

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

CV2013-04831

BETWEEN

**SHAHEED ALLAHAM**

CLAIMANT

AND

**THE TEACHING SERVICE COMMISSION**

FIRST DEFENDANT

**THE BOARD OF THE TRINIDAD MUSLIM LEAGUE**

SECOND DEFENDANT

**BEFORE THE HON. MADAME JUSTICE JOAN CHARLES**

**Appearances:**

For the Claimant: Mr. H.R. Ian Roach  
Instructed by Mr. Imran Ali

For the Defendants: Mr. Russell Martineau S.C., Ms. Kavita Jodhan  
Instructed by Stephanie Sobrian

**Date of Delivery:** 19<sup>th</sup> December 2014

**JUDGMENT**

## **BACKGROUND**

[1] By a Fixed Date Claim filed on 7<sup>th</sup> January 2014, the Claimant claimed the following reliefs:

- (i) A declaration that the decision of the Second Defendant, made sometime between March and April 2013, not to recommend the Claimant for the position of Vice Principal (Primary) at the San Fernando TML Primary School is illegal and/or irrational and/or in breach of the Rules of Natural Justice and is consequently void and of no effect.
- (ii) A declaration that the decision of the First and Second Defendants made sometime between March and April 2013 not to inform the Claimant of the reason(s) for the Second Defendant's refusal or failure to recommend him to the said post was in breach of the Rules of Natural Justice.
- (iii) A declaration that the decision of the First and Second Defendants made sometime between March and April 2013 to re-advertise the said post and not to invite the Claimant to make representations on whether same should be done was in breach of the Rules of Natural Justice.
- (iv) Orders of Certiorari to bring into the High Court and quash the decisions set out in paragraphs (i) to (iii) above.
- (v) An interim injunction to restrain the Defendants from conducting any further interviews for the said post and continuing to advertise the said vacancy until such time as the Claimant is informed of the said recommendation made by the Second Defendant and is given an opportunity to respond thereto and/or alternatively, the Second Defendant makes a different recommendation to appoint the Claimant to the said post.
- (vi) An order that the First Defendant direct the Permanent Secretary of the Ministry of Education to call upon the Second Defendant to reconsider its

said recommendation and make a different one, in accordance with **Regulation 133** of the **Public Service Commission Regulations**.

- (vii) An order pursuant to **Section 11(1)** of the **Judicial Review Act, Chap. 7:08** extending time for the making of this application.
- (viii) Costs.
- (ix) Such further or other reliefs, including all such orders, writs and directions as may be appropriate for enforcing or securing the enforcement of the rights and of me and as the nature and justice of the case may require.

## **THE AFFIDAVITS**

- [2] The Claimant filed an affidavit in support of his application on the 25<sup>th</sup> November 2013. In reply the First Defendant relied upon the affidavit of Mariam Dhanessar filed herein on 9<sup>th</sup> May 2014. The Claimant filed an affidavit on 25<sup>th</sup> May 2014 in response to Ms. Dhanessar's affidavit.

## **FACTS**

- [3] The material facts are not in dispute. The office of Vice Principal (Primary), San Fernando T.M.L. Primary School was advertised by the Ministry by circular memorandum No. 47 dated 12<sup>th</sup> October 2012. The Claimant and seven other persons applied for the position in response to this advertisement.
- [4] The Claimant was interviewed by the Second Defendant in December 2012 and by the First Defendant on the 22<sup>nd</sup> March 2013. At the interview conducted by the First Defendant during the period of 20<sup>th</sup> March 2013 to 22<sup>nd</sup> March 2013 the Claimant was successful and indeed scored the highest points from among the candidates interviewed. The Claimant, at a meeting with the Second Defendant's

secretary in April 2013, learned that he had been successful at both interviews but that he had not been recommended by the Second Defendant to fill the vacant position because of his age as the Second Defendant wanted to concentrate on succession planning at the school.

- [5] The First Defendant, by letter dated 5<sup>th</sup> April 2013, wrote to the Second Defendant stating that it proposed to promote the Claimant to the position of Vice Principal (Primary) at the San Fernando T.M.L. Primary School and invited its comments (“M.B.5”). Thereafter, by letter dated 19<sup>th</sup> April 2013, the Second Defendant wrote to the First Defendant stating that it disagreed with their proposal to promote the Claimant to the office of Vice Principal (Primary) and recommended Mrs. Wahida Mohammed-Narine instead.
- [6] The Commission by letter dated 15<sup>th</sup> May 2013 responded to the Second Defendant and requested that in accordance with the **Concordat** of 1960 that they state specifically the moral or religious grounds on which their objection is based<sup>1</sup>.
- [7] By letter dated 21<sup>st</sup> May 2013 the Second Defendant replied to the Commission stating *inter alia* that they did not wish to present any case of moral and religious grounds against the Claimant and they wished to meet with the Commission to resolve the issue. A copy of the letter dated 21<sup>st</sup> May 2013 was marked ‘M.D.7.’
- [8] The Ministry erroneously re-advertised the office of Vice Principal (Primary) by circular memorandum No. 33 dated 11<sup>th</sup> June 2013 before its decision made subsequently, to appoint the Claimant to the said position. In order to deal with this premature advertisement by the Ministry the Commission requested that the closing date for receipt of applications be extended to 19<sup>th</sup> July 2013. The Commission received the Claimant’s application in response to the re-

---

<sup>1</sup> Annexed as ‘M.D.6’ to the affidavit of Mariam Dhanessar filed herein on 9<sup>th</sup> May 2014

advertisement on 6<sup>th</sup> November 2013. No date has been set for interviews for the office.

[9] By letter dated 13<sup>th</sup> June 2013<sup>2</sup>, the Commission informed the Second Defendant that it had promoted the Claimant as Vice Principal (Primary), San Fernando T.M.L. Primary School with effect from 17<sup>th</sup> June 2013.

[10] The Second Defendant objected to the above decision of the Commission. At a meeting held on 26<sup>th</sup> June 2013, the Commission met with representatives of the Second Defendant to resolve the matter. The Second Defendant advanced, *inter alia*, that the interview conducted by the First Defendant was flawed. They also indicated that the recommendation for the post was based on succession planning in order for the school to maintain and enhance its performance. The Commission thereafter felt satisfied that the issues raised by the Second Defendant were sufficient for it to reconsider its decision to appoint the Claimant as Vice Principal. Accordingly, the Commission rescinded its decision to do so and requested that the post be re-advertised.

[11] By letter dated 4<sup>th</sup> July 2013<sup>3</sup>, the First Defendant informed the Second Defendant, *inter alia*, that it had taken into cognizance the additional information provided by them and that it had decided to rescind its decision to promote the Claimant as Vice Principal (Primary), San Fernando T.M.L. Primary School and that the Ministry was requested to re-advertise the office of Vice Principal (Primary) ("M.D.10").

[12] The Claimant challenged three decisions made between March and April 2013 as follows: -

---

<sup>2</sup> Annexed as 'M.D.8' to the affidavit of Marium Dhanessar filed herein on 9<sup>th</sup> May 2014

<sup>3</sup> Annexed to the affidavit of Marium Dhanessar as 'MD 10'

- (i) The decision of the Second Defendant not to recommend the Claimant for the position of Vice Principal;
- (ii) The decision of the First and Second Defendants not to inform the Claimant of the reason(s) for the Second Defendant's refusal or failure to recommend him to the said post; and
- (iii) The decision of the First and Second Defendants to re-advertise the said post and not to invite the Claimant to make representations on whether the same should be done.

[13] By his Fixed Date Claim the Claimant also sought an Order that the First Defendant direct the Permanent Secretary of the Ministry of Education to call upon the Second Defendant to reconsider its recommendation in accordance with **Regulation 133** of the **Public Service Commission Regulations**.

#### **SUBMISSIONS OF THE CLAIMANT**

[14] It was submitted by the Claimant that neither the Constitution nor the Regulations provide for objections from denominational boards on any basis other than that of moral or religious grounds. The reasons given by the Second Defendant for not recommending the Claimant which were subsequently accepted and acted upon by the First Defendant were that *“they did not wish to present any case of moral and religious grounds against the Claimant”* and instead *“put forward points to the Commission including that the interview was flawed and concerns about succession planning for the school to maintain and enhance its performance”*. This was not a proper ground upon which the First Defendant could properly rescind its decision to appoint the Claimant and request that the post be re-advertised.

- [15] The Claimant submitted further that the Defendants clearly misdirected themselves and took into consideration irrelevant matters that were contrary to their remit under the Constitution, the Regulations and the **Concordat**, from which their powers and authority are derived.
- [16] The Second Defendant was in breach of the provisions of **Regulation 18** when it advised the First Defendant that its objections were based on alleged flaws in the First Defendant's interview and the advancement of the Second Defendant's succession planning. Neither of these are matters included in the criteria set out in **Regulation 18** for promotion.

#### **SUBMISSIONS OF THE DEFENDANT**

- [17] The First Defendant submitted that the Claimant's case on the Fixed Date Claim Form is that the failure of the Defendants to inform him of the reasons for the Second Defendant's refusal or failure to recommend him is in breach of the rules of Natural Justice. It was further submitted that the principles of Natural Justice do not include a general rule that reasons should be given for the decisions. The First Defendant relied upon the cases of **R v Home Secretary ex p Doody [1993] 3WLR 154 at 172 D-E** and **R v Minister of Defence ex p. Murray 1998 COD 134 at 136**.
- [18] It was also submitted by the said Defendant that in the absence of an express requirement in the Regulations to disclose to the Claimant the reason(s) for the Second Defendant's refusal or failure to recommend the Claimant, Natural Justice does not require the First Defendant to do so. The Regulations do not require the First Defendant to call for the reasons from the Second Defendant. Additionally, **Regulation 133(2)** provides that the First Defendant may require

the Permanent Secretary to call for reconsideration (not for reasons). It is only where **Regulation 133 (2)** is triggered (and it is not in this case) and the Board does not make a fresh recommendation in 21 days that the Board is required to give reasons (see **Regulation 133(3)**).

[19] The First Defendant argued that the appointment to an assisted school must be made on the recommendation of the Board. In this case the Commission was not of the view that the Board did not follow the **Regulation 18** principles. The First Defendant argued, further, that in this case there was neither recommendation nor approval of the Board for the Claimant's appointment, so the Commission had no choice but to re-advertise the vacancy or appoint the person recommended by the Second Defendant, Mrs. Mohammed Narine. The Commission contended that the failure to invite the Claimant to make representations as to whether to re-advertise cannot in those circumstances be a breach of Natural Justice. The First Defendant contended that if the Commission had invited the Claimant to make representations on whether to re-advertise and the Claimant had persuaded the Commission not to do so the Commission could not have appointed the Claimant because his appointment was neither recommended nor approved by the Board. In that circumstance the position would have had to be left vacant which could not be in the interest of good administration. The Defendants relied upon the case of **Kamla Jagessar v Teaching Service Commission** which held that the Commission had acted at all material times in accordance with the law in its treatment of the Claimant. It could hardly be argued that in those circumstances the Claimant was treated unfairly contrary to the principles of Natural Justice<sup>4</sup>. It was also held in that case<sup>5</sup> that the administrative discretion of the State has, since the **Concordat**, been always exercised subject to the approval of the Board. It was therefore a settled practice.

---

<sup>4</sup> Kamla Jagessar v Teaching Service Commission, para 9

<sup>5</sup> Kamla Jagessar v Teaching Service Commission, para 96



[20] As regards the Claimant's argument that the Second Defendant could only object to his appointment on moral and religious grounds, the First Defendant submitted that that would only be the case if **Regulation 133 (2)** was triggered. It argued that since the Commission was not of the view that the Board had failed to follow **Regulation 18** principles in making its recommendation, then **Regulation 133 (2)** was not applicable on the facts of this case. As a result the issue of moral and religious grounds being the basis for the Board's objection to an appointment by the Commission was not applicable.

[21] The First Defendant argued that in these circumstances a failure to invite representation from the Claimant before re-advertisement of the position cannot be a breach of Natural Justice.

[22] It was further submitted on behalf of the First Defendant that while the Commission had the sole responsibility and power to appoint and promote teachers in denominational schools, this responsibility and power are circumscribed by the fact that they can only be exercised on the recommendation or with the approval of the Board, because the Commission by its own Regulations has so provided.

[23] It was the First Defendant's contention that the moral and religious consideration is not the only fetter in the Commission's power to appoint. The Claimant could not be appointed to the post by the Commission unless his appointment was recommended or approved by the Board. It asserted that the refusal of the Board to recommend or approve the Claimant's appointment caused the Commission to rescind the appointment of the Claimant.

[24] It was pointed out by the First Defendant that the Regulations require the Board, not the Commission to follow **Regulation 18**. What guides the Commission is

the recommendation or approval of the Board according to **Regulation 133** or the Board's objection on moral or religious grounds under the **Concordat**. It was also argued that it is for the Board in this case to decide what weight it puts on the respective factors considered in **Regulation 18** and in so doing it may apply a weighting that is different from what the Commission would apply if it were applying **Regulation 18** to the issue.

### THE STATUTORY FRAMEWORK

[25] The power to appoint persons to hold or act in public offices in the Teaching Service is vested in the First Defendant under **SECTION 125** of the **CONSTITUTION OF TRINIDAD AND TOBAGO** which provides:

*“Subject to the provisions of this Constitution, power to appoint persons to hold or act in public offices in the Teaching Service established under the Education Act, including power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices and to enforce standards of conduct on such officers shall vest in the Teaching Service Commission.”*

[26] The First Defendant is also empowered by **Section 129** of the **Constitution of Trinidad and Tobago** to make regulations to regulate its own procedure, including the procedure for consultation with persons with whom it is required to consult, in carrying out its mandate under **Section 125** of the **Constitution of Trinidad and Tobago**. The Commission therefore by its own Regulations can determine how it exercises the power to regulate its own procedure.

[27] **Regulations 129, 132 and 133** of the **Teaching Service Commission Regulations** made by the First Defendant govern and regulate the procedure for the appointment and promotion of teachers in Assisted Schools within the Teaching Service. The relevant parts of the Regulations are as follows:

*“129. (1) As soon as it is known that a vacancy will occur in the office of teacher in an assisted school, the Board shall communicate the particulars of the vacancy to the Permanent Secretary in writing with a request that the vacancy be filled”.*

*129. (2) On receipt of the particulars of a vacant office of teacher under sub regulation (1), the Permanent Secretary shall communicate particulars of the vacancy to the Director in writing and shall, by circular memorandum, advertise such vacant office in all public schools. ...*

*129. (5) The Permanent Secretary shall forward all applications made in response to an advertisement under sub regulation (2) to the Board for the Board to make its recommendation regarding the filling of the vacancy. ...*

*129.(6) The Permanent Secretary shall forward to the Director any recommendation made by the Board for filling of the vacancy with his comments thereon.*

*132. Every application made in response to an advertisement under regulation 131 shall be addressed to the Permanent Secretary who shall forward to the Director-  
(a) the applications of all eligible applicants for appointment*

*to a Government school;*

*(b) the applications of all eligible applicants for appointment to an assisted school after submitting such applications to the Board for recommendations to be made by it.*

**133.** *(1) The Board, in making any recommendations for the filling of a vacant office in accordance with regulation 129(5) or of regulation 132, shall apply the principles of selection prescribed by regulation 18 and the Commission shall, subject to sub regulation (2), approve the recommendation and make the appointment.*

*(2) Where the Commission is of the view that the Board had not made a selection in accordance with such principles, the Commission may require the Permanent Secretary to call upon the Board to reconsider its recommendation and make a different recommendation and, in making such request, the Commission shall take into consideration the religious denomination of the school and the religious persuasion of the teacher.*

*(3) Where the Board under sub regulation (2) fails to make a different recommendation within twenty-one days of being requested to do so and gives no explanation of its failure to do so, the Commission may appoint to the vacancy-*

*(a) a teacher of the religious persuasion of the assisted school, with the approval of the teacher and the Board; or*

*(b) a teacher of a religious persuasion different from that of the assisted school, with prior approval of the teacher and of the Board."*

[28] **Regulation 18** of the **Public Service Commission Regulations Chap 1:01** provides as follows:

*18. (1) In considering the eligibility of officers for promotion, the Commission shall take into account the seniority, experience, educational qualifications, merit and ability, together with relative efficiency of such officers and in any event of an equality of efficiency of two or more officers, shall give consideration to the relative seniority of the officers available for promotion to the vacancy.*

*(2) The Commission in considering the eligibility of officers under sub regulation (1) for an appointment on promotion, shall attach greater weight to –*

- a) seniority, where promotion is to an office that involves work of a routine nature, or*
- b) merit and ability where promotion is to an office that involves work of progressively greater and higher responsibility and initiative than is required for an office specified in paragraph (a).*

*(3) In the performance of its function under sub regulations (1) and (2), the Commission shall take into account as respects each officer –*

- a) his general fitness;*
- b) the position of his name on the seniority list*
- c) any special qualifications*
- d) any special courses of training that he may have undergone (whether at the expense of the Government or otherwise);*
- e) the evaluation of his overall performance as reflected in annual staff reports by any Permanent Secretary, Head of*

*Department or other senior officer under whom the officer worked during his service;*

- f) any letters of commendation or special reports in respect of any special work done by the officer;*
- g) the duties of which he has had knowledge;*
- h) the duties of the office for which he is a candidate;*
- i) any specific recommendation of the Permanent Secretary for filling the particular office;*
- j) any previous employment of his in the public service, or otherwise;*
- k) any special reports for which the Commission may call;*
- l) his devotion to duty;*

*(4) In addition... the commission shall consider any specifications that may be required from time to time for appointment to the particular office'.*

[29] **Clause 4** of the **Concordat** provides inter alia as follows:

*“The right of appointment, retention, promotion, transfer and dismissal of teachers in Primary Schools will rest with the Public Service Commission. A teacher shall not be appointed to a school if the denominational board objects to such an appointment on moral or religious grounds. Similarly, if a teacher be found unsatisfactory on these very ground, moral or religious, the denominational authority shall have the right to request his removal to another school after due investigation. For these reasons it is proposed (provided the legal and constitutional arrangements allow) that vacancies as they occur in all schools should be*

*advertised and applications submitted in the first instance to the respective Board of management which will examine them and forward them all, with their recommendations to the Public Service Commission for final action."*

## **LAW & ANALYSIS**

[30] The procedure outlined in the above Regulations for an appointment of a teacher to an assisted school was explained in the judgment of the Court of Appeal delivered by Hamel-Smith JA in the case of **Teaching Service Commission v Lynette Maharaj**<sup>6</sup>:

*"The procedure to fill a vacancy in an assisted school, in this case, the post of Principal, is subject to the Public Service Commission Regulations, Chap.1:01 that were adopted by the Teaching Service Commission with retroactive effect from September 20, 1968. The regulations provide, inter alia, that the post be advertised and all applications received be sent by the Commission to the Board of the particular school. The Board in turn is required to interview the applicants and to recommend one for the post. In making its recommendation to the Commission the Board is guided by certain principles for selection. They are important because if the Commission finds that the Board has failed to apply them before making its recommendation it may reject the recommendation and call on the Board to make a different one. The discretion to*

---

<sup>6</sup> Civ App. No. 157 of 1994

*do so is a matter solely for the Commission. If the discretion is exercised, should the Board fail to make a different recommendation, the Commission in accordance with and subject to regulation 133(3) can appoint a teacher of its own choice."*

- [31] After interviews were conducted by the Second Defendant in December 2012, there is no evidence that it sent its recommendation to the Commission before 5<sup>th</sup> April 2013 when the Commission wrote to it indicating that the former intended to promote the Claimant and invited the Board's comments. From the evidence it appears that it was only then that the Second Defendant communicated its recommendation to the Commission. The procedure adopted by the Commission, in appointing the Claimant before receiving the Board's recommendation for the post, is clearly in breach of **Regulations 129 (5) and (6) and 133 (1)**. Even if the Board had been tardy in submitting its recommendation for the position, nothing in the Regulations authorizes the Commission to proceed to communicate their intention to promote an applicant for the position and to invite comments from the Board. The better and proper course to be followed, in line with the Regulations would have been to invite the Board to send its recommendation for the post once it had taken into account **Regulation 18**. In that case the Commission was mandated to appoint the Board's recommendation. If the Board had failed to take **Regulation 18** into account in coming to its decision then the provision of **Regulation 133 (2)** would have been triggered. The Commission could then require the Board to reconsider its recommendation and make a different one. It is only where the Board failed to do so within 21 days and gave no explanation for its failure that the Commission could proceed to appoint someone to the post pursuant to the guidelines provided by **Regulation 133 (3)**.



- [32] In my view it is only where the First Defendant is required to make an appointment to the vacancy pursuant to **Regulation 133 (3)(a)** and **(b)** that Clause 4 of the **Concordat** would obtain. **Regulation 133 (3) (a)** contemplates that the Commission may appoint a teacher of the same religious persuasion to an assisted school with the approval of the Board and the teacher. If the Board objects to such an appointment, it having failed to make a different recommendation upon being asked to do so by the Commission, then the only basis for such objection can be as provided for the **Concordat** on moral and religious grounds.
- [33] In this case the First Defendant abandoned its own procedure set out in **Regulation 129** and **133 (1)** supra and purported to appoint the Claimant based on interviews that it conducted without having first received the Board's recommendation, or having considered whether that recommendation was made taking into account **Regulation 18**. Furthermore, after the purported appointment of the Claimant as outlined above, the First Defendant met with the Second Defendant to discuss the issue of the Claimant's appointment in the fact of the Board's continued objection. At that meeting the Board indicated that its objection was based on *inter alia*, succession planning for the school and a flawed interview process. The Board also made it clear that it did not wish to present a case on the basis of moral or religious grounds against the Claimant. On the basis of this discussion and meeting the First Defendant rescinded its decision to appoint the Claimant as Vice Principal and decided to re-advertise the post.
- [34] In this case, there is no evidence by either side that the Second Defendant failed to take into account **Regulation 18** in recommending Mrs. Wahida Mohammed-Narine to fill the vacant post of Vice Principal (Primary) in the San Fernando TML Primary School. In the circumstances pursuant to **Regulation 133 (1)**, the Commission was obligated to approve the recommendation.

[35] I am of the view that the decision to rescind the appointment was the right one though not for the reasons relied upon by the First Defendant. Since it failed to follow its own procedure for the appointment of a teacher to an assisted school, I consider that in fairness to all, including the applicant, the appropriate course to adopt was to abandon the entire exercise, rescind its decision and start over. This would ensure that the rights of all parties – the Board, the Claimant and the other applicants are protected by adherence to a procedure for appointment carefully laid out in Constitution and the **Concordat**.

[36] The **Concordat** is an agreement between the Government of Trinidad and Tobago and the Boards of assisted or denominational schools by which certain assurances are given by the Government for the preservation and character of denominational schools within the State. The fact that a special procedure is outlined in the Constitution for the appointment of a teacher to an assisted school is an acknowledgment of the right of the Boards of these schools to have an important input into the staffing of these schools in order to preserve the character of the school as a denominational one. I consider that the provisions contained in the Constitution, the Regulations and the Concordat operate to ensure fairness to all sides including the applicant for a vacancy such as the Claimant.

[37] In the circumstances the First Defendant did not follow the procedure set out for the appointment of a teacher to an assisted school.

*What is the effect of the failure by the Teaching Service Commission to adhere to the procedure set out in the Constitution for the appointment of a teacher to an assisted school?*

[38] **Section 129 (3)** of the Constitution provides:

*(3) The question whether –*

*(a) Service Commission has validly performed...any function vested in it by this Constitution...*

*(b)...*

*(c)...*

*May not be enquired into any Court”*

[39] This Section prevents any enquiry by a Court of law to determine whether the Commission has validly performed any of its functions under the Constitution unless it can be shown that in exercising its powers the Commission acted outside its jurisdiction or in breach of the rules of Natural Justice.<sup>7</sup> In its Fixed Date Claim the Claimant did not allege that the Commission acted outside its jurisdiction. However, in its submissions<sup>8</sup> the Claimant did argue that the Commission acted *ultra vires* the Constitution and Regulations when it rescinded its decision to appoint him as Vice Principal and took into consideration matters that were irrelevant and outside the provision of Clause 4 of the **Concordat**.

[40] The Claimant has alleged in this case that the decision of the Second Defendant not to recommend him for the position of Vice Principal was in breach of the

---

<sup>7</sup> Teaching Service Commission v Lynette Maharaj Civ App NO 157 of 1994 pg 6

<sup>8</sup> Paragraph 10, Submissions of Claimant filed on 18<sup>th</sup> July 2014

rules of Natural Justice in that he was entitled to know the reason why the Second Defendant refused to recommend him to the post. He also asserted that the decision of the Defendants to re-advertise the post and not to invite him to make representations on whether this should be done also amounted to a breach of the Rules of Natural Justice.

[41] The Claimant was interviewed by the Second Defendant along with other applicants. He was given the same opportunity as the others to make a case for his appointment. Thereafter the Board made a decision about its recommendation to the post as it was entitled to. As noted above, there is no evidence that the Commission concluded that this recommendation had failed to take into account **Regulation 18**. In the circumstances, the Claimant was not entitled to be heard again before the Board made its recommendation.

[42] Additionally, there is no provision in the Regulations for an applicant to be informed of the reason(s) why the Board did not recommend him for promotion after interview. I am of the view that the purpose of **Regulation 133 (1) and (2)** are to ensure fairness to the Claimant and any other applicant in the selection process by the Board. I do not consider that in the circumstances of this case the Claimant was entitled to be informed of the Board's reasons for not recommending him. It is only where **Regulation 133 (3)** is triggered that the reason for the Board's objection to an appointment to the Commission must be given. In that case the reason is limited to that of moral and religious grounds.

[43] It is to be noted that there is no general duty on the part of the public authority to give reasons.<sup>9</sup> In **R v Ministry of Defence ex parte Murray** the Court citing Donaldson LJ **R v Civil Service Appeal Board ex parte Cunningham 1991 4 AER 310** stated, "When a statute has conferred on anybody the power to make

---

<sup>9</sup> R v Ministry of Defence ex parte Murray pg 9,

decision affecting individuals, the Court will not only require the procedure prescribed by statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural standards as will ensure the attainment of fairness.” Further, in the absence of a requirement to give reasons the party seeking to argue that reasons should have been given must show that the procedure adopted of not giving reasons is unfair.<sup>10</sup>

[44] From the facts and circumstances of this case, I find that the procedure for the appointment of a teacher to an assisted school was open and fair. The Claimant was not entitled to be given reasons for the Board’s decision not to recommend him for the vacancy nor the decision of both Defendants to re-advertise the position. Accordingly, I hold that there was no breach of the rules of Natural Justice by either Defendant.

*What is the effect of the failure by the First Defendant to follow its own procedure?*

[45] In **Teaching Service Commission v Lynette Maharaj** *supra* Hamel-Smith JA opined that the failure (by a Commission) to comply with the provision of a particular regulation or to construe or apply it properly may result in a function vested in it not being validly performed; however the ouster clause in the Constitution may prevent review by the Court. He stated that:

*“Even if the counsel for the respondent is correct and the assumption could be made that the Commission had failed to comply with the regulation, could it be said that the Commission was acting outside of its jurisdiction? The*

---

<sup>10</sup> R v Secretary of State for the Home Department ex parte Doody 1994 1 AC 531

*answer must be 'no'. The Commission, in exercising its power of appointment, was appointing Mr. Beepath to the post of principal and that was something it was empowered to do by virtue of Section 125. The fact that failure to comply with a particular regulation or to construe or apply it properly may result in a function vested in it not being validly performed is precisely the purpose of the ouster clause.*

*In **Thomas v The Attorney General 1982 AC 113 PC** Lord Diplock said at page 393: If the Police Service Commission had done something that lay outside its functions, such as making appointments to the Teaching Service or purporting to create a criminal offence, **Section 102(4)** of the Constitution would not oust the jurisdiction of the High Court to declare that what it had purported to do was null and void."*

[46] I have already held that the First Defendant breached its own procedure for appointment of a teacher in an assisted school as laid out in the Constitution and the Regulations created thereunder. However, this failure to comply with the Regulations occurred in the course of the Commission exercising its power to appoint the Claimant to the post of Vice Principal – something that it was empowered to do by **Section 125** of the **Constitution**. In the circumstances where the First Defendant has sought to correct its error by re-advertising the position – a course which I endorse, there is nothing for the Court to review.

[47] I should add that had the Commission persisted with the appointment of the Claimant, and the Board had complained, then **Section 129 (3)** could not have operated to oust the jurisdiction of the Court. The decision making power of the

Teaching Service Commission to appoint persons to offices within the teaching service is not exclusive to the Teaching Service Commission. **Section 129** of the Constitution of Trinidad and Tobago empowers the First Defendant to make regulations to regulate its own procedure in order to give effect to its mandate under Section 125 of the Constitution. Regulations 129, 132 and 133 of the Teaching Service Commission Regulations provide for consultation with the Board of an Assisted School before an appointment to that school can be made by the Ministry. A failure to follow that procedure can arguably be the basis of a claim by any such Board of a breach of their constitutional right to property since Assisted Schools are owned by their respective Boards. The importance of adherence to procedural provisions provided for in the constitution was explained by Lord Keith in the **Attorney General of Trinidad and Tobago v Whiteman 39 WIR 397**:

*“There are no grounds for giving a restricted meaning to the words “procedural provisions”. A procedure is a way of going about things, and a provision is something which lays down what that way is to be. Given that there are some situations where the right to communicate with a legal adviser will not be effective if no provision exists for some procedure to be followed with a view to dealing with these situations, there is a clear necessity that such provision should be made. So section 5(2)(h) gives a right to such provision.”*

[48] In the circumstances I must dismiss the Claimant’s case for Judicial Review. The First Defendant has taken necessary action to address its missteps and it is to be hoped that the matter is dealt with fairly and properly by both Defendants. Whilst the Court can empathise with the Claimant, who feels that he has been

bypassed though qualified to fill the post, the relevant issue is whether the selection is done fairly and in accordance with the prescribed Regulations.

[49] On the issue of costs, I order that each part bear their own costs. Even though I have dismissed the Claimant's claim the fact is that the First Defendant did not follow the procedure for the appointment of a teacher to an assisted school.

Joan Charles  
Judge