



REPUBLIC OF MALAWI

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

STEVE MWAKHULA AND OTHERS.....COMPLAINANT

AND

MINISTRY OF EDUCATIONRESPONDENT

INQUIRY NO.: 13/2020

FILE NUMBER - BT/2016/OMB/024

CORAM:

MARTHA CHIZUMA	-	OMBUDSMAN
Steve Mwachula	-	Complainant
Isaac Tuluka	-	Complainant
Margret Malinjira	-	Complainant
Mr Makandanje	-	Representing Respondent
Bertha Kalulu	-	Clerical Officer

DETERMINATION

1. We received a complaint from 22 Complainants, Mr. Steve Mwakhula and others claiming that the Respondent had unfairly treated them by not promoting them directly upon attaining a higher qualification when others who were in the same situation as them were promoted directly.
2. We sought comments from the Respondent through investigations but it came out that the matter was far from being resolved. Thus the matter was set down for inquiry which took place on 30th September, 2019.
3. In the inquiry Steve Mwakhula testified on behalf of the others. He stated that in 2009, Government issued an advert for primary school teachers who wanted to upgrade their studies at Domasi College of Education. The 22 Complainants were some of the teachers who were successful and they graduated in December 2012.
4. They were then sent to different secondary schools in May 2013, in 2014 they were sent to teach at Teachers Training Colleges (TTC). Some of their colleagues started getting letters of promotion and the Complainants were expecting theirs as well. However in 2016 they were told that they will not be promoted directly, they must attend interviews for promotion.
5. He further stated that some of the people who were in the same situation as them went to court and judgment was entered in their favour.
6. He concluded by saying that they are suffering a lot as they are still being paid salaries of primary school teachers.
7. In response, the Respondent stated that Chrissy Pindani and Steve Mwankhula have been already offered positions. But they requested for more time to

address me on the actual position of the matter and I granted them 7 days to make their written submission.

8. Despite several reminders it was only three months later after several follow ups by my officers including my final letter of reminder of 29th October, 2019 when I received submissions from the Respondents on 18th November, 2019.

ANALYSIS OF THE LAW AND FACTS

9. For maladministration to be proved against Government according to section 123 of the Constitution and section 5 of the Ombudsman Act the complaint against the public authority has to allege either or several of the following instances; injustice; abuse of power; unfair treatment; manifest injustice or conduct qualifying as oppressive or unfair in an open and democratic society; the exercise or performance of powers, duties and functions in an unreasonable, unjust or unfair way. As per section 5 (2) this further includes decision or recommendation made by or under the authority of any organ of Government or any act or omission of such organ that is unreasonable, unjust or unfair or based on any practice deemed as such and also that the powers, duties and functions which vest in any organ of Government are exercised in a manner which is unreasonable, unjust or unfair.
10. The question that has to be determined is whether the Respondents conducted themselves in a manner that fits into any of the instances mentioned above.
11. The evidence that is before me shows that some teachers who were in the same category as the Complainants were promoted directly to secondary school teacher grade after attaining the higher qualification. The promotions were effective from 2012 being the year of graduation. However not all

received their promotions. Some were left out and they were just promised that they would be considered. Later the Respondents told them that due to policy changes they needed to go through interviews.

12. The Respondents were given time to make a comprehensive submission on the issue. However, the submission that was presented to me by the Respondents' is basically just a report of their records on who got promoted, when the promotion was done and the new grade attained together with the promotion letters. I did not get any submission on the issue that was at hand i.e. unfairness suffered by the Complainants from 2012 to 2019 or why some teachers were directly promoted and others not.
13. During the Public Inquiry it was clear to see how emotionally destructive this flagrant discrimination has had on the Complainants. Some have since died some have retired or are in the process of retiring before being promoted. I asked the Respondents if they fully appreciated the consequences of their action or inaction not only on the Complainants themselves but also on the students they are supposed to teach to which I simply received a lukewarm response.
14. I must state that am very conversant with section 4 of the Public Service Act which provides for promotions on merit. Actually this is the only guaranteed way of ensuring fairness in the manner in which the recruitment and promotions are done in public service. However despite the Act the Respondents for reasons best known to themselves decided to simply promote without using the merit process. This was a clear breach of the law. But in so breaching the law they went further to treat people in the same category differently without any good reasons.

15. The fact that there was a policy on interviews in 2015 should not have been applied retrospectively such that the Complainants ought to have been exempted from it as they obtained their qualifications way before this policy. But even if I was wrong in holding such view, it ought to be kept in mind that this policy did not say anything different from the Public Service Act. The law was already there to guide the Respondents in the handling of the Complainants but they chose to disregard it. In so doing they discriminated against the Complainants and committed an injustice against them.
16. It is that disregard of the law that has put them in this unfortunate position. The Complainants herein deserved to be treated as their colleagues. There are two ways of achieving this. Either that the Complainants colleagues be demoted to the former grade they held before promotions in 2012 and made to refund all the salaries and benefits of that grade for all the years they have held the new grade or indeed that the Complainants be considered to have been promoted from 2012 as with their colleagues. Obviously the first option will be totally impossible to effect and only fair way to resolve this matter is by treating the Complainants in similar manner.
17. Before I conclude I need to reiterate what I stated during the Public Inquiry that it is high time that the Respondents put their house in order in as far as this issue is concerned. My Office has had to handle so many similar complaints of this nature. And I can only imagine that whilst it is only 22 who complained, there are lot more teachers out there who are also suffering the same but they simply do not have access to a platform to get a remedy for this kind of injustice. It is quite disheartening as I observed during the hearing that the Respondents seem not to care much about the suffering they have been causing to the teachers as a result of this. It is not right to reduce teachers

like the Complainants to pleading and crying for that which is their right as it happened herein. It is not right for them to keep on pushing them from one office to another and making them feel like beggars when the Respondents' officers are duty bound to assist them. The Respondents cannot claim to be dedicated to education in this country whilst treating the teachers in this manner. This has to stop.

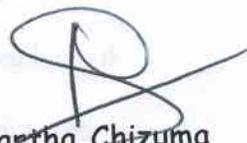
18. In view of the above, I make the following directives:

- (a) The Respondents should with immediate effect promote the Complainants herein and all those teachers in the same situation across the country. The promotions should be effected from 2012.
- (b) The Respondents should treat the other Complainants who have been promoted recently and those who are not part of this complaint as if they were promoted in 2012.
- (c) All accrued arrears for those in (a) and (b) above should be paid by 30th October, 2020.

19. RIGHT OF REVIEW

Any Party dissatisfied by this determination and with sufficient interest in the matter has a right to apply for review to the High Court in accordance with section 123 (2) of the Constitution within 90 days from the date of this determination.

Dated this 19th Day of February, 2020


Martha Chizuma
OMBUDSMAN