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1975, No. 10

An Act to provide for the administration and regulation of the Cook Islands Public Service

(7 March 1975)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and Division into Parts -

(1) This Act may be cited as the Public Service Act 1975

(2) This Act is divided into Parts as follows:

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| Part I | - | Public Service Commissioner
(Sections 3 - 7) |
| Part II | - | The Public Service
(Sections 8 - 35) |
| Part III | - | Appeals
(Sections 36 - 44) |
| Part IV | - | Special Posts
(Sections 45 - 47) |
| Part V | - | Miscellaneous
(Sections 48 - 58) |

2. Interpretation - In this Act, unless the context otherwise requires, -

"Commissioner" means the Public Service Commissioner appointed by the High Commissioner under Article 73 of the Constitution;

"Departmental head" or "Head of Department" means the head of a Department of the Public Service;

"Employee", in relation to the Public Service, means a person employed therein, whether on the permanent staff (including any probationer) or temporarily or as a wage worker or as an expatriate;

"Expatriate employee" means any employee appointed under section 13 of this Act;

"Graded position" means any position on the permanent staff of the Public Service above the trainee and basic grades of each occupational class;

"Minister" means the Minister appointed under the provisions of the Constitution as the Minister in charge of the Public Service:

"Officers", in relation to the Public Service, means an employee on the permanent staff of the Public Service other than a probationer or a temporary salaried employee or a wage worker or an expatriate employee:

"Permanent staff" means those employees employed on a permanent basis and who are placed in grades in occupational classes and who are not temporary employees or wage workers or expatriate employees:

"Probationer" means a person serving on probation in terms of section 14 or section 31 of this Act:

"Promotion" means advancement from one grade to another within an occupational class or transfer from one occupational class to another involving in either case an increase in salary:

"Public Service" means the Public Service as defined in Article 72 of the Constitution:

"Special post" means any position in the Public Service which has been so designated pursuant to section 45 of this Act:

"Temporary employee" means an employee for the time being employed in terms of section 1 of this Act:

"Wage worker" means an employee for the time being employed in terms of section 12 of this Act.

PART I - PUBLIC SERVICE COMMISSIONER

3. Functions, powers and duties of Commissioner -

(1) Subject to the control of the Minister the Commissioner shall be responsible for the administration of this Act.

(2) The Commissioner shall, in respect of the Departments of the Public Service, be responsible for -

- (a) Reviewing the efficiency and economy of each Department, including and discharge by the departmental head of the responsibilities placed on him by section 9 of this Act:
- (b) Approving and reviewing establishments of staff after consultation with the heads of Departments affected:
- (c) Prescribing basic training programmes after consultation with the heads of Departments affected and making recommendations to the Minister on the facilities necessary for the proper training of staff

(3) The Commissioner shall have the powers necessary to perform his lawful functions and to carry out his lawful duties.

4. Annual report - (1) The Commissioner shall as soon as practicable after the end of each financial year furnish a report to the Minister on the state of the efficiency and economy of the Public Service and on his own operations for that year.

(2) A copy of the report shall be laid before the Legislative Assembly as soon as practicable after it has been received by the Minister.

5. Delegation of powers - (1) The Commissioner may from time to time, either generally or particularly, delegate any of his powers to the holder for the time being of any specified office in the Public Service.

(2) In any case where the Commissioner has, pursuant to subsection (1) of this section, delegated any of his powers to any person, that person may, with the prior approval of the Commissioner delegate such of these powers as the Commissioner approves to any other person or to the holder for the time being of any specified office in the Public Service.

(3) Subject to any general or special directions given by the Commissioner, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation.

(4) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or of specified classes of offices.

(6) Every such delegation shall be revocable in writing at will and no delegation shall prevent the exercise of any power or function by the Commissioner.

(7) Any such delegation shall, until it is revoked, continue in force according to its tenor, notwithstanding any change of Commissioner.

6. Investigations and inquiries - (1) The Commissioner shall have the power to conduct investigations or inquiries and for this purpose may specially appoint a person or persons to conduct such an investigation or inquiry and to report the result of the investigation or inquiry to the Commissioner. For the purposes of this section the Commissioner or the person or persons he appoints shall have the same powers and authority to summon witnesses as are conferred upon Commissions of inquiry by the Commissions of Inquiry Act 1966.

(2) Payment of any fees or expenses incurred in connection with any such investigation or inquiry shall be authorised by the Commissioner out of money appropriated by the Legislative Assembly for this purpose.

7. Officers and employees of the Commissioner - There shall from time to time be appointed pursuant to the provisions of this Act such officers and employees as may be necessary to enable the Commissioner to carry out his functions and duties and those officers and employees shall have all such powers, duties and functions as may be lawfully conferred upon them.

PART II - THE PUBLIC SERVICE

8. The Public Service - There shall be appointed pursuant to this Act such heads of Departments and other officers and employees as shall be necessary to carry out the functions of Departments of the Public Service.

9. Heads of Departments - In addition to any other functions and duties imposed by any other law in force in the Cook Islands the head of any Department of the Public Service shall be responsible to the Minister for the time being in charge of that Department for the efficient and economical administration of that Department.

Appointments and Promotions

10. Appointments to the Public Service - (1) Except as provided in subsection (2) hereof the Public Service Commissioner shall make all appointments to the Public Service and shall, in making such appointments have regard to the need to maintain and develop an efficient career service based on the recruitment of adequately qualified persons. The Public Service Commissioner shall make no appointment to the Public Service unless he is satisfied that such appointment is necessary and that the appointee has clearly more merit for the position to be filled than any other officer who is available for the position.

(2) Subject to subclauses (3) and (4) of Article 74B of the Constitution the Public Service Commissioner together with two heads of department appointed in accordance with subsections (3) and (4) of this section, shall make all appointments to graded positions of the Public Service and shall in making such appointments have regard to the need to maintain and develop an efficient career service based on the recruitment of adequately qualified persons. The Public Service Commissioner and heads of departments shall make no appointment to the Public Service unless they are satisfied that such appointment is necessary and that the appointee has clearly more merit for the position to be filled than any other officer who is available for the position:

Provided that before making such appointments the Public Service Commissioner and the two departmental heads shall consult with the departmental head within whose Department the position to be filled exist.

(3) For the purposes of subsections (1) and (2) of this section merit shall be determined in accordance with section 15 of this Act.

(4) The two departmental heads to be appointed for the purposes of making appointments and promotions as provided in subclause (2) of Article 74B of the Constitution and subsection (2) of this section shall be appointed as follows:

- (i) One departmental head shall be nominated for the purpose by the Executive of the Cook Islands Public Service Association (Inc.) and appointed by the High Commissioner for a term of not more than two years: and

- (ii) One departmental head shall be nominated for the purpose by a simple majority of all departmental heads and appointed by the High Commissioner for a term of not more than two years:

Provided that no departmental head shall take part in the making of any appointment or promotion as aforesaid when the position to be filled is within his Department.

(5) In the event of a departmental head being disqualified from taking part in the making of an appointment by the proviso to subsection (4) of this section, or in the event of his absence from the Cook Islands the position of that departmental head shall be filled for the purpose of making that appointment by a deputy appointed in the same manner as the departmental head.

(6) The two departmental heads appointed pursuant to subsection (4) of this section shall perform such additional functions as may be prescribed by this Act.

(7) Every appointment of any person to the permanent staff of the Public Service shall be notified within the Public Service by Official Circular.

11. Temporary salaried employees - Commissioner may engage such temporary salaried employees as may from time to time be require and may dismiss any person so engaged with not less than one week's notice, or, in the case of misconduct, without notice.

12. Wage workers - The Commissioner may engage such wage workers as may from time to time be required and may dismiss any person so engaged with not less than one day's notice, or in the case of misconduct, without notice.

13. Expatriate employees - In accordance with the provisions of subclause (4) of Article 74B of the Constitution persons from outside the Cook Islands may be appointed to positions in the Cook Islands Public Service but such persons shall be deemed not to be appointed to the permanent staff of the Public Service or as officers of the Public Service.

14. Appointments to be on probation - (1) Every person appointed to the permanent staff of the Public Service shall be on probation for such period being not less than three months nor more than twelve months (except as provided in subclause (2) of this section), as the Commissioner specified generally or in any particular case or class of cases.

(2) The Commissioner may by notice in writing to the probationer extend the period of probation of any probationer for a specified period not exceeding six months provided that the total period of probation of that probationer does not exceed eighteen months.

(3) The Commissioner may at any time, and shall at the expiration of the term of probation, in writing, confirm or annul the appointment to the Public Service of any probationer.

15. Appointments to vacant positions - (1) Subject to the provisions of subclauses (3) and (4) of Article 74B of the Constitution all appointments to vacant positions in the Public Service other than graded positions shall be made by the Public Service Commissioner, and all appointments to graded positions shall be made by the Public Service Commissioner and two heads of department appointed in accordance with the provisions of section 10 of this Act.

(2) The Commissioner shall whenever practicable notify every vacancy or prospective vacancy in a permanent position (including any newly created permanent position) in the Official Circular or in such other manner as he thinks sufficient to enable any employee qualified for appointment to make applications therefor

(3) Notwithstanding anything in subsection (2) of this section, and subject to subclauses (2), (3) and (4) of Article 74B of the Constitution the Commissioner may in any case fill any vacancy without having notified the same

Provided that any appointment so made shall be notified in accordance with subsection (2) of section 10 of this Act and where a right of appeal exists there shall be an open right of appeal.

(4) In the event of two or more officers being available for the same position, preference shall be given to the officer who has the most merit for appointment to the position.

(5) For the purposes of this Act, the merit of an officer for promotion shall be determined by -

(a) Work experience, dedication and competence shown in performance of duties previously carried out by him; and

(b) Personal qualities, characteristics, and attributes relevant to the position to be filled; and

(c) Relevant educational or other qualifications:

Provided that where two or more officers who are applicants for a vacancy are adjudged to be equal in merit for promotion having regard to the matters specified in the foregoing provisions of this subsection, regard shall be given to the length of continuous permanent service of each officer.

(6) Every promotion of an officer or probationer shall be notified within the Public Service by notice in the Official Circular.

(7) The Commissioner may in any case allow any officer to decline any offered promotion or appointment without prejudice to his right to any future promotion or appointment for which he might be qualified.

16. Effective date of appointments - (1) Notwithstanding anything to the contrary in any enactment other than this section, the power conferred by this Act to appoint any person to any position in the Public Service shall be deemed to include a power to appoint that person from and including a date to be specified in that behalf in the instrument or minute of appointment, whether or not that date is earlier or later than the date on which the power of appointment is exercised, and salary shall be payable from and including such date (not being earlier than the date so specified in the instrument or minute) as the Commissioner may determine.

(4) The provisions of subsection (1) of this section shall apply notwithstanding that any other person previously appointed to the position may on the specified date and for any time thereafter continue to hold and receive the salary for that position though (by reason of absence or other circumstances) not actually performing the duties thereof.

17. Acting appointments - (1) In the case of absence from duty of any employee other than an employee in a special post (from whatever cause arising) or on the occurrence from any cause of a vacancy in any position in the Public Service other than a special post (whether by reason of death, resignation, or otherwise) and from time to time while the absence of vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by -

- (a) any other employee who is not an expatriate employee for the time being directed by the Commissioner to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues; or
- (b) any other employee who is an expatriate employee for the time being directed by the Commissioner with the concurrence of Cabinet to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(2) In the case of absence from duty of any employee in a special post (from whatever cause arising) or on the occurrence from any cause of a vacancy in any special post (whether by reason of death, resignation or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by any other employee for the time being directed by the Commissioner with the concurrence of Cabinet to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(3) No direction given under subsection (1) or subsection (2) of this section and no acts done by any employee acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the employee had not been appointed to any position to which the direction relates.

18. Evidence of appointments - (1) Any appointment to any office or position in the Public Service shall be made, confirmed or approved in writing by an instrument or minute by the Commissioner or by any person to whom the Commissioner has delegated power in that behalf in accordance with section 5 of this Act; and, notwithstanding anything to the contrary in any enactment, it shall not be necessary for the Commissioner or any such person to execute any formal warrant or other instrument in special form.

(2) A certificate signed by the Commissioner that any person named in the certificate was appointed to any office or position in the Public Service from and including a day stated therein shall be sufficient evidence that the person so named was duly so appointed to and continues to hold the office or position unless the contrary is proved.

19. Appointment subject to appeal to be provisional -

(1) Every appointment or promotion which is subject to a right of appeal by any officer under section 40 of this Act shall be provisional until all appeals lodged in respect thereof have been duly determined, or, if no appeal is lodged, until the time for the lodging of appeals has expired.

(2) If any appeal against a provisional appointment or promotion is allowed, the Commissioner shall cancel the provisional appointment or promotion.

(3) In the case of any graded position the Commissioner and the two heads of departments appointed pursuant to subsection (4) of section 10 of this Act may at any time cancel a provisional appointment or promotion, whether or not an appeal against the appointment or promotion has been lodged, if in their opinion the office is not required, or if they consider that further notification of the position is desirable, or for any other sufficient reason.

20. Redundancy - (1) If at any time the Commissioner, after consultation with the head of the Department, finds that a greater number of persons is employed in that Department than is considered necessary for the efficient working thereof, such persons as are redundant may (if practicable) be transferred to any other Department which in the opinion of the Commissioner after consultation with the head of that Department requires additional assistance; and if any persons so found to be redundant cannot be usefully employed in any other Department the Commissioner may terminate his employment.

(2) If at any time the Commissioner finds that any officer is in receipt of a greater salary than the maximum determined by him to be fairly appropriate to work performed by or assigned to that officer, the case shall be dealt with by the Commissioner subject to the following provisions:-

- (a) If in the opinion of the Commissioner the officer is fitted for or capable of performing work of a class equivalent to the amount of his salary, and that class of work is available in the same or another Department, the Commissioner may assign that class of work to that officer:
- (b) (i) If that class of work is not available, the Commissioner may reduce the salary of the officer to the maximum determined by the Commissioner to be appropriate to the class of work actually performed by or assigned to the officer:
 - (ii) Any such determination shall be subject to right of appeal:
- (c) If any such reduction of salary is certified by the Commissioner to be made on the ground only that no work equivalent to the salary previously received by the officer affected is

at the time of the reduction available, and the officer affected elects to continue in the Public Service at that reduced salary, the officer shall remain eligible for promotion as from the grade to which his salary before reduction was incident notwithstanding the reduction, and shall be entitled to employment on the class of work to which his previous salary was appropriate as soon as a vacancy occurs therein in preference to any other officer of the same or lower grade whose salary has not been reduced.

21. Employees may be transferred - (1) The Commissioner may, after consultation with the head of any Department affected, transfer any employee, whether on probation or otherwise, from one position in a Department to any other position in that Department or to a position in any other Department whether or not the transfer involves a change of location.

(2) There shall be a right of appeal against any transfer pursuant to subsection (1) of this section on the grounds specified in the proviso to paragraph (c) of subsection (2) of section 40 of this Act, and the provisions of that proviso shall apply to any such case.

22. Failure to comply with a direction to transfer -

(1) Any employee who fails to comply with a direction of the Commissioner requiring him to transfer from one position or locality to another may be forthwith dismissed or reduced in grading by the Commissioner unless he justifies the non-compliance in the opinion of the Commissioner by adducing some valid and sufficient reason therefor.

(2) There shall be no right of appeal against any dismissal or reduction in grading under this section:

Provided that nothing in this subsection shall affect the right to appeal against transfer conferred by the proviso to paragraph (c) of subsection (2) of section 40 of this Act.

23. Notice of termination of employment - (1)

Every officer shall be deemed to be a three-monthly employee and notwithstanding any other provision in this Act, his employment may be terminated at any time after three months' notice in writing has been given -

(a) By the Commissioner to the officer on the ground of redundancy or to effect retirement in accordance with retirement policy; or

(b) By the officer to the Commissioner

(2) The Commissioner may forthwith terminate the employment of any officer who gives less than three months' notice under this section.

(3) This section shall not derogate in any manner from any other provisions of this Act conferring power on the Commissioner to dismiss officers.

Remuneration, Classification and Grading

24. Occupational classification and grades - (1) The occupational classes of the Public Service shall be under the general categories of Executive, Professional, Technical and General.

(2) The Commissioner and the Departmental heads appointed pursuant to subsection (4) of section 10 of this Act shall sub-divide each occupational class into grades according to their assessment of the relative levels of responsibility and skills required to be exercised by employees of the occupational class, and shall prescribe a salary rate and a maximum salary rate and incremental steps for each such grade.

(3) In addition to any other powers conferred upon him by this Act or any other law in force in the Cook Islands the Commissioner shall have power to prescribe for the Public Service or any class or classes of employees thereof annual and special leave, public holidays, ordinary hours of work, and the period to be worked before overtime rates become payable: rates of remuneration and conditions in respect of minimum earnings, overtime, travelling time, shift work, night work, and special duty, and in respect of work on Saturdays, Sundays, and public holidays, and at any other time outside the ordinary hours of duty; separation allowances, locality allowances, dirty work allowances and other allowances relating to conditions of work; tool allowances, travelling allowances, lodging allowances, camp allowances, and several allowances; and the terms and conditions under which working clothing may be issued.

25. Classification, grading and salaries of officers and probationers - (1) The Commissioner and the Departmental heads appointed pursuant to subsection (4) of section 10 of this Act shall place every officer and probationer in an occupational class and shall also place every officer and probationer in a grade in the appropriate occupational class according to the level of responsibility and skill required to be exercised in the performance of the duties assigned to him. Salary shall be payable to each officer or probationer according to his grading and on promotion, unless the Commissioner acting on his own or with the Departmental heads appointed pursuant to subsection (4) of section 10 of this Act, as the case may require, otherwise determines, an officer or probationer shall be awarded the minimum salary and proceed to the maximum for the grade as provided in section 27 of this Act.

(2) From the date of the commencement of this Act until the Commissioner and Departmental heads have classified and graded all officers and probationers in accordance with this section, any enactment repealed by this Act so far as it relates to classification and grading shall continue notwithstanding its repeal to apply to all officers and probationers not for the time being graded in accordance with this section as if this Act had not been passed.

(3) It shall be lawful for the Commissioner to permit an officer or probationer to receive a salary greater than that determined as appropriate in accordance with this section if the officer or probationer was in receipt of such higher salary at the date of the commencement of this Act.

(4) Notwithstanding the foregoing provisions of this section, the Commissioner and Departmental heads