

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Civil Case No. 46 of 2012

**BETWEEN : ASSIAL ROLLAND & ORS**

First Claimants

**AND: PIO LETINE & ORS**

Second Claimants

**AND: TEACHING SERVICE COMMISSION**

First Defendant

**AND: GOVERNMENT OF THE REPUBLIC OF  
VANUATU**

Second Defendant

Coram: Justice Aru

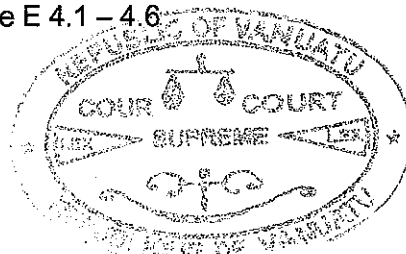
Counsel: Mr. W. Kapalu for the Claimants

Mr F. Gilu for the First and Second Defendants

**JUDGMENT**

**Background**

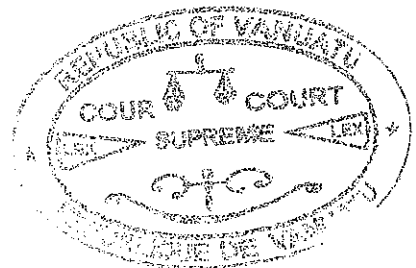
1. The Government Remuneration Tribunal on 23 November 2005 made a determination outlining the new salary structure and grading for the teaching service. The determination came into effect in January 2006. Under the new structure, secondary teachers including junior secondary teachers were classified under scale E 3.5 – 4.0 and senior secondary teachers were classified under scale E 4.1 – 4.6.



2. The first and second claimants claim to be teachers at the Lycee Louis Antoine de Bouganville (Lycee LAB). In summary the first claimants allege that they have been teaching the senior classes at Lycee LAB but since the Government Remuneration Tribunal (GRT) determination in 2005, they are still paid as secondary teachers (scale 3.5) instead of senior secondary teachers (scale 4.1). Their claim is for the difference in salary backdated to the date the GRT determination came into force which they allege amounts to VT 44,661,526.
3. The second claimants claim that they were teaching senior classes at the Lycee LAB for the whole of 2011 and were never paid salaries. They allege that they are entitled to salaries for that year to be paid in accordance with GRT scale 4.1 and they claim payment in the sum of VT 4,339,440.
4. The relief they seek is payment of the above sums in addition to an order for increase of salary for each claimant in accordance with the GRT determination.
5. Witnesses called by the claimants in support of their claim are Molsir Dominique, Bergman Iati, Pio Letine, Yalita Cedrique and Joel Nirua. The defendants on the other hand called Derek Alexander who is the chairman of the TSC.

#### Issues

6. Counsels have identified the following three issues for determination by the court :
  - Whether or not the first claimants are entitled to be paid according to GRT scale E4.1
  - Whether or not the second claimants are entitled to be paid their salary by the defendants after teaching senior secondary classes at Lycee LAB for a year
  - Whether or not the claim is statute barred



## Laws

### • TEACHING SERVICE ACT [CAP 171]

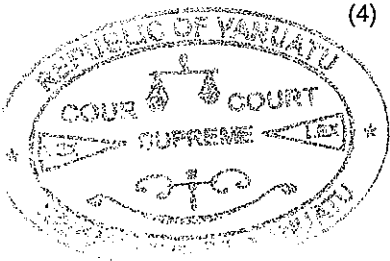
7. The Teaching Service Commission (TSC) being the first defendant is the authority established under the TSC Act [CAP 171] with the responsibility to oversee the teaching services. Section 5 sets out its functions as follows :

- "(1) The functions of the Commission are –
- (a) to make officers and employees available to the Minister for the performance of educational duties; and
  - (b) such other functions as are conferred on it by this Act.
- (2) Subject to this Act, the Commission shall make available to the Minister for the performance of educational duties such number of officers and employees, possessing such qualifications, as the Minister requires."

8. The TSC is empowered by s. 11 to appoint teachers to perform teaching duties and it states :

#### "11. Appointment of officers

- (1) Subject to this section, the Commission may appoint to the Service as officers to perform educational duties such number of persons as the Minister, after receiving a report from the Commission, determines.
- (2) A person shall not be appointed as an officer unless –
  - (a) he has such qualifications as are determined by the Commission;
  - (b) he is, in the opinion of the Commission, healthy and physically fit; and
  - (c) he is, in the opinion of the Commission, a fit and proper person to be an officer.
- (3) Subject to this Act, officers hold office on such terms and conditions as the Commission from time to time determines.
- (4) The Commission shall not determine terms and conditions of employment in respect of transferred officers that are less favourable than the terms and conditions of employment enjoyed by such officers under any Government service at the time of their transfer.



9. Prior to 2005, any teacher appointed pursuant to the Act is entitled to be paid in line with the salary scale and increments stipulated in Annex 1 clause (1) and (2) of the Teaching Service Staff Rules. This salary scale was reviewed which resulted in the GRT determination issued in 2005.

10. Section 12 requires that any available position in the teaching service must be advertised and such advertisement must specify where applicable, the age limitations for such appointments and qualifications required. Similarly where vacancies occur s 20 requires that :

“(3) The Commission may determine that a position or class of positions is to be filled by an officer or officers who possesses or possess qualifications specified in the determination and, where the Commission has so determined, an officer shall not be allocated, transferred or promoted to the position or a position in the class of positions, as the case may be, unless he possesses those qualifications.”

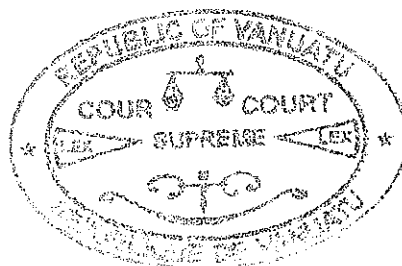
11. Vacancies may be filled by way of promotions which must be in line with the criteria set out in s 22 as follows:

“(1) In the selection of an officer for promotion under section 20(1), consideration shall be given only to the relative efficiency of the officers available for promotion.

(2) For the purposes of this section, "efficiency" means suitability for the discharge of the duties of the kind to be performed by the person selected, having regard to –

- (a) aptitude for the discharge of those duties;
- (b) relevant experience and qualifications;
- (c) training, including formal training;
- (d) capacity for development; and
- (e) relevant personal qualities.”

12. Finally , in relation to recruitment and promotion of teachers , s 26 of the Act places a duty on the TSC to:



"... develop recruitment and promotion procedures not inconsistent with this Act, being procedures for the careful assessment of personal qualifications and capabilities that are likely to contribute to the efficient working of the Service and that preclude patronage, favouritism and unjustified discrimination."

13. In summary, the functions of the TSC is to make available to the Minister of Education teachers to teach who posses qualifications to meet the teaching requirements set by the Minister. Such qualifications must be relevant for teaching positions be they at primary, junior secondary or senior secondary school level. This is the scheme that applies to appointments, advertisement of teaching positions, vacancies and promotions of teachers.

• GOVERNMENT REMUNERATION TRIBUNAL ACT [CAP 250]

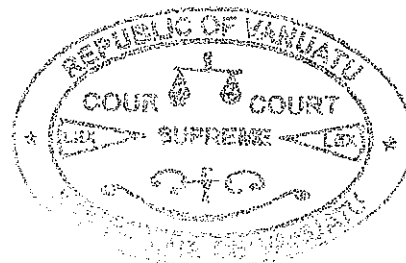
14. The purpose of the Act is to establish the GRT as set out in s 1 which will consider and determine the maximum remuneration payable to those persons employed by or appointed to positions by the Government or by an agency of Government.

15. Section 14 provides for the implementation of the GRT determinations and provides :

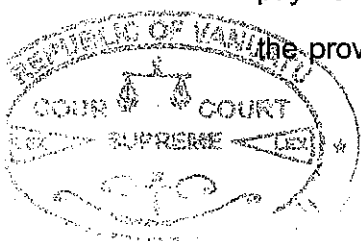
"Every determination of the Tribunal fixing a rate or rates of remuneration shall have effect according to its tenor, and notwithstanding any provision in any other enactment, no order will be required to give effect to that determination."

**WHETHER OR NOT THE FIRST CLAIMANTS ARE ENTITLED TO BE PAID ACCORDING TO GRT SCALE E 4.1**

16. Molsir Dominique at paragraph 3 of his sworn statement says that the first claimants have taught at the Lycee LAB for a number of years as senior secondary teachers teaching year 11 to 14 but were receiving the salary of junior secondary teachers. He provided a list of teachers, number of years taught, name of school and total outstanding salary annexed as Annexure "MD1". The total claimed as outstanding salary was VT 44,661,526.



17. Under cross examination he admitted that the Annexure "MD1" table and the calculations were done by the claimants themselves.
18. There is no evidence of the first claimants actual salary or salary grade or even salary slips. Further more, Molsir Dominique confirmed that he does not have a degree or a diploma qualification .
19. Derek Alexander at paragraph 4 and 7 of his sworn statement states that except for Garae Violetta, Leingkone Lavinia, Malvirani Azaria , Tamata Yollande and Tevanu Fabrice who are senior secondary teachers paid on salary scale E 4.1, the first claimants have been appointed as secondary teachers . Under cross examination he confirmed that a lot of the first claimants are teaching junior secondary and that teachers teaching junior secondary are those teaching year 7 to 10.
20. As secondary teachers their salary scale ranges from E 3.5 to 4.0 according to the GRT determination.
21. The scheme of the Act is that one is appointed to a position on merit requiring qualification and experience. Once the GRT determination became effective, teachers on the old salary scale should receive salaries as determined by the GRT corresponding to their salary scale. For the first claimants to become entitled, they need firstly to show that before the GRT determination, they were appointed as senior secondary teachers and secondly they were being remunerated as senior secondary teachers.
22. There was no evidence before the court to that effect. Therefore apart from those confirmed as senior secondary teachers the first claimants cannot claim entitlement to payment according to GRT scale E4.1. To suggest that s 14 of the GRT Act overrides the provisions of the TSC Act when they were not so appointed as senior secondary



teachers is wrong as all appointments must comply with the provisions and criteria set by the TSC Act .

23. This issue must therefore be answered in the negative.

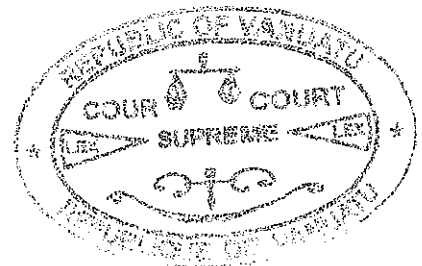
**WHETHER OR NOT THE SECOND CLAIMANTS ARE ENTITLED TO BE PAID THEIR SALARY BY THE DEFENDANTS AFTER TEACHING SENIOR SECONDARY CLASSES AT LYCEE LAB FOR A YEAR**

24. It was submitted by counsel that the second claimants have rendered their services by teaching senior secondary at Lycee LAB in 2011 without being paid any salary and they were advanced funds by the school to be refunded once their salaries were paid by the Defendants. They rely on an alleged assurance given to them by the Director of Education. Bergman Iati said he was in a meeting where the assurance was made. Under cross examination he denied having any written minutes of that meeting and did not produce any evidence of that meeting which he said he had.

25. Derek Alexander said the second claimants were appointed by Lycee LAB and not the TSC. Furthermore, he said he was aware of a meeting between the Director and the second claimants but had no record of it and nothing in writing was sent to the TSC.

26. Pio Letine , Cedrique Yalita , and Joel Nirua all confirmed when cross examined that in 2011 they were not appointed by the TSC. The TSC can only be liable for their salaries if it had appointed the second claimants under the provisions of the TSC Act and more specifically pursuant to s 11 of the Act. In the absence of any evidence to that effect, the second claimants lack standing to pursue their claim against the defendants for their 2011 salaries.

27. The second issue must also be answered in the negative.

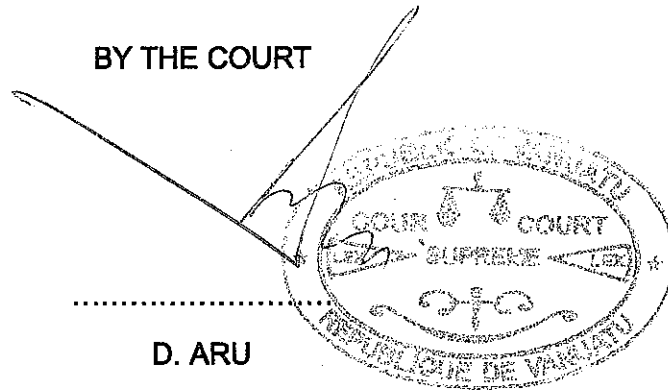


**WHETHER OR NOT THE CLAIM IS STATUTE BARRED**

28. The answer to this question depends on whether or not the claimants are entitled to make such a claim.
29. Given my answers to the above two issues, the question of whether or not the claim is statute barred is no longer relevant as the claimants have not established a basis to make their claim in the first place.
30. The claim is misconceived therefore it must be dismissed. The defendants are entitled to their costs on a standard basis to be taxed failing agreement.

DATED at Port Vila, this 27 day of August, 2014

BY THE COURT



D. ARU

Judge