

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No. 22/479

BETWEEN: DOMINIQUE MOLSIR
Claimant

AND: TEACHING SERVICE COMMISSION
First Defendant

AND: THE REPUBLIC OF VANUATU
Second Defendant

Coram: Justice Oliver A. Saksak

Counsel: Mr Eric Molbaleh for the Claimant
Mrs Florence Williams Samuel, Acting Solicitor General for the Defendant

Date of Hearing: 3rd July 2023

Date of Judgment: 31st May 2024

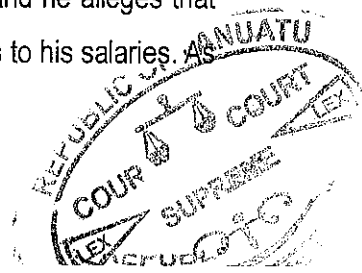
JUDGMENT

Introduction

1. This judgment is formulated on the papers pursuant to the decisions of both counsel made on 3rd July 2023.
2. Directions were issued on that date for the filing of written submissions by 30th July 2023 and 30th August 2023.
3. Despite those directions the claimant only filed submissions on 18th September 2023 and the defendants filed and their submissions on 24th November 2023. The lateness has contributed to the delay in delivering a decision earlier, and the delay is very much regretted by the Court.

Background

4. The claimant's claim is founded on negligence or allegation of breach of duty. It is based on section 38 of the Teaching Service Act No. 38 of 2013.
5. The claimant has been teaching since 1992 for a period of some 32 years and he alleges that during this lengthy period, he has not been recommended for any increments to his salaries.



such he alleges the Teaching Service Commission has been negligent by not performing its duty as required by law.

6. The defendants have denied the allegations and submitted that with appraisal reports to the TSC to determine whether to award increments, the claimant is not entitled to any increments under section 38 of the Teaching Service Act.
7. The defendants argued and submitted that despite no increments were made, the claimant's salaries were increased three (3) times following the determination of the Government Remuneration Tribunal made in 2005, in 2006 covering the periods between 2006 to 2017, and again in 2018, and that the claimant has been paid accordingly.

The Issues

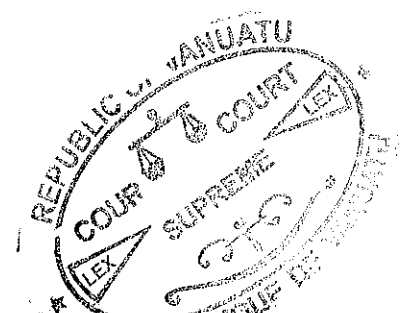
8. Three issues have been raised for determination by the defendants which are-
 - a) Whether the Defendants negligently failed to increase the claimant's salaries from 1994 to 2023?
 - b) How much, if answer to (a) is yes?, and
 - c) Whether the claimant is entitled to damages for negligence?

Discussion

9. In order for the claimant to succeed, he is required to prove on the balance of probabilities the defendant's duty and the breach of that duty to be able to succeed in his claims for increments based on his allegations of negligence.
10. The claimant relies on section 38 of the Teaching Service Act which states-

" 38 Salary increments

- (1) If an employee is entitled to a salary increment on condition of satisfactory service, the Commission may award the increment provided the decision is based on merit.*
- (2) In awarding a salary increment the Commission must consult with and take into consideration the views of the immediate supervisor of the employee concerned."*



11. Section 3.2 of the Teaching Service Staff Rules 1985 states:

"3.2 Salary and increments may be granted in accordance with the officers categories under the provisions of Annex 1 of the Teaching Service Staff Rules."

12. Section 2 of Annex 1 states:

" 2 All Increments awarded to teachers at all levels E1-E9 will not be automatic but will be subject to satisfactory Annual Confidential Report.

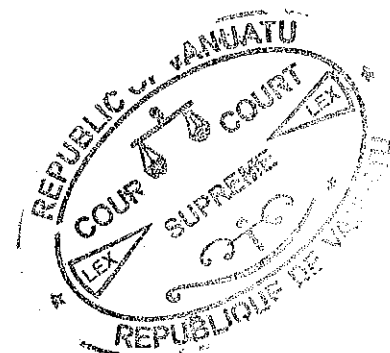
Annual confidential report on each primary school teacher will be completed by Regional Education Officer or any other persons delegated by PEO primary education to perform the task.

Annual confidential report on trained teachers teaching in secondary and/or post-secondary institutions will be completed by Principals of the respective institutions or any other persons delegated by the Principal Education Officer responsible for Secondary and further education to perform the task."

13. It is clear from these provisions that teachers are entitled to salary increments, however the increments are not automatic. They are conditional on annual confidential reports made by principals based on merit. If therefore there are no reports made and submitted to the Teaching Service Commission, the Commission is not obliged in any way to award any increment, let alone is there any obligation to consider awarding any salary increments.

14. In the claimant's case, it is common ground he was a trained teacher teaching in a secondary institution. Under section 2 of Annex 1 of the Teaching Service Staff Rules it was the Principals of those institutions who were obliged to provide Annual Confidential Reports. The claimant was required to produce evidence showing those reports existed or exist to enable him to claim for increments in salaries.

15. The Acting Solicitor General in her written submissions made reference to the Court of Appeal's judgment in the case of Rolland v Teaching Service Commission [2018] VUSC 42 and Civil Appeal Case No. 879 of 2018 where the Court of Appeal reviewed the judgment of Geoghegan J who found and held that the appellants (including the claimant) had not established a breach of any legal duty owed to them by the defendant. The Court of Appeal agreed that Geoghegan J's finding and ruling was correct and upheld that judgment.



16. Despite that judgment, the claimant instituted a separate proceeding to claim for increments which has already been adjudicated and which the State submits is res judicata based on the principle in Henderson and Henderson (1843) 67 ER 319.
17. I accept the State's submission. The Claimant's claim for increments based on negligence is res judicata.
18. The issues in (b) and (c) are therefore not worthy of determination now that the first issue has failed.

The Result

19. The claimant's claims fail and is hereby dismissed.
20. The State claimed for costs in the sum of VT 500,000 but in my view in the circumstances of the case, costs must lie where they fall. Each party must bear their own costs.

DATED at Port Vila this 31st May 2024

BY THE COURT



Hon. Oliver A Saksak

Judge

