

REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN

PUBLIC REPORT
ON THE
UNLAWFUL TERMINATION OF A
SECONDARY TEACHER BY THE
TEACHING SERVICE COMMISSION

06.12.2000

9125/2000/08

**PUBLIC REPORT ON THE
UNLAWFUL TERMINATION OF A SECONDARY TEACHER BY THE TEACHING
SERVICE COMMISSION.**

PREAMBLE

"AUDI ALTERAM PARTEM " (Everyone has the right to be heard)

It is a basic principle of natural justice and administrative fairness that every individual has the right to know the charges against him and to have the opportunity to respond to those charges. This is particularly true of matters affecting a person's profession or livelihood.

SUMMARY

In November 1998, **Mr. P** lodged a formal complaint to the Office of the Ombudsman alleging that his termination by the Teaching Service was unlawful. **Mr. P** is a French speaking teacher who had served the Teaching Service since 1987.

In 1989 he was appointed under section 11 of the Teaching Service Act (**the Act**) as a permanent teacher to teach at the Primary level. In 1994, he was posted to teach at Rensarie Junior Secondary school on a one year temporary appointment by Mr. Romain Batick, the former Minister of Education. **Mr. P** was appointed on a temporary basis only because he had failed his Secondary Teaching Certificate.

During the school closing ceremonies in November 1994, **Mr. P** was accused of providing alcohol to some students who were involved in its consumption.

Following a report made by Mr. Jean Pierre Bulebanban, the school Principal, the Director General at that time, Mr. George Kuse wrote a letter to the Teaching Service Commission (**theTSC**) recommending that they suspend **Mr. P** .

As a result of this recommendation, **Mr. P** was not given a posting in 1995. He was never formally suspended, nor disciplined, nor given an opportunity to respond to the allegations made against him. The **TSC** did not even provide notice of his suspension or termination. The only further communication he had from the **TSC** was in 1997 when he received his retirement letter from them.

It is recommended that:

Recommendation 1: The TSC should apologize to Mr. P following his unlawful termination.

Recommendation 2: The TSC should re-instate him to the teaching service at the primary level.

Recommendation 3: The TSC should compensate Mr. P from the beginning of 1995 until the end of 1997 for the stress and inconvenience caused to him and his family.

Recommendation 4: The **TSC** should obtain the services of a legal counsel to advise it with respect to all suspensions, terminations and disciplinary procedures to ensure that it follows the relevant laws and the principles of natural justice.

The full text of the relevant laws and regulations can be found in the Appendices of this public report.

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1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government, related bodies, and leaders. The Ombudsman can also look into defects in laws or administrative practice, including the improper termination of Mr. P. by the TSC.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 This report discloses the events related to the alleged unlawful termination of a teacher by the TSC.
- 2.2 The report sets out the information obtained in the Ombudsman's investigation. It includes the Ombudsman's findings and recommendations into the alleged unlawful termination of Mr. P. as prescribed under the Constitution, the Ombudsman Act and the Leadership Code.

3. RELEVANT LAWS, REGULATIONS AND RULES

- 3.1 The statutory provisions relevant to this report are attached as **Appendix H** at the end of this report.
- 3.2 The Teaching Service Act (Cap 171) provides for the appointment and suspension of teachers. The Act also sets out the procedures that the TSC should follow when suspending any Officer from the Teaching Service.
- 3.3 The Act further provides that both the Minister of Education and the TSC have a duty to decide on the suspension or termination of any teacher. The teacher must be informed of the nature of the disciplinary action and be given an opportunity to respond to the allegations.

4. OUTLINE OF EVENTS

- 4.1 Mr. P is a French speaking teacher. He commenced his teaching service in 1987 when he was appointed for a probationary period of one year. See his letter of probationary appointment attached as **Appendix A**.
- 4.2 In 1989, he was appointed under section 11 of the Act to teach at the primary level. His letter of appointment is attached as **Appendix B**.
- 4.3 1991-1993: He enrolled in a two-year course at the Lycée Louis Antoine de Bougainville to obtain a Secondary Teaching Certificate.
- 4.4 Although he failed his course in secondary teaching, he was given an opportunity to teach on a temporary basis at Rensarie Junior Secondary School for a probationary period of one year. See his letter of appointment in **Appendix C**.
- 4.5 It is alleged that at the end of the school closing ceremonies in November 1994, Mr. P provided and consumed alcohol with some students.
- 4.6 The principal of the school, Mr. Jean Pierre Bulebanban reported the incident to the Director of Education at that time, Mr. George Kuse. See **Appendix D**.
- 4.7 Mr. Kuse then wrote to the TSC, recommending that the Commission terminate Mr. P. See **Appendix E**.

- 4.8 As a result of this letter, **Mr. P** was not given a teaching post in 1995. He was also not notified of his termination. **Mr. P** wrote a letter to the **TSC** giving them a full explanation of the allegations in Mr. Jean Pierre Bulebanban's report. However, he did not receive a response from the **TSC**.
- 4.9 On 13 November 1998 **Mr. P** lodged a formal complaint to the Office of the Ombudsman to investigate the validity of his termination from the Teaching Service.
- 4.10 Upon receiving a complaint from **Mr. P**, the Ombudsman's Office undertook a preliminary investigation into the matter.
- 4.11 On 9 December 1999, the Ombudsman requested that the **TSC** explain why **Mr. P** was not given a teaching post in 1995.
- 4.12 Mr. Christopher Karu, the Secretary General of the **TSC** confirmed to the Ombudsman at this Office on 09 March 1999 that **Mr. P** was appointed on a temporary basis for one year. He was terminated from the Teaching Service following the incident that occurred in November 1994 when he introduced alcohol into the school at the end of the school closing ceremonies.
- 4.13 The **TSC** did not inform **Mr. P** of the allegations made against him, which deprived him of an opportunity to respond as required under section 35(2) of the Act.
- 4.14 On 4 August 1999, the Ombudsman wrote to Mr. Kuse. As the former Director General of Education Mr. Kuse had recommended that the **TSC** terminate **Mr. P** after he received the report from the Principal of the school.
- 4.15 In his response to the Ombudsman's letter, Mr. Kuse pointed out that **Mr. P** is wellknown to him. In addition, because he was aware of **Mr. P's** past teaching background, it was his duty as the Director General of Education to recommend his termination from the Teaching Service. He also confirmed in his letter that **Mr. P's** position at the Primary level is still valid following his appointment letter of 1989.

It is noted that **Mr. P** wrote to the **TSC** on 20 October 1999, requesting a vacant post in the primary level. A copy of this letter is attached as **Appendix "F"**. However, the **TSC** did not respond to his request.

- 4.16 On 4 August 1999, the Ombudsman also sent a letter to the **TSC** asking it to outline the basis of its decision and to discuss whether the matter could be solved internally without proceeding to a report stage. To date, the **TSC** has not responded to the Ombudsman's letter. A copy of this letter is attached as **Appendix "G"**.

4.17 Members of the Teaching Service Commission

Members of the **TSC** at the time of **Mr P's** termination were:

Chairman:	-	Edward Melsul
Members:	-	William Mael
	-	Franklyne Kere
	-	Jacques Nauka
	-	Etienne Kombe
Executive Secretary:		Christopher Karu

5. RESPONSES

5.1 A working paper on this investigation was sent to the following people for their responses and comments:

- All members of the **TSC** as outlined in paragraph 4.15.
- Mr. George Kuse.
- Mr. Jean Pierre Bulebanban.
- The Assistant Minister of Education, Mr Willie Posen.
- The Director General, Mr George Andrews.
- The Secretary of the **TSC**, Mr Christopher Karu.

The Ombudsman did not receive a response from any of the above individuals.

6. PRELIMINARY FINDINGS

Finding 1: The statement made by Mr. Christopher Karu was incorrect and did not take into consideration provisions of the Act.

The Ombudsman considered Mr. Karu's statement that **Mr. P's** appointment was only on a temporary basis for one year and concluded that his statement was wrong. **Mr. P's** permanent appointment as a primary school teacher was made under section 11 of the Act. The reference to a temporary one year appointment was only in relation to the probationary term for the position at Rensarie Junior Secondary School made under section 13 of the Act.

Finding 2: The action of the TSC to terminate Mr. P based on the school report of Rensarie Junior School was unfair and violated section 35 of the Act.

The **TSC** did not act fairly or according to law when it terminated **Mr. P**. The **TSC** did not inform **Mr. P** of the report from the Principal of Rensarie Junior Secondary School or of the allegations made against him. This deprived him of an opportunity to respond to the allegations as required under section 35(2) of the Act. Therefore, the action of the **TSC** was not lawful.

Finding 3: The Teaching Service Commission failed to follow the law when suspending Mr. P's salary.

The **TSC** acted contrary to law by suspending **Mr P's** salary at the beginning of 1995. Suspension of salary can only occur following an enquiry by the Commission under the procedures set out in Part VI of the Act. In this case the procedures were not followed by the **TSC**. Furthermore, **Mr. P** was not informed that he would not receive a teaching post, or that his salary was suspended. He was not even informed that he was suspended or terminated. He was not advised of any charges against him, nor given an opportunity to defend himself against any charges.

Finding 4: The Teaching Service Commission acted unlawfully by retiring Mr. P in December 1996

The **TSC 's** conduct was contrary to law and unjust, by purporting to retire **Mr. P** in December 1996, retroactive to the beginning of 1995. This was an attempt by the **TSC** to justify the fact that **Mr. P** had not been suspended or terminated according to procedures established by law. In fact, **Mr. P** was continuously employed in the Teaching Service for over 3 years, and was therefore entitled to a minimum of 3 months notice of termination under the Employment Act. The early retirement could not take effect before August 1997, after 3 months notice had been given to **Mr. P**.

Finding 5: The Teaching Service Commission authorised an improper payment of Mr. P's severance entitlement

The TSC's conduct was unjust and contrary to its own rules by underpaying Mr. P's severance entitlement upon retirement. Since the retirement could not lawfully become effective until August 1997 Mr. P should have received accumulated leave and one month's pay for each year of service from 1995 to 1997.

7. RECOMMENDATIONS

- Recommendation 1:** The TSC should apologize to Mr. P following his unlawful termination.
- Recommendation 2:** The TSC should reinstate him to the teaching service at the primary level in line with his appointment letter of 1987.
- Recommendation 3:** The TSC should compensate Mr. P from the beginning of 1995 until the end of 1997 for the stress and inconvenience caused to him and his family.
- Recommendation 4:** The TSC should obtain the services of a legal counsel to advise it with respect to all suspensions, terminations, and disciplinary procedures it is required to follow by law. This will help to ensure that it follows the basic principles of natural justice and its own enabling legislation.

Dated the 6th day of December 2000.



Hannington G. ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

- A. Appointment of 1987
- B. Appointment letter of 1989
- C. Appointment letter of 1994
- D. Copy of the report from the Principal of the School
- E. Recommendation letter from Mr. George Kuse to the TSC.
- F. Letter from Mr. "P" to the TSC requesting vacant posting of 2000.
- G. Copy of Ombudsman letter to the TSC.
- H. Relevant Law and Regulations



Please address reply to
The Chairman

"A"

Adresser la réponse au
President

In reply, please quote
TSC/

En réponse prière rappeler
TSC/

23 February 1987

Dear

LETTER OF PROBATIONARY APPOINTMENT

I am directed by the Teaching Service Commission to offer you an appointment on probationary terms and conditions effective from 29th January 1987.

2. The post to which you are appointed is in Category ~~75%~~ X.E2.1. of the Teaching Service Salary Scales as provided in the Teaching Service Staff Rules.

3. The terms and conditions of your appointment to the Vanuatu Teaching Service are provided for under Part 3 Section 11 of the Teaching Service Act No. 15 of 1983 and any other terms and conditions as may be instructed by the Teaching Service Commission.

4. The probationary terms and conditions are not permanent terms of service, however, appropriate provisions of the Teaching Service Act No. 15 of 1983 will apply to you. Your probationary appointment is for a period of one year after which you may be recommended for permanent appointment.

5. Under these probationary terms and conditions you may terminate your engagement by giving three months notice or three months salary in lieu of notice to the Commission.

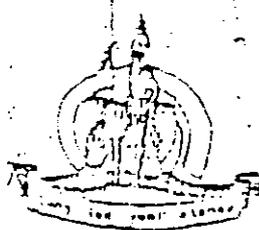
6. You may be called upon to perform your duties in any place in the Republic.

7. If you accept this offer of appointment on probationary terms and conditions, would you please sign all copies of the acceptance below and return two copies to the Director General of Education, Ministry of Education and Sports, P O Box 153, Vila.

Yours faithfully


Chairman
Teaching Service Commission

cc: Accountant General
Auditor General
SF



Please address reply to -
The Chairman

Adresser la réponse au
Président

In reply, please quote
TSC/

In réponse prière renvoyer
TSC/

M. *P*
Ecole Catholique de VAC

31/07/89

CONFIRMATION DE NOMINATION A TITRE PERMANENT

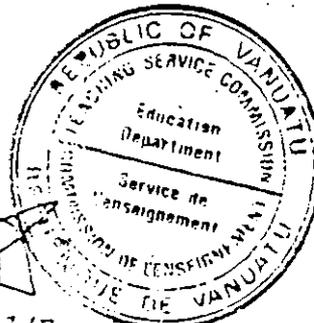
Conformément aux dispositions de la Section 33 (d) (a) du Règlement du Personnel du Service de l'Enseignement, article 10 de 1983, j'ai le plaisir de porter à votre connaissance que la Commission de l'Enseignement a confirmé votre nomination à titre permanent auprès du Service de l'Enseignement à compter du 30 Juin 1989.

Vous serez soumis aux mêmes conditions et termes de contrat que ceux décrits dans votre avis de nomination original en date du 1/07/87 et ce jusqu'à ce que de nouveaux termes et conditions soient déterminés par la Commission de l'Enseignement conformément à la loi.

Nous espérons que vous accomplirez vos fonctions au maximum de vos capacités et de vos compétences. L'avenir du pays est entre vos mains et la Commission de l'Enseignement saisit cette occasion de vous souhaiter tout le succès possible dans votre carrière de fonctionnaire au Service de l'Enseignement du Vanuatu.

Veillez agréer, M. *P* nos salutations distinguées.

M. Nganga
MERO NGANGA
Président
Commission de l'Enseignement



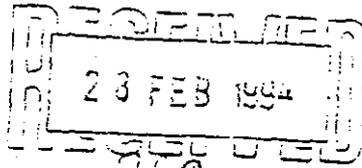
- CC : - Monsieur le Directeur de l'Administration, Finance et Personnel
- Monsieur le Directeur de l'Enseignement Primaire



MINISTÈRE DE L'ÉDUCATION

MINISTRY OF EDUCATION

Our Ref: ME/CAB/204/1



Date: 25th February 1994

Dear

TEMPORARY APPOINTMENT TO TEACHING SERVICE

I am pleased to offer you an appointment on temporary terms and conditions in the Teaching Service of the Vanuatu Government effective from 28th February 1994.

The post you are appointed to is in Category E 372 an annual Salary of VT 508,208 plus VT 51,000 being living allowance per year of the Vanuatu Teaching Service Salary Scales as approved and implemented by the Teaching Service Commission.

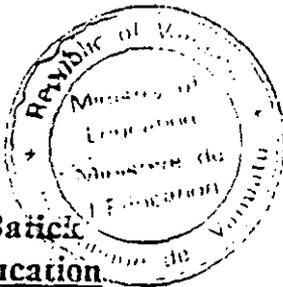
Your appointment as an employee is subject to section 14 of the Teaching Service Act No 15 of 1983 and any additional terms and conditions as may be determined by the Teaching Service Commission.

Your appointment is offered on temporary basis and it may be terminated by you, giving one month's notice or one month's salary in lieu of notice to the Commission.

You are advised that during your period of service you may be called to perform educational duties in any place in the Republic.

If you accept this appointment please complete the attached form and return it to the first Secretary Education Cabinet P.M.B 028 VILA.

Yours faithfully.



Hon. Romain Batick
Minister of Education

- cc: Director General of Education
- cc: Chairman of Teaching Service Commission
- cc: PEO Primary Education
- cc: Personal file.

Recu 5/12/94

RENSARIE J.S.S.

"D"

BP 01 NORSUP
MALLICOLO

Le 18.11.94

RAPPORT DE MONSIEUR

Le jeudi 10 Novembre, les élèves des dixièmes années ont terminé leur examen . L'école a organisé un repas d'adieu après lequel les élèves devraient quitter l'établissement .

Un professeur nommé "P", originaire d'Unmet sur Mallicolo, était le seul professeur à ne pas participer à ce repas . Il est resté chez lui. Après le repas, certains élèves sont partis sur des voitures qui les attendaient mais d'autres n'ont pas voulu partir et se sont retrouvés chez , garçons et filles qui leur a servi à boire . Les élèves sont devenus souls. L'administration de l'école a essayé de les faire partir mais le professeur en question les a empêchés de quitter l'établissement. L'administration a prévenu la police qui est arrivée à l'école et a emmené Gildas et cinq élèves . Les autres se sont enfuis . Ils ont passé une nuit à la prison de Lakatoro . Elle les a ramenés à l'école le lendemain .

Monsieur "P" est un professeur temporaire qui a été placé à Rensarie depuis le mois de Mars par suite à la grève des professeurs. Mais le fait qu'il procure de la boisson alcoolisée aux élèves, l'administration de l'établissement n'accepte plus ce professeur à Rensarie . Je vous demande de le transférer ailleurs au cas où vous encore le reprendre l'année prochaine .



BULLE CALEVA an-Pierre

GOUVERNEMENT
DE LA RÉPUBLIQUE DE
VANUATU

GOVERNMENT
OF THE REPUBLIC OF
VANUATU



Department of Education
Private Mail Bag 028
Port Vila

Département de l'Éducation
Sac Postal Réservé 028
Port Vila

Téléphone : 22309

Téléphone : 22309

Port-Vila, le 3 décembre 1994

EDUC.433/85/GK:ar

A Monsieur le Président de la Commission
de l'Enseignement

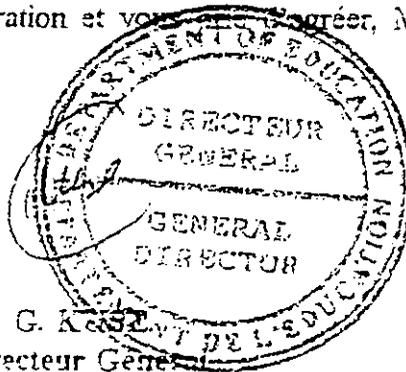
OBJET : Recommandation de cessation de fonction

Monsieur,

J'ai l'honneur de vous soumettre le cas d'un enseignant temporaire à l'école secondaire de Rensarie. Il s'agit de Monsieur [redacted] qui était nommé par la Commission à titre temporaire.

Suite à un rapport émanant de la Direction de cet établissement que celui-ci ne semble pas coopératif et abuse de sa compétence pour souler quelques élèves de Rensarie. Je vous demande que cet enseignant cesse ses fonctions au 31 décembre 1994.

Je vous remercie de votre collaboration et vous prie d'agréer, Monsieur, l'expression de mes salutations distinguées.



G. Kessell
Directeur Général

Mr P
B.P. 40,
Norsup,
Malekula.

" F " " F "

20 octobre 1999

a: Monsieur Christopher Garu,
Secrétaire de la Commission de l'Enseignement,
Ministère de l'Education.

OBJET: Demande de poste d'Instituteur dans une école
primaire de l'archipel.

Monsieur,

Suite à ma lettre de nomination permanente du 3.7.'89 dans
l'enseignement primaire, je voudrais de nouveau faire une
demande pour avoir un POSTE l'année prochaine, l'année 2000,
dans l'enseignement primaire de Vanuatu.

Je vous demande donc d'avoir la gentillesse de ressortir mon dossier
et le soumettre à la Commission pour son approbation.

En vous remerciant d'avance, Monsieur le Secrétaire, je vous demande
de bien vouloir agréer mes sentiments les plus respectueux.



cc. Directeur Général de l'Education
Directeur du Primaire
Bureau du Médiateur



"G"
Office of the Ombudsman
Bureau du Médiateur
Ofis blong Ombudsman



Our Ref: 5933/9125/L44/wt
(Please quote this reference on all correspondence)

4 August 1999

Mr Willy Tasaruru
Chairman
Teaching Service Commission
PMB 028
PORT VILA

Dear Sir

SUSPENSION OF MR "P"

We are in receipt of a complaint from Mr "P" a secondary school teacher from Ransari Junior Secondary School against the Teaching Service Commission. Mr "P" complains that he was not given a post since 1995 until the beginning of 1997 when he received his retirement letter. His salary was suspended from early 1995.

We have undertaken a preliminary investigation into Mr "P" complaint, and believe that this matter may be effectively resolved with the able assistance of the Teaching Service Commission ("TSC"). The relevant facts are as follows:

1. Mr "P" was appointed as an officer of the Teaching Service in accordance with s. 11 of the Teaching Service Act ("Act"). A copy of his letter of probationary appointment from the TSC, dated 23 February 1987 and permanent appointment effective from 30 June 1989, are attached.
2. Mr Christopher Karu has informed to us during his testimony in this office on 09 March 1999 that Mr "P" appointment was "temporary" and "only for one year". Upon review of the appointment letter, you will see that these statements are wrong. As you know, permanent positions are made under s.11, while temporary positions are made under s.14 of the Act. The reference to one year in the appointment letter is only in relation to the period of probation for permanent officers, which is consistent with s.13 of the Act. Therefore his temporary appointment is only an arrangement made by Teaching Service commission in order to allow Mr "P" to teach in secondary level. But his status to be a permanent officer is still intact. This is consistent with his retirement letter (copy enclosed) which refers to a permanent status.
3. Section 18 of the Act states that officers of the Teaching Service must be given a position. Mr "P" an officer of the Teaching Service, was not given a position in 1995

4. On 08 December 1994, Mr George Kuse who was a Director General of Education at that time wrote to the Chairman of the Teaching Service Commission and recommended him to suspend Mr [redacted] from the teaching service. Mr Kuse made this recommendation on the basis of a school report stating that Mr [redacted] has introduced liquor in school during the end of year of school ceremony in November 1994. A copy of this memo is attached. Mr [redacted] salary was suspended as a result, and has not resumed to date.

5. An officer's salary can be suspended in the course of disciplinary proceedings, either by the Minister (s.32) or by the TSC (s.35). There were no disciplinary proceedings against Mr [redacted], nor was the salary suspension initiated under the relevant conditions or by the Minister or TSC.

6. An officer's salary ceases upon termination of the position. Section 13(3) of the Act allows the TSC to terminate the appointment of an officer on probation, such as Mr [redacted]. The TSC did not terminate his appointment. Salary cannot be suspended prior to proper termination by the TSC. But it appears in this case that Mr [redacted] was never formally suspended, disciplined, never advised of charge against him, never given a formal opportunity to defend himself and not formally retired until 1996. Instead he was simply not given a post and his salary was suspended. He is entitled to 3 months notice before termination of his contract.

As a permanent officer, Mr [redacted] is entitled to his salary in accordance with his employment contract, except as may be provided by law or contract (ie. a suspension or termination as outlined above). It appears that Mr Kuse, through ignorance or negligence, effectively suspended Mr [redacted] from service without lawful authority.

We suggest that the TSC review this matter with a view to reaching a resolution in accordance with the law and the TSC procedures. Specifically, our preliminary recommendations are:

1. TSC to apologise to Mr [redacted] and provide compensation of his full salary from the date of his suspension. This will continued until his appointment is officially terminated in writing with reasons for his suspension, in accordance with s.13 of the Act.
2. TSC to reinstate Mr [redacted] back to teach in Primary level following his permanent appointment .
3. TSC to retain legal counsel to advise it with respect to all suspension, terminations, discipline procedures, etc. to ensure that it follows the relevant law and the principles of natural justice.

As it is apparent that Mr [redacted]'s complaint extends to the TSC since you have ultimate responsibility for the Teaching Service. This letter also serves as notification to you and an opportunity for you to reply to the complaint (in accordance with Article 62(4) of the Constitution).

If you wish, you may request mediation of this complaint. This would ordinarily involve meetings at this Office between yourself and your legal officer, with an Ombudsman mediator, to attempt to resolve the complaint in a fair manner.

"H"

Relevant Laws and Regulations.

TEACHING SERVICE ACT (CAP 171)

Definition of an Officer.

Section (1)

"officer" means a person appointed under section 11(1) as an officer and includes a transferred officer.

Additional Functions And Duties of the Commission

Section 8

Subject to this Act, the Commission shall in respect of the Service be responsible for—

- (e) acting as the personnel authority for the Service . . .

Appointment Of Officers

Section 11

- (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.

Appointments To Be On Probation

Section 13

- (1) Unless the Commission, in a particular case or class of cases, otherwise directs, the appointment of every officer shall be on probation for a period not exceeding 1 year commencing from the date on which the officer commences duty.
- (2) A person appointed as an officer on probation remains on probation until his appointment is confirmed or terminated in accordance with this section.
- (3) The Commission may at any time during the period of the probation of an officer, terminate the appointment of the officer.
- (4) As soon as practicable after the expiration of the period of the probation of an officer, the Commission shall:
 - (a) confirm the appointment of the officer;
 - (b) terminate the appointment of the officer; or
 - (c) direct that the officer continue on probation for such further period, not exceeding one year, as the Commission thinks fit.
- (5) Where, under subsection (4), the Commission directs that an officer continue on probation for a further period, it may confirm or terminate the appointment of the officer at any time during that further period and, if it has not confirmed or terminated the appointment before the expiration of that period, shall do so as soon as practicable after the expiration of that period.
- (6) Where the appointment of an officer is terminated under this section, the Commission shall as soon as practicable, notify the officer in writing of the reasons for the termination.

Employees

Section 14

- (1) Where the Minister so requests, the Commission may engage temporary employees to perform educational duties.

"H"

- (2) Subject to this Act, persons engaged as employees are employed on such terms and conditions as the Commission from time to time determines.
- (3) Notwithstanding the position occupied by an employee, he may perform duties as directed by the Minister.

Allocation Of Officers And Employees To Positions.

Section 18

Where an officer is appointed or an employee is engaged, the Minister shall allocate the officer or the employee to a position.

Tenure

Section 27

- (1) The employment of an officer in the service shall not be terminated except by resignation or retirement as provided by this section or by retirement or dismissal as provided under Part VI of this Act or section 41(3).

(s. 41(3) addresses the procedure for hearing appeals.

Part VI:

Suspension Of An Officer By The Minister.

Section 32:

- (1) If in the opinion of the Minister, an officer-
 - a) is inefficient, incompetent or unfit or unable to perform his duties; or
 - b) is guilty of misconduct,

the Minister may, by notice given to the officer specifying the grounds for suspension, suspend him from the duty for a period not exceeding 1 month.

- (2) Where the Minister suspends an officer -
 - (a) The Minister shall, in writing, immediately inform the Commission of the suspension and the grounds for suspension;
 - (b) the Minister may at any time remove the suspension; and
 - (c) the Minister may determine that the officer shall not be paid his salary during the period of the suspension.

"H"

Disciplinary Action For Misconduct

Section 35:

- 3 Where, after inquiry as directed by the Commission, it is found that an officer has been guilty of misconduct, the Commission may-
 - a) caution or reprimand him,
 - b) if the officer occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the minimum salary of that range - reduce his salary to a lower salary within that range;
 - c) if the officer occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the maximum salary of that range - determine that he shall not be granted, or shall not be granted until the expiration of a specified period, the whole or such part as the Commission specifies, of a specified increase in salary within that range that would otherwise be granted to him;
 - d) reduce him to a lower position and salary; or
 - e) dismiss him from the Service.
- 2) In an inquiry for the purpose of subsection (1), a formal hearing is not required but the officer shall be informed of the nature of the alleged misconduct and be given an opportunity of furnishing a statement in relation to the matters alleged to constitute the misconduct.
- 3) Where-
 - a) an inquiry is being held into the alleged misconduct of an officer; or
 - b) an officer has been charged with having committed an offence against a law of Vanuatu and it appears to the Commission that the act or omission alleged to constitute the offence is such as to constitute misconduct by the officer,

the Commission may suspend an officer from the duty.

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Effect Of Suspension

Section 36:

Where an officer is suspended under section 32(1) or 35(3)-

- a) the period of his suspension shall count as service for all purposes except where the officer is dismissed from the Service because of the same matter for which he was suspended; and
- b) he is entitled to engage in paid employment during any period of suspension without salary.