

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 89/07

In the matter between:

PHINDILE REBECCA GWEBU

APPLICANT

And

THE SECRETARY - CIVIL SERVICE COMMISSION

1ST RESPONDENT

THE CIVIL SERVICE COMMISSION

2ND RESPONDENT

THE ATTORNEY GENERAL

3RD RESPONDENT

CORAM:

NKOSINATHI NKONYANE:

JUDGE

DAN MANGO:

MEMBER

FOR APPLICANT:

MR. C.S. NTIWANE

FOR RESPONDENTS:

MR. S. KHUMALO

JUDGEMENT 23.03.07

[1] The applicant brought an urgent application against the 1st and 2nd respondents for an order in the following terms: -

"a) That the Rules of the above Honourable Court in respect of form, manner of service and time limits be dispensed with and the matter be heard as one of urgency.

b) That the suspension of Applicant's salary by half is set aside and Respondents be ordered and directed to pay her full salary during the period of her suspension.

c) Costs of the Application.

d) Further and/or alternative relief."

[2] The application is opposed by the Respondents, and on their behalf an Answering Affidavit, deposed thereto by Mntonzima Dlamini, was filed.

[3] The parties consented to the matter being argued before the Judge and one member of the Court.

[4] The legal representatives of the parties informed the Court that they have reached an understanding on all the other issues arising from the application.

[5] They informed the Court that the only question left for the Court to decide was whether the suspension by half of the applicant's salary was lawful as it was not done by the Prime Minister as provided by regulation 39 subsections(1) and(3) of the Civil Service Board (General) Regulations of 1963.

[6] The applicant is a civil servant and is employed by the Ministry of Finance. She was suspended on half pay on the 21st February 2007 following her being arrested and charged with fraud and contravening Section 42 of the Prevention of Corruption Act No.3 of 2006.

[7] In the suspension letter annexure "C" of the Founding Affidavit, it is stated that the applicant was being suspended in terms of the provisions of regulations 38 and 39.

[8] The question that the Court was asked to answer is whether the 1st and 2nd respondents had the right to suspend the applicant's salary by half.

[9] The respondents' attorney submitted that the 1st and 2nd respondents do have the power to suspend by half the salary of the applicant. The Court was referred to Section 10(1) of the King's Proclamation No.1 of 1981 and also to the Court of Appeal of Swaziland case of ELIAS V. DLAMINI V. PRINCIPAL SECRETARY IN THE MINISTRY OF AGRICULTURE AND CO-OPERATIVES (1ST RESPONDENT) AND SWAZILAND GOVERNMENT 2ND RESPONDENT) CASE NO. 12/2000.

The Applicant's Attorney argued to the contrary that the 1st and 2nd respondents do not have the power to suspend the Applicant's salary by half as such power is vested only in the Prime Minister as provided for under regulation 39(1).

Regulation 39 (1) and (3) provides as follows: -

"39(1) If the Minister considers that the interests of the service require that an officer should

cease forthwith to exercise the powers and functions of his office, he may interdict him from the exercise of those powers and functions, if disciplinary proceedings are being taken or are about to be taken or if criminal proceedings are being instituted against him.

(3) An officer who is interdicted shall, subject to regulation 38(4J); 38(5) receive such emoluments, not being less than one half of his normal emoluments as the Minister thinks Fit"

The interpretation part of the regulations provides as follows in regulation 2:

"Minister" means the Prime Minister and includes any Assistant Minister to whom he has delegated any duties or functions under the Civil Service Order, No.16 of 1973."

If the enquiry ended here, it would be clear that indeed it is the prerogative of the Prime Minister to interdict a civil servant and suspend half the salary if he thinks fit.

There was however a subsequent law, being the King's Proclamation No.1 of 1981. Under Section 10(1) the Proclamation provides that: -

"There shall continue in existence an independent Civil Service Board or similar body established by law and which shall be responsible for the recruitment and appointment to, and promotion and discipline of persons in, the Civil Service."

The effect of this Proclamation was that it gave the Civil Service Board the power to discipline a Civil Servant Further, the effect of this Proclamation was that it superceded Section 3(1) of the Civil Service Order of 1963, which vested the disciplinary control of public officers in the Prime Minister.

[16] This is the interpretation that was also given by the Court of Appeal in the Elias V. Dlamini's case (supra). In that case the Court of Appeal was also dealing with a case in which the appellant was interdicted and his salary halved in terms of the provisions of clause 39 of the Civil Service Board (General) Regulations of 1963.

[17] The Court of Appeal agreed with the Appellant's argument that the Principal Secretary had no power to interdict him as such power vests with the Civil Service Board in terms of the Proclamation of 1981, The interdiction was declared unlawful and null and void *ab initio*.

[18] In the present case the Applicant says it was the Prime Minister or any Minister

delegated by him, and not the Civil Service Board (now the Civil Service Commission) that had the power to suspend her with half pay.

[19] The Court of Appeal when dealing with the provisions of Section 10 of the King's Proclamation No.1 of 1981, agreed that it was inconsistent with, and should be taken to have superceded Section 3(1) of the Civil Service Order of 1973. The Court went on to hold that it logically followed that the discipline of persons in the Civil Service was a function that now belongs to the Civil Service Board by virtue of the 1981 Proclamation.

[20] Simply put therefore, the disciplinary powers that formerly vested in the Prime Minister in terms of section 3(1) of the Civil Service Order No. 16 of 1973, now vests in the Civil Service Board in terms of Section 10 of the King's Proclamation No.1 of 1981.

[21] It follows therefore that the Civil Service Commission had the power to suspend the Applicant on half pay on the charge of fraud. The charge under the Prevention of Corruption Act was clearly ill-conceived as the alleged acts of corruption took place before the Act came into operation.

[22] There is, however, an urgent need to amend the regulations to be in line with the Proclamation of 1981 in order to dispel any confusion that may presently exist.

[23] Taking into account all the foregoing observations, the court will make the following order:

- a) THE APPLICATION IS DISMISSED.
- b) NO ORDER FOR COSTS IS MADE.

The member agrees

NKOSI NATHI NKONYANE J.

INDUSTRIAL COURT