

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable/Redact
[2024]
MC46/2023

In the matter between:

ALEX ETIENNE
(rep. by Joshua Revera)

Petitioner

and

THE PUBLIC SERVICE APPEAL BOARD
(unrepresented)

Respondent

Neutral Citation: *Etienne v PSAB* (MC46/2023) [2023] (11 December 2024).

Before: E. Carolus J

Summary: Application for Judicial Review of decision of Public Service Appeal Board – Articles 145 & 146 of the Constitution

Heard: 22nd October 2024

Delivered: 11 December 2024

ORDER

1. I issue a writ of certiorari quashing the decision of the Public Service Appeal Board contained in its letter dated 10th April 2023
 2. I issue a writ of mandamus compelling the Public Service Appeal Board to hear the petitioner’s complaint.
 3. A copy of this judgment is to be served on the respondent.
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RULING

E. Carolus, J

[1] Alex Etienne has petitioned this Court for judicial review of a decision of the Public Service Appeal Board (“the PSAB”) made on 10th April 2023.

[2] The events giving rise to the decision which is sought to be reviewed, as averred in the amended petition dated 12th November 2013, are as follows:

- [3] The petitioner who was employed as a police officer attached to the Anti-Narcotics Bureau (“ANB”) was transferred to the Organised Crime Unit with effect from 1st July 2022 because of restructuring of the ANB. His employment with the Organised Crime Unit was terminated by letter dated 1st December 2022, with effect from 1st January 2023 by reason of redundancy pursuant to Public Service Order 164(1)(d). The petitioner avers that the decision to terminate his employment was not made in compliance with PSO 164 in that no approval was sought from the authority responsible for Public Administration for the same. Furthermore, he avers that contrary to what was stated in the letter dated 1st December 2022, the position that he held continues to exist. The petitioner appealed to the PSAB which informed him by letter dated 10th April 2023 that the PSAB had conducted an investigation into the circumstances of the termination of his employment and had concluded that all established procedures for redundancy were followed. The PSAB further stated that his complaint did not fall within the categories of complaints that the PSAB was mandated to deal with by Article 146 of the Constitution and therefore did not fall within its jurisdiction.
- [4] The petitioner avers that the PSAB’s decision not to hear the petitioner’s appeal was in violation of Article 146 (1) of the Constitution in that it omitted or failed to exercise its function under that provision to hear matters of public service. He further avers that the PSAB is not bestowed with any investigative powers and its decision was therefore ultra vires and in breach of natural justice.
- [5] The petitioner therefore seeks a writ of Certiorari quashing the PSAB’s order of 10th April 2023, and a writ of Mandamus ordering it to hear matters filed before it by the petitioner.
- [6] He avers that he has demonstrated his clear right to the performance of an act which the PSAB has a duty to perform; that there is no other adequate legal remedy available; and that he has a direct and substantial interest in the matter.
- [7] Leave was granted to the petitioner to proceed with the petition by Order of this Court dated 14th February 2024. The Court ordered service of the petition, supporting affidavit and connected documents and exhibits on the PSAB. An order was also made directing the

PSAB to forward the record in respect of its decision canvassed in the petition, to the Supreme Court.

- [8] The Chairperson of the PSAB was duly served but the PSAB was unrepresented on the date fixed for its appearance, and the matter proceeded exparte.
- [9] At the hearing of the matter, counsel for the petitioner essentially relied on the petition and supporting affidavit.
- [10] In *William v PSAB* (MC48/20230 [2024] 17th September 2024) and *Legaiie v PSAB* (MC45/2023) [2024] (17 September 2024), two cases identical to the present one in all material respects, Madeleine J, at paragraph [9] of both judgments, identified the issues for her determination as being “*one, whether the [PSAB] acted Ultra Vires the Constitution in refusing to hear the Petitioner’s complaint/appeal from the termination of her appointment on the ground of redundancy by the Police Department. Two, in doing so, did the Respondent also breach the principles of natural justice? Three, are there are grounds to grant the writs prayed for by the Petitioner?*” These same issues arise in the present case.
- [11] Madeleine J then went on to examine Articles 145 and 146 of the Constitution, which provide in relevant part as follows:

Article 145. Establishment of the Public Service Appeal Board

(1) There shall be a Public Service Appeal Board which shall perform the functions conferred upon it by this Constitution and any other law.

(2) Subject to this Constitution, the Public Service Appeal Board shall not, in the performance of its functions, be subject to the direction or control of any person or authority.

Article 146. Functions of Public Service Appeal Board

(1) *The Public Service Appeal Board shall hear complaints by persons aggrieved by -*

- (a) *an appointment made to an office;*
- (b) *a promotion to an office;*
- (c) *disciplinary proceedings taken in respect of an officer;*
- (d) *the termination of appointment of a person who was holding an office;*
- (e) *any decision relating to the qualification of a person who has applied for an office or is serving in an office,*

in the public service.

(2) *Clause (1) shall not apply to an office the appointment to which falls within the competence of the Constitutional Appointments Authority or an office referred to under article 62(3) or any other law.*

(3) *The Public Service Appeal Board may refuse to consider a complaint where it is of the opinion that—*

- (a) *it is frivolous, vexatious or trivial or made in bad faith; or*
- (b) *the making of the complaint has, without reasonable cause, been delayed for more than six months, or the complaint is the subject of proceedings before the court.*

Emphasis added

[12] Madeleine J stated that –

[14] *In the present application, it is clear to me that the Petitioner was employed in the public service, namely the Police Department, until her appointment was terminated on the ground of redundancy by a letter dated 1st December 2022 and to take effect on 1st January 2023 pursuant to Public Service Order 164.*

[15] *In terms of Article 146(1)(d) of the Constitution, the Respondent clearly has jurisdiction to hear complaints of termination of the appointment of the holder of an office in the public service unless the office is excepted under Article 146(2). The Respondent can only refuse to hear a complaint, in terms of Article 146(3) of*

the Constitution, if it is of the opinion that the said complaint is frivolous, vexatious and made in bad faith. Also, if the making of the complaint has been delayed for more than 6 months or if the complaint is subject to pending court proceedings.

[13] She went on to say that –

[16] *The Respondent's letter of 10th April 2023 informs the Petitioner of two matters. One, that it investigated into the circumstances of the alleged termination of her employment contract and found that all established procedures for redundancy were followed. Second, that the complaint fell outside its jurisdiction and that it will not hear the matter. This letter, itself, is in response to the Petitioner's letter of 16th January 2023 requesting an explanation as to why her complaint was not being accepted by the Respondent. None of the permissible circumstances for refusal to hear a complaint under Article 146(3) of the Constitution were raised by the Respondent.*

[17] *It appears from the Petitioner's letter of 16th January 2023 and the Respondent's letter of 10th April 2023, that the Respondent conducted an investigation into the alleged termination of Petitioner's employment and found compliance with the redundancy procedures without first accepting her complaint and also in deciding that it had no jurisdiction to entertain the same complaint. In so doing, the Respondent did not hear the Petitioner. Neither in relation to the purported investigation into the termination of her employment, nor at all, in relation to her own complaint. Furthermore, Article 146(1) of the Constitution does not vest any investigating powers in the Respondent.*

[14] She held as follows:

[18] *Based on the above and given the clear mandate of the Respondent under Article 146(1)(d) of the Constitution and that no objections were raised by the Respondent to the application, I allow the challenge to the legality and propriety of the Respondent's decision of 10th April 2023 as made out in the Petitioner's application.*

[19] *I answer all the three questions under paragraph 9 above in the affirmative.*

[15] She proceeded to issue a writ of certiorari quashing the decision of the PSAB and a writ of mandamus compelling it to accept and hear the Petitioner's complaint in relation to the termination of her appointment.

[16] Given the similarities in the present case to *William v PSAB* and *Legaie v PSAB (supra)*, for the same reasons as in those cases, I also allow the challenge to the legality and propriety of the PSAB's decision of 10th April 2023 as made out in the present petition. Similarly, I also find that that the PSAB acted ultra vires the Constitution in refusing to hear the Petitioner's complaint regarding the termination of her appointment, that in doing so it breached the principles of natural justice, and that there are grounds to grant the writs prayed for by the Petitioner.

[17] Accordingly, I make the following Orders:

(a) I issue a writ of certiorari quashing the decision of the PSAB contained in its letter of 10th April 2023.

(b) I issue a writ of mandamus compelling the Respondent to accept and hear the Petitioner's complaint in relation to the termination of her appointment.

[18] A copy of this Judgment is to be served on the Respondent.

Signed, dated and delivered at Ile du Port on 11th December 2024



E. Carolus, J