like a similar one in question in the case of **Mamahali Molapo v Maseru City Counsel & Another 1997 - 1998 LLR @ page 175**. In this case, the letter for the dismissal of the applicant had been written by the Maseru city Counsel and yet she was dismissible by the then Minister of Interior and Chieftain Affairs in terms of **Sec 14 (1) of the Urban Government (Amendment) Order 1992**. It was held that the Council had acted *ultra vires* **Sec 14 (1)**. The court holds that it would be unhealthy and rather contextually injudicious for it to order that the applicant, who has already been convicted of bribery be reinstated into the Police Service. It consequently, therefore, refuses to make such an order.

[17] There must be a realization that the Human Resource Officer flagrantly violated the basic procedure pertaining to the content of a letter of dismissal as contemplated under **Sec 31 (1)(f)**. The effect of this technical deficiency in the letter, is that it automatically renders it invalid and as such qualifies the applicant to receive his remuneration entitlements due to him from the date of the purported letter of dismissal and, consequently the stoppage of his salary. The remuneration should as a way of mitigating the losses on the side of the respondent, exclude whatever period the applicant might have secured himself a formal employment. In that event, the calculations should be made on *pro-rata* basis. This should obtain until such time that a properly worded letter of dismissal is written to him through his attorneys of record.

[18] The court acknowledges the cooperation of the counsel in the endeavor to expectiously conclude the matter and have the judgment timeously delivered.

**E.F.M. MAKARA
ACTING JUDGE**

For the Applicant : Adv. M.P. Tlapana
For the 1st Respondent : Adv. K. Mok'hena