

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
Judicial Review No. 14 of 1984

R. v. PUBLIC SERVICE APPEALS BOARD EX PARTE
MANOA BALE & ANOTHER

Mr. A.R. Matebalavu for the applicant
Mr. Anand Singh for Mr. Donald Dass
Dr. Ajit Singh amicus curiae.

J U D G M E N T

The applicant seeks an order of certiorari quashing the decision of the Public Service Appeals Board of the 25th May, 1984, dismissing the appeal of the applicant against the provisional promotion of Mr. Donald Santa Dass as Chief Health Inspector.

The Public Service Commission by official circular dated 15th January, 1983, advertised a number of vacancies in the Public Service. One such post was that of Chief Health Inspector. The advertisement read as follows:

"Chief Health Inspector

Responsible to the Permanent Secretary for Health and Social Welfare in planning coordination and supervision of environmental health activities of the Ministry of Health and Social Welfare. Advisor on all public health matters to Government Ministries, Departments, Local Government and Rural Local Authorities, Statutory Bodies and Private Enterprises.

Qualifications: Must hold a diploma from the Royal Society of Health, London or degree in Environmental Sciences or equivalent qualification. Post-graduate experience or qualification in environmental sciences is essential. Must possess wide experience in public health administration, public health legislation and public health engineering."

There were six applications for the post including Mr. Donald Santa Dass and the applicant.

The Public Service Commission considered the applications and provisionally approved Mr. Dass.

Under Section 14 of the Public Service Act, an officer who has unsuccessfully applied for a position has a right of appeal to the Public Service Appeals Board.

The applicant exercised this right and his appeal was heard by the Board and dismissed.

When the applicant's complaints are considered, it is apparent that he considers he was the only person qualified for the position advertised in terms of the advertisement.

Mr. Matebalavu has endeavoured to establish that the Appeal Board lacked jurisdiction or made a jurisdictional error in that it failed to take into account a condition precedent to the appointment to the post. That condition was the qualifications necessary for the position.

In the official circular on the front page are what may be termed guidance notes for information which are signed by the Chairman of the Commission.

On the question of qualifications, the notes state in bold type :

QUALIFICATIONS

ALL APPLICANTS SHOULD NOTE THAT CANDIDATES MUST BE QUALIFIED IN TERMS OF THE ADVERTISEMENTS AT THE TIME APPLICATIONS CLOSE.

PERSONS WHO DO NOT POSSESS THE MINIMUM QUALIFICATIONS OR RELEVANT JOB EXPERIENCE IDENTIFIED IN THE ADVERTISEMENT WILL NOT BE CONSIDERED.

Section 14 subsection (11) of the Public Service Act provides as follows :

"(11) Proceedings before the Appeal Board shall not be held bad for want of form. No appeal shall lie from any decision of the Appeal Board, and, except on the ground of lack of jurisdiction other than for want of form, no proceedings or decision of the Appeal Board shall be liable to be challenged, reviewed, quashed, or called in question in any Court."

It is only on the ground of lack of jurisdiction that the decision of the Appeal Board can be challenged in this Court.

The applicant does not allege that there has been any breach of natural justice in the hearing given to him.

Under the proviso to Section 14(1)(a) the applicant's appeal had to be confined to his merits for promotion and could not be extended to the merits of any other person for promotion or appointment.

It appears to me that both before the Appeals Board and this Court the applicant has infringed that provision.

In paragraph 7 of his affidavit sworn the 16th July, 1984, he stated as follows :

"That to the best of my knowledge and belief, the aforesaid Donald Santa Dass did not possess any relevant post-graduate (academic) experience or qualification. So that, he did not even quantify for consideration for, or as a candidate for, the position of Chief Health Inspector. This I had pointed out in paragraph 3.3.5 of my written submissions, as referred to in paragraph 8 hereunder."

When the advertisement is considered, it is not a requirement that an applicant should hold "a relevant post-graduate qualification in the nature of a degree, or diploma or supervised academic attainment" as the applicant contends.

The qualifications advertised were :

- (1) Must hold diploma from the Royal Society of Health London, or
- (2) Degree in Environmental Sciences or
- (3) Equivalent qualification.
- (4) Post graduate experience or qualification in environmental sciences is essential.
- (5) Must possess wide experience in public health administration, public health legislation and public health engineering.

The applicant in challenging the decision on jurisdictional grounds has overlooked two factors .

1. The Public Service Commission made it clear that applications by persons not possessing the minimum qualification or relevant job experience (emphasis added) would not be considered. No (5) above in my view is the minimum qualification.

The Public Service Commission could appoint an experienced man with a degree or diploma.

2. Under section 105 of the Constitution the Commission had power to make appointments and was not committed to appointing someone who met all the qualifications it was seeking in an applicant.

The Commission has for its guidance the provisions of the Public Service Commission (Constitution) Regulations and no doubt on an appeal the Appeal Board is guided by such regulations.

This Court cannot entertain any complaints that the Board did not follow those rules but if on the face of the Record they took into account a factor it had no right to take into account, the decision could be a nullity and on the authority of Anisminil Ltd. v. The Foreign Compensation Commission & Another (1969) 1 All E.R. 208, the Board's decision could be quashed.

Mr. Matebalavu argues that because the terms of the advertisement required the applicants to have the

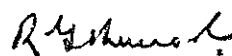
qualifications stated, the Board should have allowed the appeal where a provisional appointee does not possess those qualifications and it had no jurisdiction to confirm such appointee.

I have already indicated that the applicant's appeal must be confined to his own merits. There is nothing in the Record of the proceedings to indicate that the Board acted without or beyond its jurisdiction.

In fact the Record indicates that Mr. Dass holds three diplomas - for Public Health U.K. 1962, for Public Health Inspection of Overseas Appointment U.K. 1962 in Food Technology Australia. He acted as Chief Health Inspector for 8 months 30/6/68 - 28/2/69 and was acting in that post from 24/10/82 at the time he was provisionally appointed to the post. He may not have been as highly qualified academically but he certainly had more experience.

This Court is precluded from reviewing the Board's decision in view of the provisions of Section 14(11) since the applicant has failed to establish that the Board acted without or beyond its jurisdiction.

The application is dismissed with costs to Mr. Dass.


(R.G. KERMODE)
J U D G E

S U V A,

28th JANUARY, 1985