

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 02 of 2017

BETWEEN: **MINISTRY OF EDUCATION, HERITAGE AND ARTS**
APPELLANT

AND: **NASEEM ALI**
RESPONDENT

Appearances: Ms. S. Ali for the Appellant.

Mr. D. Nair for the Respondent.

Date/Place of Judgment: Wednesday 20 October 2021 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

Employment Law – Whether the Employer had applied an open merit selection process to fill in the vacancy of the Head Teacher of a Primary School – Whether the grievor was discriminated against in any form- Whether the selection process must have also included an interview process – Whether the Tribunal could order the grievor to be promoted instead of the suitable candidate who was promoted by the Ministry.

B. Legislation:

1. *Public Service Act and Regulations 1999: Regulation 5.*
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Cause and Background

1. The employer appeals against the decision of the Employment Relations Tribunal ("***Tribunal***") of 16 January 2017 on its finding that the grievor was disadvantaged by the discriminatory action of the Ministry of Education, Heritage and Arts ("***Ministry***") in filling the vacancy of the position of the Head Teacher of Ahmadiyya Muslim Primary School in Lautoka which resulted in him losing out on the position. As a result, the Ministry was ordered to promote the grievor to the position of the Head Teacher and to pay him the difference in the salary from 6 October 2015.
2. The dispute between the parties arose when there occurred a vacancy in Ahmadiyya Muslim Primary School for the position of the Head Teacher. The worker had applied for the position and was unsuccessful as another teacher was appointed to that post. The worker then reported a grievance to the Tribunal in the following terms:

"My employment grievance relate to the failure by the employer to give due consideration to my qualifications, experience and proven capacity and appoint me to the position of HT at Ahmadiyya Muslim Primary School in Lautoka.

...

The relief which I am seeking is to be promoted and the employer desist from practicing discrimination in terms of promotions that is protected under section 75 and 77 (1) (b) of the ERP and Part 2, Regulation 5 of the Public Service Regulations, 1999.

This grievance is submitted pursuant to section 188(4) of the Employment Relations Act..."

3. The basis of the grievance is specified in the worker's preliminary submission to the Tribunal.

Grievor's Position

4. In its preliminary submission, the grievor explains what his concerns are. He says that when the position of the Head Teacher was advertised, he applied for the same. He was not appointed to the position when he was more qualified and experienced than Mr. Mubarak Inayat Shah who got appointed over him.

5. The grievor alleged that the employer deviated from its advertisement and applied a discriminatory criteria in promoting another person to the post when the employer ought to have adopted the principles of equal employment opportunity.
6. The grievor also alleges breach of Regulation 5 of the Public Service Act and Regulations 1999, Part 2 in filling the vacancy which reads:

“5(1) The appointment or promotion of a person to an office pursuant to section 147 (1) of the Constitution must be made on the basis of merit after an open, competitive selection process, and in accordance with section 140 of the Constitution.

(2) An appointment or promotion may only be made if –

- 1. the vacancy in the office, or a vacancy in an office with the same duties, was notified in a Public Service Official Circular within the last year as open to any citizen of the State;***
- 2. an assessment has been made of the relative suitability of the candidates for the duties, after interview or using another competitive selection process;***
- 3. the assessment was based on the relationship between the candidates work- related qualities and the work-related qualities genuinely required for the duties;***
- 4. the assessment focused on the relative capacity of the candidates to perform the duties.***

(3) The following work-related qualities may be taken into account in making an assessment referred to in subregulation (2) –

- 1. skills and abilities;***
- 2. qualification, training and competencies;***
- 3. standard of work performance;***
- 4. capacity to perform at the level required;***

5. *demonstrated potential for further development;*
6. *ability to contribute to team performance”.*

7. In particular it was alleged that the employer should have disclosed the merit analysis of all the applicants. It did not do so and he is not aware of how the employer made the assessment for the suitable candidate when it had failed to carry out an interview process of the applicants. The interview process, it is contended is a crucial requirement and is an objective criteria practiced in the Public Service sector for filling in the vacancies. Due to non-compliance of the requirements for the interview, he was denied the right to be heard in the decision making process that has adversely affected his career development and livelihood.
8. The grievor also alleged that there was breach of s. 20(1) of the Constitution which requires the employer to create a fair working environment. It is alleged that by practicing discrimination, the employer has developed double standards and inconsistencies in promoting persons who are less meritorious than those who are most deserving, qualified and with proven potential and capability as s. 127(8) (b) of the Constitution requires appointments to be made on the basis of an open, transparent and competitive selection process based on merit.
9. It is further contended that the employer followed a closed door concept where only those who had vested interest in the advancement of the discriminative criteria were involved. The failure by the employer to disclose the selection criteria demonstrates their intention not to disclose what consideration in the advertisement and the strict principles articulated in Part 2 of the Public Service Act and Regulations, 1999 was followed.
10. The grievor also alleged that the persons who were involved in the promotion criteria were selectively chosen to foster the interest of promoting the person who had already been identified and the process was merely academic. The matrix system criteria was not disclosed in the advertisement and as such the process adopted was subjective. The criteria was not known to most of the applicants except to those who had been selectively identified to allow them to obtain subjective commendations from irrelevant sources only to justify their promotions.

Ministry's Position

11. The Ministry's position was set out in the affidavit deposed on its behalf and its preliminary submissions. It says that on 26 August 2015, the Ministry advertised its vacant Head Teacher Positions for various schools in the Fiji Sun. It also invited applications from qualified persons for the position of Head Teacher of Ahmadiyya Muslim Primary School. It received 50 applications for this particular position. The worker was one of the applicants.
12. After an open and competitive selection process, it was decided on 6 October 2015 that Mr. Mubarak Inayat Shah be appointed to the position of the Head Teacher. The Ministry outlined the process which it used and applied to make the selection. According to the Ministry, everyone was given an equal opportunity to apply for the position regardless of their acting positions and regardless of their employment ranking.
13. All applications received for the position were tabulated and arranged by scores by the members of the Post Processing Unit of the Ministry using a standard teaching recruitment matrix. The matrix system is based on qualification and merits.
14. The members of the Post Processing Unit have all undergone the Civil Service Training to use the matrix system. The matrix system is without any interference from the Directors, Permanent Secretary for the Ministry or any other persons. All the applications that meet the Minimum Qualification Requirement ("***MQR***") are put in the selection matrix (long list) and tabled according to points before another body being the Appointments Committee.
15. The recruitment selection matrix is entirely based on merits and considers but is not limited/restricted to any one of the following:
 - a. ***Qualifications of the candidate.***
 - b. ***The in-service and related professional development courses and workshops attended that may be relevant to the position.***
 - c. ***The scores of any recognized test (APA) etc.***
 - d. ***The length of service of the candidate.***
 - e. ***The grade of candidate.***
 - f. ***The years of rural service.***

- g. Experience and exposure of the candidate relevant to the position.*
- h. Disciplinary cases concerning the candidate.*
- i. Report or commendation from the relevant Director.*
- j. Promotions and demotions that the officer has had.*

16. The selection criteria is known to the teachers of the Ministry. The matrix system ensures that the decisions be made on merits and substance. The Higher Authorities being the Directors, Permanent Secretary and the Minister cannot unilaterally dismiss the most meritorious candidate. Transparency has to be maintained at all times. Under the matrix system, the points are awarded according to qualification ranking and experience along with the other criteria set by the Permanent Secretary.
17. In this particular case, there was no test or any interviews done as the recruitment for Head Teachers was done in a pool and the Permanent Secretary did not see any real need for interviews. Under the Constitution, the Permanent Secretary can set the requirements and in this case, interviews was not considered as material or a necessary requirement.
18. The Ministry has never held interviews for its teachers in its history of recruitment and will not be holding interviews due to the strain on its available limited resources. It is not feasible to hold interviews for all positions in pool recruitments due to the high number of applicants.
19. Under the Constitution, the prerogative to assess candidates and set criteria for selection lies with the Permanent Secretary and interviews was not considered by the Permanent Secretary to be practicable for pool recruitment.
20. For the 50 applicants, the scores were compiled under the matrix system and placed before the Appointments Board of the Ministry. The Appointment Board is chaired by the Permanent Secretary and the members are usually the Directors concerned, the Director Human Resources and members of the Post Processing Unit who deliberate on the advertised positions and the scores. It is in this meeting that the Directors provide feedback and reports on the applicants. The members of the Appointments Board shortlist candidates and recommend the most appropriate candidate for the position.

21. The shortlisted applications for the position of Head Teacher Ahmadiyya Primary School were then re-tabled before the Concurrence Board meeting on 6th October 2015 which was again chaired by the Permanent Secretary but invited more Ministry Staff and other Directors. This meeting was done to obtain the Minister's concurrence on the recommendations put forward by the Appointments Board, pursuant to Section 127 (7) of the Constitution of Fiji. Any issues or disagreements concerning the recommendation made are usually raised and discussed at the concurrence meeting by other staff present.
22. The Ministry says that given the above process, it can be seen that it has put in place a fair, open and transparent system of recruitment and promotion and the Permanent Secretary has not unlawfully used or abused its powers. There was no biasness and favoritism that can be shown against the matrix system.
23. The Ministry also explained why Mr. Mubarak Inayat Shah was appointed over the worker. Mr. Mubarak Inayat Shah was the successful candidate with higher ranking points than the grievor. He had 66.3 points whilst the grievor had 56.3 points in the selection matrix. The selection was based entirely on merits and no discrimination was exercised as it will not be tolerated by the Ministry.
24. The allegation that the successful candidate has not met the MQR of the advertisement is not true. He met the MQR by qualifying from the ED8A grade with 25 years' experience. Apart from that, the successful candidate has also done 4 years of rural service which is a requirement in the advertisement and gives him an edge and advantage over the grievor. Further, the Director Primary also gave commendation points for the leadership and relevant trainings done by Mr. Mubarak Inayat Shah and had assessed all the candidates based on team work and productivity.
25. Due to his dedication and productivity and team work, Mr. Mubarak Inayat Shah was assessed by the Director Primary to be a more worthy candidate and was also given a special commendation. Director Primary further awarded points for demonstrating excellent leadership skills and producing results while being in employment with the Ministry. The

matrix systems clearly shows that Mr. Mubarak Inayat Shah was facing heavy competition from the other applicants vying for the position who were ahead of him. The other applicants ahead of him have already been appointed to positions in other schools.

26. The Ministry says that the grievors contention that Mr. Mubarak Inayat Shah was unworthy and inferior to him is not supported by any evidence as he was selected on an open merit based system. There was no discrimination against anyone. The grievor's allegation on discrimination is baseless. The Ministry did not apply any personal characteristic or circumstance against anyone including the grievor in filling the vacancy. The entire selection system was based on points system on a given and approved criteria.

Tribunal's Findings

27. It has taken me quite some time to find out the specific reasons that the Tribunal gave for arriving at its findings. The findings are not properly reflected in its analysis section or the determination. I also found that under the head of "*background and evidence*" the Tribunal arrives at its conclusion. The Tribunal also states the submissions of the parties under this head. It was therefore very confusing to ascertain whether what the Tribunal said was a reflection of the evidence or the submissions or its findings.
28. It has therefore been an arduous exercise to reflect on what appears to be the Tribunal's findings in this case. I have therefore taken time to painstakingly reflect the reasons for the Tribunal's findings.
29. The Tribunal made several specific findings. It found that when it comes to the question of the MQR and further qualifications, the grievor had superseded Mr. Mubarak Inayat Shah in both areas. In respect of the MQR, the Tribunal stated that the grievor had the MQR for the position but he was not awarded the maximum points in the matrix system. There was no explanation given by the Ministry on why the grievor was not allocated the maximum points for having the MQR.

30. In respect of further qualification, the Tribunal found that the grievor had completed the Bachelor of Education (Primary). Yet he was not allocated the maximum points in the matrix system. It found that there was no explanation given as to how the points were allocated in that respect, as the grievor had stated in his evidence that his qualification in Bachelor of Education was completed prior to the processing of the post and he had submitted his qualification to the Ministry. That was not considered by the Ministry because as per its evidence, it did not look at the grievors file but only his application. This, the Tribunal concluded supports the grievors allegation that the promotion was predetermined and the points were allocated to eliminate the grievor.
31. It found that Mr. Mubarak Inayat Shah was allocated more points in two specific areas. The first was that he had received special commendation from the Director Primary for which he got 8 points. The Tribunal found that the requirement for special commendation was not disclosed in the advertisement and was something that the Post Processing unit came up with on its own. By not making it a requirement in the advertisement and by not disclosing the reasons for such commendation, the Ministry had predetermined that Mr. Mubarak Inayat Shah be promoted and that the allocation of points for special commendation was designed to eliminate the grievor from the promotion.
32. It went onto further find that the selection criteria was not made known to the grievor and as such he was not aware that by getting some commendation he would have been allocated 8 points. The Ministry failed to explain the basic requirements as to how this commendation issue operated and who qualified to give the commendations.
33. The second basis on which Mr. Mubarak Inayat Shah was given more points was for his rural service. He was allocated 2 points when the grievor was not allocated any points for serving in the rural district. The Tribunal found that the grievor had served Wairabatia Muslim Primary School. It found that the witnesses of the Ministry being the Director of Human Resources Mr. Eroni Loganimoce and the Assistant Manager of the Post Processing Unit refused to acknowledge that Wairabatia Muslim School comes under the rural classification and have misled the Tribunal.

34. The Tribunal stated that the grievor was not awarded any points in the category of experience and exposure. There are no reasons granted for that. It is undisputed that the grievor is better placed in terms of experience and exposure than Mr. Mubarak Inayat Shah but that was not recognized even though he has acted on the post and is much senior in terms of substantive grade. Why was the grievor not given the maximum points for his seniority? The Tribunal said that the grievor had joined service on 2/01/1990 and Mr. Mubarak Inayat Shah had joined service on 21/01/1992. After joining the service, Mr. Mubarak Inayat Shah had broken service for 2 years. Due to that, the Tribunal found that the grievor had 4 additional years of service which was not taken into account and both of them were allocated same points.
35. By not allocating maximum points to the grievor for the number of years of service and the substantive grade, the Ministry disadvantaged the grievor in terms of the total points allocated.
36. It stated that based on the facts and evidence available it finds that in making an assessment of who is the most suitable candidate for the position, the Ministry had failed to either award points or in some cases failed to award maximum points to the grievor and when questioned during the hearing, the witnesses misled the Tribunal and were on the verge of committing perjury.
37. The Tribunal said that it does not have anything against the matrix system but when a Manager using it deliberately distorts data and information, then the traditional open interview is the only way to make appointments to advertised positions.

Grounds of Appeal

38. Aggrieved at the findings of the Tribunal, the Ministry appeals the decision on the grounds that it has erred in law and in fact in:
1. *Ordering that the grievor be promoted to the position of Head Teacher and be paid the difference in salaries from 06 October 2015 without considering that:*
 - a. *Pursuant to section 127(7) of the Constitution of Fiji, the authority to appoint its employees is vested in the Permanent Secretary of the Ministry.*

- b. *By granting the order, the Tribunal usurped the authority vested in the Ministry.*
 - c. *That the Permanent Secretaries have the authority to determine all matters pertaining to the employment of all staff of the Ministry, including the qualification requirements for appointment and the process to be followed for any appointment, such as the automated matrix system.*
2. *Failing to acknowledge that all the other applicants for the position of Head Teacher at Ahmadiya Muslim Primary School were also subject to determination of their applications by the matrix process.*
 3. *Overlooking that the grievor was not the next eligible candidate, even if the commendation factor was not taken into account.*
 4. *Holding that the grievor had been discriminated against only on the grievor's subjective view.*
 5. *Holding that the grievor was not aware of the commendation feature.*
 6. *Holding that the promotion was predetermined and the points were allocated to eliminate the grievor.*
 7. *Holding that the Manager deliberately distorted data and information in the matrix system.*
 8. *Failing to acknowledge that the grievor obtained his degree after he applied for the promotion.*
 9. *In holding that seniority in terms of years of service should qualify the grievor for the promotion.*
 10. *In holding that the interview was the only way to ensure competitive and transparent process of recruitment.*

11. In holding that the matrix together with the 3 stage selection process was not a fair and competitive process of recruitment.

12. In holding that the Ministry had deviated from the terms of the advertisement.

Analysis

39. The first issue that I need to answer is that of the Tribunal usurping its powers by ordering that the grievor be promoted and paid the salary from 6 October 2015. The issues before the Tribunal were whether the employer had failed to use an open, fair, transparent and proper method of selection for the person best suited for the position of the Head Teacher of the subject school and whether the grievor had been discriminated against or unfairly disadvantaged by the selection process.
40. In reference to the particular facts of this case and specifically on the matrix system used by the Ministry to make the appointments, I must say that there was clear evidence before the Tribunal that the grievor was not immediately behind Mr. Mubarak Inayat Shah in terms of allocation of the points. There were so many other candidates with higher points than the grievor.
41. There was no evidence before the Tribunal to compare and contrast the allocation of points in respect of other candidates. There was in fact no evidence led on other candidates. By ordering the grievor to be promoted, the Tribunal overlooked the basic fundamental principle that it did not have to take over the powers and authority of the Ministry.
42. If the Tribunal found that there was any discrimination against the employee for any reason or that the process of selection was not open, fair, and transparent in any way then the matter ought to have been sent back to the Ministry with a direction to make a fresh assessment of the applications. Even if the grievor was reassessed by the Ministry to be better placed than Mr. Mubarak Inayat Shah, it would still have to be assessed whether the grievor qualifies to be promoted as there are other applicant's way ahead of the grievor.

43. In that regard, the dispute was not only between Mr. Mubarak Inayat Shah and the grievor that the Tribunal could issue such orders. Other candidates will be affected if the grievor were to be appointed. The Tribunal erroneously disregarded the interests of other candidates and proceeded to take over the powers of the employer.
44. I proceed next to the issue of allocation of points to the two candidates. The first concern of the Tribunal was that the grievor was not allocated the maximum points for both the basic qualification and the substantive grade. Let me discuss about the relevant basic qualification first. Both the grievor and Mr. Mubarak Inayat Shah had ED4C as the basic qualification. Both were allocated 6 points. The Tribunal's concern was why the grievor was not allocated the maximum points. If the grievor was entitled to the maximum points then so was Mr. Mubarak Inayat Shah as both of them had ED4C as the basic qualification. It would make no difference to the final results if both of them were allocated the same points. There is no discrimination shown against the grievor in this regard.
45. On the issue of substantive grade, Mr. Mubarak Inayat Shah possessed ED8A and the grievor had ED6D. The grievor was allocated 4 points and Mr. Mubarak Inayat Shah was allocated 2 points. There is no discrimination shown here as the grievor got more points for having a higher substantive grade.
46. Now to further qualifications. Neither the grievor nor Mr. Mubarak Inayat Shah received any points for further qualifications. The grievor said in his evidence that he had obtained a degree and based on that the Tribunal found that he was better qualified than Mr. Mubarak Inayat Shah. I find that in this respect the uncontroverted evidence of the employer was not taken into consideration by the Tribunal.
47. The Director of the Human Resources Management gave clear evidence that at the time the application was processed, the grievor had not attained the degree. He was still pursuing the same.
48. The Director further clarified that the grievor had tendered his Curriculum Vitae ("CV") to the Tribunal. I could not find that in the records but since the testimony is not challenged it is

important to give weight to the same. The Director testified that the CV of the grievor showed that he qualified with Bachelor of Education Primary in December 2015 and since the post was processed and filled before that date, the Ministry could not have taken into account that qualification.

49. The grievor has not tendered to the Tribunal his certificate of the qualification identifying what he was qualified with and when he qualified with the same. As a result, it is improper to make speculations that the Ministry was aware about the qualification and deliberately did not allocate points for additional qualification thus discriminating the grievor.
50. The Tribunal unfairly expected the Ministry to have taken into account the qualification when the grievor was not bestowed with one at that point in time. Yes, he was pursuing the Degree but he had not attained the same. Anything could have gone wrong and if the grievor was given credit for what he had not attained than he would receive an unfair advantage over the others. That would then amount to discrimination.
51. The next aspect which the Tribunal found concerning was the issue of allocating points to Mr. Mubarak Inayat Shah for having special commendation from the Director Primary. It was found by the Tribunal that this was neither a requirement in the advertisement nor something that was made known to the grievor and by considering that factor, the grievor was unfairly disadvantaged.
52. The Director of Human Resources testified that special commendation was required under the advertisement. He says that it appears under the topic "Duties". He said that the advertisement was in the following terms:
- "To administer and ED4C primary school, offer professional guidance to staff and teach, liaise with the school committee, parents and Ministry of Education staff. The appointee should be able to contribute towards the cultural and social life of the school and supervise the teaching of the appropriate vernacular language".*
53. The Director continued that the requirement was compounded although it was not specifically stated.

54. Before I turn to whether the grievor was aware of the fact that he needed to have commendation from the Director Primary, I wish to address the issue of reports from superiors and the issue of confidentiality. I find that it was not for the applicants to seek any commendation but for the Directors to provide one to those applicants who are thought to best suit the position and are able to work at a required level. This report comes from the Director on his own accord. The applicants should not ask him for a report. Not everyone who seeks commendation will be given one. To a large extent that commendation process is an internal reporting matter and does not need to be divulged to the applicants to avoid personal and professional clashes.

55. If a person challenges the selection process, the propriety of the commendation can come under scrutiny. The only instance in which the commendation can be challenged is if a conflict of interest, bias, unfairness, favoritism, nepotism or the likes are alleged.

56. I refer to Regulation 5 (2) of the Public Service Act and Regulation, 1999 which states that the assessment must focus on the relative capacity of the candidate to perform the duties. I find this requirement to impose an obligation on a senior person in the discipline to provide a report on the person's capacity. There was nothing untoward about the Director's recommendation to Mr. Mubarak Inayat Shah to be the suitable candidate. There is no evidence of improper conduct on the Director's part in favoring Mr. Mubarak Inayat Shah and as such the commendation cannot be impeached.

57. Notwithstanding my views, I will deal with whether the grievor knew about the commendation requirement. I have seen the advertisement and the requirements of Regulation 5 of the Public Service Act and Regulations 1999. Part 2. Specially, the latter states that the following aspects may be taken into account:

1. *skills and abilities;*
2. *qualification, training and competencies;*
3. *standard of work performance;*
4. *capacity to perform at the level required;*
5. *demonstrated potential for further development; and*
6. *ability to contribute to team performance.*

58. The grievor is aware of the above Regulation as he is the one who has alleged breach of that. The above requirements of the law clearly indicates that a report from someone is required. The applicant should then have sought clarification on whether he must produce relevant references or reports to indicate that he or she has the skills and abilities to work at the position. If he had sought the clarification, the Ministry would have informed him of what was expected from him.
59. The Tribunal also stated that the Ministry should have allocated the grievor with points for serving in the rural division. The Ministry has clearly stated that the school which the grievor claims to fall under the rural division is not classified as a rural school. The Tribunal said that this amounts to misleading the Tribunal. I am flabbergasted. The Ministry has its territorial demarcation of which schools are classified as rural schools. If the witnesses said that the subject school was not rural then there was no basis or contradictory evidence to arrive at a finding that the witnesses were trying to mislead the Tribunal.
60. On this aspect, the reliable evidence was given by the Ministry that the subject school does not fall under the rural division. I cannot fathom how this evidence could be properly impeached and it was in fact not impeached. Given that, I do not find that it could be established that the Ministry was biased in not classifying the subject school as rural and allocating points for serving in a rural school. There was no discrimination established.
61. I think it also proper to address the issue of the number of years of service. The work history produced by the Ministry for both the candidates show that they started work as school teachers in 1990. The grievor started on 22 January 1990 as a teacher primary on probation in Ahmadiya Muslim Primary School. Mr. Inayat Shah started work as a temporary trainee teacher primary in Naitasiri Primary School on 06 January 1990. The number of years of service is almost the same. Both of them have served for over 20 years. There is no marked or significant difference in the years of their service for one to get more points than the other. Mr. Inayat Shah has served almost close to 15 schools in various districts compared to 3 schools which the grievor served.

62. On the issue of experience and exposure, neither the grievor nor Mr. Mubarak Inayat Shah were given any points for experience and exposure. None of them had acted as a Head Teacher in the ED4C category. Even though the grievor was acting Head Teacher and Head Teacher Substantive in other categories, Mr. Shah had served in various schools all over Fiji. In that regard, I do not find that the grievor's experience and exposure could be classified as something extraordinary than Mr. Mubarak Inayat Shah to be allocated more points.
63. The Tribunal also stated that the interview for the position was necessary as that was the only way a transparent and competitive system could operate. The Director of Human Resources had explained very clearly in the cross-examination that the interview is not mandatory. It is just a part of the process of recruitment. In this case there was no interview needed as the matrix system indicated the points. Interview will be conducted if there is a tie on points by 5 or few officers. When someone is clearly ahead in terms of the points system, the interview is not necessary.
64. I have no reason to flaw the matrix system. Even the Tribunal said that it has nothing against the system. If the matrix system can clearly indicate that there is no tie in terms of the assessment of the candidates, there is no need for an interview. Interview system is not the only way to select the candidates in the Ministry. It is used as a process if needed and I find the explanation of the Ministry proper that when candidates are selected for the pool, interview system has never been the practice of the Ministry.
65. By choosing one process which was applied uniformly to all the candidates and not conducting the interview does not make the process discriminatory. The matrix system was applied to all the candidates and the same factors were considered for all the candidates. The grievor was not discriminated by considering any factor which was not applied to anyone else.
66. I therefore find that the matrix system was a competitive and an open selection process which was known to the teachers as the Ministry had informed all the Heads of the Schools that it will be applying that. There was no evidence to contradict the evidence of the Ministry in this regard.

67. The Tribunal continuously remarked in its judgment that the promotion in this case was predetermined. There was no basis for this finding. There was evidence that those who allocated the points to Mr. Mubarak Inayat Shah were known to him or that the panel was specifically chosen to suit the agenda of the Ministry.

68. I also turn to the issue where the Tribunal finds that the data in the matrix system was deliberately distorted. There was absolutely no direct or indirect evidence to come to that finding. I have read the transcribed records of the hearing and there is no evidence of any party to suggest that the data was distorted. This is something that the Tribunal came up with to justify its findings that the matrix system was not effective or proper in this instance.

Final Orders

69. I therefore find that the Tribunal erred in arriving at the finding that the grievor was discriminated against when the matrix system was used to fill in the vacancy of the position of the Head Teacher and that the grievor was not fairly allocated points for the factors that ought to have been given consideration.

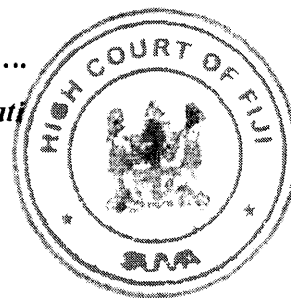
70. I find that the Tribunal erred in promoting the grievor to the position of the Head Teacher and making orders for payment of the difference in the salary from the date of appointment.

71. I wholly set aside the orders of the Tribunal and order that each party bears their own costs of the appeal proceedings.

.....
Hon. Madam Justice Anjala Wat

Judge

20. 10. 2021



To:

1. *Attorney – General’s Chambers for the Appellant.*
2. *Mr. D. Nair for the Respondent.*
3. *File: ERCA 02 of 2017.*