

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
MISC CAUSE NO 80 OF 1997

BETWEEN:

W D BONDWE & OTHERS PLAINTIFF

AND

MINISTRY OF EDUCATION DEFENDANT

CORAM: POTANI, REGISTRAR

Nyimba, Counsel for the Plaintiff's/Applicants

ORDER ON ASSESSMENT OF DAMAGES

This assessment of damages is pursuant to the judgement of the Honourable Justice Ndovi. The judgement order, in paragraph (c), provided as follows:

“The applicants are awarded damages/compensation for wrongful termination of employment through forced retirement as did the Government in respect of those who were so treated by the previous one party state, which approach was very commendable in that the affected people are given their full benefits, namely, salaries, allowances, gratuity and pension up to the time they should have retired normally at 55 years of age. I so order. This will be computed by the Registrar.....”

The case involves 12 plaintiffs/applicants namely: W D Bondwe, N D Chikafa, R H Kachimanga, B Kayange, G A Lamya, A Ligowe, A J Namachapa, M P Nasota, M S H Ngwira, S C Y Zobophe, B P Kossam and N Nyirongo.

It is well settled on the evidence before the learned Judge and that adduced during the hearing on the assessment that the applicants were employed by the Ministry of Education of the Government of Malawi. Sometime around July, 1997, while working as District Education Officers (DEO), their employment was unilaterally terminated by the Ministry. No reason was given for the termination. It is also clear from the evidence that at the time of the termination of their employment, none of the applicants had attained the normal retirement age of 55. Clearly, therefore, they were deprived of benefits they could have otherwise continued to enjoy under their employment.

It is mainly the evidence of PW6, Francis Juwawo Phiri, an Assistant Accountant in the Ministry of Education, which is most relevant with regard to the benefits the applicants lost due to the wrongful termination. He testified that he is quite conversant with aspects relating to salaries, leave grants and other benefits and also the computation of gratuity and pension in Civil Service in general and the Ministry of Education in particular. He tendered in evidence as Exp 10 (a) to Exp 10 (K) and Exp 11 being documents showing detailed monetary calculations of the various benefits each applicant lost due to the premature retirement. It should be observed that in his calculations, PW6 included certain expected benefits to which the applicants had no contractual right such as subsistence/night allowances and allowances relating to their involvement in activities pertaining to elections, MASAF Projects, among others. Counsel for the applicants, citing the case of **Chawani vs. Attorney General** MSCA Civil Appeal No. 18/2000 conceded that the applicants cannot be entitled to damages in respect of aspects to which they are not entitled to under their employment contract. It was counsel's submission that what the applicants are entitled to get as damages would be the salaries they could have earned had they worked up to the retirement age, leave grants, commuted leave and gratuity for the period their service was cut short. I am in full agreement with counsel in that respect as it accords with the learned judge's judgement.

According to Exp 11, the net salary Mr W D Bondwe would have earned, if not for the premature retirement, would have been K180,735.89. As for gratuity he would have earned K210,526.00 more than what he was paid. The leave grant he lost amounted K6,000.00 while commuted leave days would have entitled him to the sum of K8,979.01. The award of damages he is entitled to therefore amounts to K406,240.90.

Mr Chikafa Phiri died in May 2001. It seems he is one of those applicants who accepted the offer by the Ministry to resume work after the learned judge's judgement herein as Exp 10 (a), which outlines the calculations of the loss he suffered, does not show any computation of lost salaries. According to Exp 10 (a), his dependants are entitled to payment of pension for 5 years totaling to K212,982.33. As for leave grant, he lost K3,000.00 while his commuted leave entitled him to K3,607.13. His total award comes to K219,589.46.

Then there is Mr R H Kachimanga. According to Exp 10 (b), he received all his salary arrears. Apparently he went back to work upon being offered so to do. Exp 10 (b) does not show any computation relating to lost gratuity. All that he is eligible to be awarded relates to commuted leave days and leave grants in the sums of K13,004.20 and K2,000.00 respectively which comes to K15,004.20.

Mr B M M Kayange also continued to work. He got his salary arrears. His commuted leave and leave grant which he lost is shown in Exp 10 (C) as K2,011.88 and K2,000.00 respectively. He is award K4,011.88.

According to Exp 10 (d), Mr B P R Kossam received all his salary arrears except for the sum of K892.00 which he became entitled to upon being promoted. As at the time of the assessment, his gratuity was being processed. Commuted leave and leave grants he is entitled to amounts to K2,301.30 and K3,000.00 respectively giving a total of K5,301.30. His award is therefore K6,193.30.

Then there is Mr A T Namachapa who according to Exp 10 (e) never received arrears of salary amounting to K397,524.32. He also lost gratuity in the sum of K206,017.50. In addition, he is yet to be paid commuted leave and leave grant amounting to K3,300.76 and K3,000.00 respectively. His total award comes to K609,842.58.00.

Exp 10 (f) shows that Mr M P Nasota died in June 1998 while still being owed arrears of salary to the tune of K21,229.60 and lost gratuity of K6,828.300. Because of his death, his dependants are entitled to pension for 5 years amounting to K149,850.00. In addition, he lost commuted leave and leave grant amounting to K2,012.50. In total he is awarded K179,920.43.

Mr M S H Ngwira resumed work. He received all his arrears of salary. According to Exp 10(g), he is entitled to lost commuted leave and leave grant amounting to K4,011.88. He is award that sum.

Then there is Mr N K Nyirongo. He also resumed work and therefore go all his arrears of salary. His outstanding commuted leave and leave grant is to the tune of K13,970.13 which I order that he be awarded.

Exp 10 (i) relates to Mrs Grace Lamya's claim. Sadly, she died but after receiving her salary arrears. She, however, did not get lost gratuity amounting to K108,520.33. Further, her dependants are entitled to pension for 5 years amounting to K251,542.00. In addition, she is owed commuted leave and leave grant totaling K4,011.88. Her total award comes to K364,074.21.

Mr A L Ligowe resumed work and was paid all his salary arrears. Outstanding commuted leave and leave grants as per Exp 10 (j) amount to K4,025.00. This is the sum he is entitled to be awarded. Lastly, there is Mr S C Y Zibophe's claim. According to Exp 10 (k), he is yet to be paid arrears of salary in the sum of K195,154.91 over and above lost gratuity in the sum of K206,293.36. Further unpaid commuted leave and leave grant stand at K17,216.07 and K2,000.00 respectively. The total award he is entitled to therefore comes to K420,664.34.

Costs of this action are to be borne by the defendants.

Made in Chambers this day of February 25, 2003, at **BLANTYRE**.

H S B Potani

REGISTRAR