



Government of Tonga

# Public Service Tribunal

Annex I

Mr. 'Aisea H. Taumoepeau, SC - Chairman

Lady 'Eseta Fusitu'a - Member

Mr. Timote Katoanga - Member

PST Appeal No.05 of 2014

Appellant: Mr. Tu'amelie Paea

Respondent: Public Service Commission

## Representation:

Appellant: Mr. Tu'amelie Paea

Respondent: Mr. Sione Sisifa, SC      Acting Solicitor General  
Ms Falemei Fale      Deputy Secretary,  
Public Service Commission

Date of Hearing: 23 October 2014

Date of Ruling: 31 October 2014

## Tu'amelie Paea v Public Service Commission (PSC)

PST No. 5/2014

### **Background**

1. This is an appeal from Tu'amelie Paea, Senior Computer Programmer, Health Planning and Information Division, IT Section, Ministry of Health.
2. The Appellant went on study leave for 2 years (2011-2012), under an "Australian Development Scholarship (ADS)" without pay. He is claiming that he should have been "on study leave with pay".
3. The Appellant had applied to the "ADS scholarship" through open competition, although supported by the Ministry of Health when he sought that support. The "ADS scholarship" that was awarded to the Appellant was not categorized as a "Government scholarship".
4. The Appellant applied to the Ministry of Health for "leave with pay" in undertaking the scholarship before he departed in the beginning of 2011. That application had taken a rather circuitous route within the Ministry of Health, and when he returned at the end of 2012 it was still outstanding. Even now, it is the subject of this appeal.

### **Issues**

5. There are two issues in this appeal:
  - (i) A procedural issue arises as to whether this Tribunal has jurisdiction in this matter; and if so,
  - (ii) Whether the Appellant was entitled to "leave with pay" when he went on scholarship.

### **Submissions of Appellant**

6. The recommendations from the Ministry of Health were inconsistent. The Appellant raised a number of cases which he deemed to be similar to his case but have been categorized as "leave with pay".
7. The Appellant also referred to similar cases from other ministries.

8. The Appellant asserted that he had not received any consultation within the Ministry of Health or Cabinet or PSC with regard to the policy on "*study leave with pay or without pay*".
9. The Appellant asserted that he signed a contract on 14 December 2010 to go on scholarship believing that it will be "*with pay*". He stated that the former Minister of Health (Lord Tangi) "*approved my study leave with pay*" in a letter dated 04 August 2010.
10. However, he also stated that before he commenced his study leave, PSC "*rejected my study leave with pay according to PS-Instruction Policy 2010*".
11. The Ministry, according to the Appellant, had submitted a proposal to PSC for re-consideration of his leave with/without pay on 04 April 2011, but no response as yet.
12. He claims that upon advice from Crown Law, the Ministry of Health informed him that he should appeal to this Tribunal.

#### **Respondent's submission**

13. The Public Service Tribunal has no jurisdiction to deal with the Appellant's appeal.
14. That this is an appeal against a decision of the Director of Health, not of PSC.
15. The Appellant has no jurisdiction to appeal against alleged inconsistencies in the decisions of the Ministry of Health and other Ministries.
16. Alternatively, the Minister of Health on the 04 August 2010 did not approve or grant the Appellant's study leave with pay.
17. Costs be awarded to the Respondent.

#### **Tribunal's findings**

18. The Tribunal has carefully considered the matter and believe that the followings are established:
  - (i) The Public Service Tribunal is established under section 21A (1) of the Public Service Act.

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- (ii) Section 21A (2) of the Act gives power to the Tribunal *to hear appeals regarding any decision made by the PSC regarding any employee.*
  - (iii) At all material times, PSC did not make any decision regarding the Appellant's application for study leave with pay.
  - (iv) Upon request by the Director of Health, on 28 January 2011, the Acting Secretary for PSC advised the Director of Health that under section 2B.23.1 of Public Service Policy Instructions 2010, the appellant is not eligible for study leave with pay.
  - (v) The PSC did not consider and decide the Appellant's application for leave with or without pay. Therefore the Tribunal has no jurisdiction with that matter.
  - (vi) The alleged inconsistencies in the decisions of the Ministry of Health and other Ministries are internal decisions and do not involve the PSC.
  - (vii) This Tribunal has no jurisdiction to deal with an appeal against internal decisions by the Ministry of Health or other Ministries.
  - (viii) The appellant was awarded an ADS scholarship when he signed the scholarship contract on the 14 December 2010.
  - (ix) The appellant's scholarship was an open scholarship because it was advertised through AUS AID open category scholarship scheme where the Government Scholarship Committee has no control.
  - (x) Scholarships deemed to be "*government scholarships*" are the ones that are offered through the Government Scholarship Committee or offered directly to a Ministry (*refer definition of "government scholarship" in Section 2 of the Public Service Policy Instructions 2010*).
  - (xi) The appellant's scholarship was not offered through the Government Scholarship Committee.
  - (xii) The Public Service Policy 2010 came into effect on the 10 December 2010.
  - (xiii) Under sections 1 and 4 of the Public Service Policy 2010, the Public Service Policy 2010 has been declared.

- (xiv) The appellant was awarded his scholarship after the Public Service Policy 2010 and Public Service Policy Instructions 2010 came into force.
- (xv) The appellant was subject to the Public Service Policy 2010 in respect of any application for study leave with pay.
- (xvi) Only recipients of Government Scholarships are eligible for study leave with pay under section 2B.23.1 of the Public Service Policy Instructions 2010.
- (xvii) The letter of the 04 August 2010 is a recommendation from the Secretary of Training Development Committee to the Minister of Health to approve a letter of support for the appellant in respect of his application for a scholarship, upon request of the Appellant.
- (xviii) The letter did not recommend to the Minister to approve granting the appellant study leave with pay.
- (xix) An application for a study leave cannot be entertained on the 04 August 2010 because the appellant has not yet applied nor awarded a scholarship.
- (xx) Counsel for the Respondent informed that to his knowledge no formal advice was given from Crown Law for an appeal to this Tribunal to be made (as alleged by the Appellant). However, counsel was of the view that a verbal advice to that effect may have been given.

**Acknowledgement**

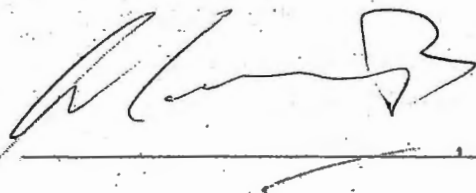
19. The Tribunal thanks both parties for their respective assistance in expediting this appeal.

**Tribunal's ruling**

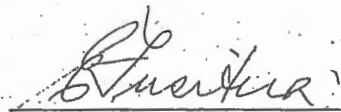
20. For the reasons shown in the Findings above, the Tribunal makes the following ruling:

- (i) The appeal is dismissed.
- (ii) Parties to bear their own costs.

**'Aisea H Taumo'opeau**



**Lady 'Eseta Fusitu'a**



**Timote Katoanga**

