

SALAPE (POUTOA) v PUBLIC SERVICE COMMISSION
AND EVES (FEAGAI)

Supreme Court Apia
St John CJ
11 May 1982

PRACTICE AND PROCEDURE - Public Service Commission - duties -
court representation

HELD: Declaration in favour of Plaintiff voiding the
appointment of the 2nd defendant. Public Service
Commission failed to advertise vacancy and invite
applications in breach of S7(3) of the Public Service
Act 1977.

LEGISLATION:

- Public Service Act 1977

R Va'ai for Plaintiff
L F Ah Ching for Defendants

The Plaintiff a registered nurse, seeks a declaration that the
appointment of Feagai Eves, the second Defendant, by the 1st
Defendant, the Public Service Commission, was null and void upon
the grounds that the Commission did not advertise the vacancy and
invite applications before the position was filled. Section 7(3)
of the Public Service Act 1977 is in the following terms:

"7. Appointment of officers to vacancies - (3) The
Commission shall urgently whenever practicable notify every
vacancy or prospective vacancy in a permanent position
(including any newly created permanent position) in the
Public Service Official Circular or in such other manner as
it thinks sufficient to enable any officer qualified for
appointment to make application therefore".

There was no dispute that the position of Incharge Family Welfare
Centre was vacant from 13 July 1981, when the second Defendant
was removed by way of transfer from that position until she was
re-appointed to the same position on 19th February 1982, a period
of over seven months. During the period the Plaintiff had been
considered sufficiently competent to be appointed by the
Commission to the position of Acting Incharge Family Welfare
Centre.

On the case being called on for hearing, a public service inspector announced that he appeared for the Commission and for the second Defendant. On enquiry by the court he stated he was not a lawyer but was directed by the Commission to appear for it and, at his suggestion to the second Defendant, obtained her approval to appear for her. The right of appearance of persons other than solicitors or barristers is a matter for the discretion of the court and in appropriate cases leave is given to other persons to appear. Eventually the inspector applied for leave and was granted it but was told to convey to the Commission a message that in future lawyers were necessary.

The commission filed what was termed a statement of defence. That statement contained, among other things, an assertion that the application was unconstitutional, that the Commission confined itself to its constitutional functions; that unsettled negotiations regarding the transfer of the second defendant prevented the position being declared a vacancy; that the granting of the order sought would prevent the Commission from performing its constitutional functions thus adversely affecting the efficiency of the public service as a whole and lastly, that the application was "manifestly frivolous and vexatious as having no basis".

To argue these "constitutional" points the Commission, as referred to previously, chose to give the court, not the assistance of a lawyer, but one of its inspectors, unqualified in law. In the circumstances, as the Chairman of the Commission swore a lengthy affidavit setting out his version of the facts, I must assume that these points of defence were approved by the Commission. Even if they had any substance it is, at least insulting to the Court to send an unqualified inspector to argue them. Added to this, can be the most confident assertion that there is not the slightest substance in any of them. The only matter in the proceedings that could be termed "frivolous and vexatious" was the statement of defence itself.

The statement that to make the declaration would be to impair the efficiency of the Public Service is ludicrous. Provisions such as Section 7(3) have been tried and tested in many countries for over a century. Section 7(3) ensures that where there is a vacancy, any qualified officer of the service can apply to advance himself or herself; from the applicants the person with the most merit is chosen by the Commission or on appeal. It must surely be obvious that any other method of filling a vacancy is destructive of the morale of those officers who are keen to improve their capacity and have the ambition to progress. The inspector argued that the Commission felt bound to be fair to the second Defendant; apparently fairness to the Plaintiff or any other officer who wished to apply did not concern it.

The affidavit filed by the chairman of the Commission emphasises differences of opinion between himself and the former Director-General of Health as to the qualification of the second Defendant. The Chairman may feel that he is better qualified to judge than the Director-General but the difference of opinion is irrelevant to this case.

The Commission is bound to carry out its functions in accordance with the Act which regulates them. If the Commission had had competent legal advice the appointment would never have been made. I make the declaration sought and I order the Commission to pay the Plaintiffs costs.