



JUDGMENT

**Robert Ramsahai (Appellant) v Teaching Service
Commission (Respondent)**

**From the Court of Appeal of the Republic of Trinidad
and Tobago**

before

**Lord Phillips
Lord Brown
Lord Mance
Lord Kerr
Lord Dyson**

**JUDGMENT DELIVERED BY
Lord Kerr
ON**

9 August 2011

Heard on 17-19 May 2011

Appellant

Sir Fenton Ramsahoye SC
Elton Prescott SC
Tom Richards
Anthony Bullock
Jodie Blackstock
Sanjeev Datadin
Cindy Bhagwandeem

(Instructed by Bankside
Commercial Solicitors)

Respondent

Peter Knox QC
Miss Carol Hernandez
Ms Nadine Nabie

(Instructed by Charles
Russell LLP)

LORD KERR

Introduction

1. The Teaching Service Commission of Trinidad and Tobago was set up to appoint and promote individuals in the teaching profession in that country. It was established under the provisions of the 1962 Constitution, and continued by section 124 of the 1976 Constitution. Teachers appointed by the Commission are employed by the Ministry of Education. Under section 5 of the Education Act 1966 the Minister of Education may impose modifications to the minimum requirements for entry into, and for appointment to grades and posts in, the Teaching Service.

2. Pursuant to section 5 of the 1966 Act, the Minister made the Education (Teaching Service) Regulations. Regulation 4 of these provides:

“The minimum requirements for entry into, and for appointment to grades and posts in, the Teaching Service are subject to such modifications as may from time to time be considered necessary and expedient by the Minister [of Education].”

3. In its material parts section 129 (1) of the 1976 Constitution provided that a Service Commission, with the consent of the Prime Minister, could regulate its own procedure and could confer powers and impose duties on any public officer for the purpose of the discharge of its functions. Acting under this provision the Teaching Commission adopted the Public Service Commission Regulations which had been passed by the Public Service Commission. Regulations 18(1) to 18(3) of these regulations set out the requirements which the respondent had to take into account in considering “the eligibility of officers for promotion”. Regulation 18(4) then provided:

“In addition to the requirements prescribed in sub-regulations (1), (2) and (3), the Commission shall consider any specifications that may be required from time to time for appointment to the particular office.”

4. Acting on behalf of the minister and pursuant to Regulation 4 of the Teaching Service Regulations, in March 2005 the permanent secretary of the Ministry of Education sought applications for the post of Vice Principal at a number of secondary schools. These included Hillview College where the appellant worked as a teacher. The memorandum specified certain criteria which had to be met as to

the education, skills and specialised techniques of applicants. It also stipulated that candidates would require to have had “five years’ teaching experience after obtaining the postgraduate Diploma in Education or equivalent, including two years in school administration”. The deadline for submissions was said to be 8 April 2005.

The relevant facts

5. The appellant entered the public teaching service in Trinidad and Tobago on 9 October 1973. He progressed through various ranks until on 23 April 2001 he reached the position of Teacher III. At that time and since then he has taught at Hillview College. In June 2000, he completed a course for a post-graduate Diploma of Education. He was awarded the Diploma on 11 October 2000.

6. On 31 March 2005, Mr Ramsahai applied to the Ministry of Education for appointment to the post of Vice Principal at five schools including the school at which he was then teaching, Hillview College. He was not interviewed for any of these positions because, it was considered, he did not fulfil the requirement that he have five years’ teaching experience after obtaining the postgraduate Diploma in Education.

The proceedings

7. On 7 December 2005, the appellant obtained an interim injunction preventing appointment of any other candidate to the posts for which he had applied. He sought judicial review of the decision not to consider him for any of those posts.

8. At first instance, the High Court (Narine J) found in Mr Ramsahai’s favour. It was held that the Teaching Commission was not bound by the criteria and deadlines imposed by the Ministry of Education. On the contrary, it was bound, by regulation 18 of the Public Service Regulations, to consider all facts relevant to his application. By rejecting his application because he had not met the minimum five year post-diploma requirement by the closing date, the Commission had treated Mr Ramsahai unfairly. The judge decided that the Commission should have taken into account the good reports on his service which had been proffered, his qualifications and experience, and the fact that he had acquired the relevant five years’ experience “at the time of interview”.

9. The Teaching Commission appealed. It argued that the five year requirement imposed by the Ministry of Education was not merely a factor to be taken into account; it was a condition precedent to the appointment of any candidate. The Court of Appeal (Archie CJ, Warner and Mendonca JJA) accepted this argument. They held that the requirement of five years’ experience was a modification of the minimum requirements for appointment to posts in the Teaching Service which

was authorised by regulation 4 of the Education Regulations. It was therefore a specification which the respondent had to consider under regulation 18(4), and from which it could not depart because it was a mandatory requirement.

The arguments

10. The appellant claimed that the closing date for applications had been chosen as a matter of administrative convenience. It ought not to be operated so as to fix the time by which the five years' experience requirement was to be satisfied. A period of time was bound to elapse between a proposed closing date and the point at which interviews took place. In this instance interviews were not scheduled until October 2005 and, by that time, the appellant had acquired the necessary five years' experience. His eligibility for appointment should have been recognised on that account.

11. It was further contended that the decision that eligibility had to be determined according to the Ministry's closing date for applications was inconsistent with the proper application of the regulations. Regulation 18 (1) of the Public Service Commission Regulations, for instance, provided that, in considering the eligibility of officers for promotion, the Commission should take into account the seniority, experience, educational qualifications, merit and ability of candidates, together with their relative efficiency, and, in the event of an equality of efficiency of two or more officers, should give consideration to the relative seniority of the officers available for promotion. And regulation 18 (3) listed a series of factors that would influence eligibility for promotion, none of which required that the officer should have completed any particular period of teaching experience. These considerations could not be properly taken into account if an inflexible bar to promotion was operated by reason only of a failure to achieve sufficient experience by an arbitrarily chosen date.

12. In any event, the appellant argued, the Commission was obliged to deal fairly and reasonably with applicants for promotion, taking into account delays which were unavoidable after advertisement of vacancies. The closing date for applications did not create a statutory bar which prevented consideration of the appellant's application and the Commission's decision to treat it as such meant that the appellant had been treated unfairly. It was both irrational and unreasonable. It did not take into account the fact that applicants were teachers in continuing service in which experience increased with every day of performance and it did not take into account the possibility that, with a long delay in conducting interviews, serious unfairness could be done to an applicant who like the appellant was likely to have the experience at the time the interviews took place. The Commission did not inform applicants of the date of interviews until they were invited to attend them and this could be a long time after vacancies had been advertised.

13. For the respondent Mr Knox QC submitted that nothing in regulation 18 required the Teaching Service Commission to consider eligibility at the time it

actually makes its decision to promote teachers. It simply sets out the criteria which have to be taken into account in considering eligibility for promotion, but expressly on the footing that consideration must also be given to any “specification” that may from time to time be stipulated. In any event, he argued, regulation 18 does not override regulation 4 of the Education Regulations and the modification that had been introduced under the aegis of this provision had to be observed.

Discussion

14. The exclusion of the appellant from consideration for promotion, even though, by the time of some of the interviews for the posts for which he had applied, he had completed five years’ teaching after having obtained his diploma, may, at first sight, seem harsh. But there is nothing whatever unreasonable about the introduction of such a requirement. It operates as a filter to applications for promotion. It cannot be said to be irrational or unconnected with the desire to improve the calibre of vice principals.

15. Although the memorandum of March 2005 did not expressly state that the five years’ teaching experience after acquiring the necessary diploma had to be completed before the closing date for applications, no other sensible or workable means of giving effect to it was possible. It could not have been intended that it could be satisfied at any later date. Otherwise, the Teaching Service Commission would have had to continue to accept applications right up to the date on which interviews took place and if, for any reason, these had to be deferred, there would have had to be a review of eligible applicants on every postponement. The decision that the closing date for applications would mark the end of the period at which one could qualify was not only reasonable, it was administratively the obvious and sensible course to follow.

16. Inevitably, with any cut-off date, there will be cases that appear to have been unsympathetically dealt with because they fall just on the wrong side of the line. But that does not make the drawing of the line unreasonable. The imposition of a criterion involving a period of time served inevitably involves the drawing of a line and it should not be forgotten that those who fall on the right side of the line have a legitimate interest in ensuring that the drawn line is not departed from.

17. The decision to treat the closing date for applications as the date on which the five year period required to be completed did not preclude full consideration of the factors outlined in regulation 18 (1) – (3) of the Public Service Commission Regulations. That consideration took place, of course, in a different context from that which the appellant would have wished but that does not mean that the requirements of those regulations were not given full effect. It was perfectly possible to have regard to the factors outlined in those provisions while still applying the cut-off provision.

Conclusion

18. None of the appellant's challenges to the decision of the Teaching Service Commission's treatment of his application has succeeded. Therefore the appeal should be dismissed.