

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

**Civil**  
**No. 23/1328 SC/CIVL**

**BETWEEN: Alfred Baniuri**  
Claimant

**AND: Republic of Vanuatu**  
Defendant

*Dates of Trial:* 30 August 2024 & 9 October 2024  
*In Attendance:* Justice V.M. Trief  
*Counsel:* Claimant – Mr K.T. Tari  
Defendant – Ms J. Toa Tari

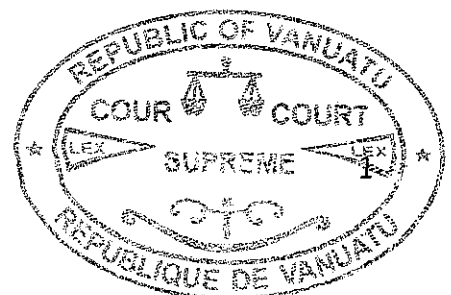
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**JUDGMENT**

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A. Introduction

1. The Claimant Alfred Baniuri commenced employment with the Public Service Commission ('PSC') in 1991 as an Accountant Clerk in the Finance Department. In 1992, he was appointed as Internal Audit Assistant in the Finance Department. Later that same year, he was seconded for 2 years to help set up the Peace Corps office in Vanuatu.
2. By PSC letter dated 14 December 1995, Mr Baniuri was re-instated to the position of Supervisor Cashier at the Finance Department commencing on 16 December 1995. He alleges in the Claim filed on 7 July 2023 that he turned up to work but was told that the position was occupied and that he would be contacted about another position, but that he was not advised of another position until 2008.
3. From 29 October 2008 to 31 December 2021, Mr Baniuri was appointed and worked as the Principal Human Resource Officer of the Ministry of Agriculture, Biosecurity, Forestry and Fisheries. He resigned and ceased employment on 31 December 2021.



4. By the Claim, Mr Baniuri is seeking payment of unpaid salary from 16 December 1995 to 17 November 2008 (12 years and 11 months) when he had been re-instated but did not work. Mr Baniuri abandoned this aspect of the Claim at the commencement of the trial, accepting that it was barred by s. 20 of the *Employment Act* [CAP. 160] (the 'Act').
5. However, Mr Baniuri seeks payment of unpaid severance allowance of VT8,612,000 for the period 16 December 1995 to 17 November 2008 and interest on that amount.
6. It was also alleged that the Defendant State breached the employment agreement, the *Employment Act*, the *Public Service Act* and/or was negligent to fulfil its obligation as a good employer which has caused Mr Baniuri to suffer loss. He is seeking VT500,000 common law damages and costs.
7. The Claim is disputed. The State alleged in its Defence filed on 10 August 2023 that despite the PSC's letter dated 14 December 1995 of re-instatement to the position of Supervisor Cashier in the Department of Finance, Mr Baniuri never worked in or performed the duties of that position. Further, that the State did not pay Mr Baniuri any salary during the period 16 December 1995 to 17 November 2008 as he had not provided any service or work for the State.
8. The first issue is whether or not Mr Baniuri was employed by the PSC in the period 16 December 1995 to 17 November 2008. If he were, he would have been in the continuous employment of the State and therefore is entitled to the payment of severance allowance. The second issue is whether or not the PSC was negligent. If it was, then what damages are payable.

B. The Law

9. Paragraph 54(1)(d) of the Act provides as follows:

54. (1) *Subject to section 55, where an employee has been in the continuous employment of an employer for a period of not less than 12 months commencing before, on or after the date of commencement of this Act, and –*

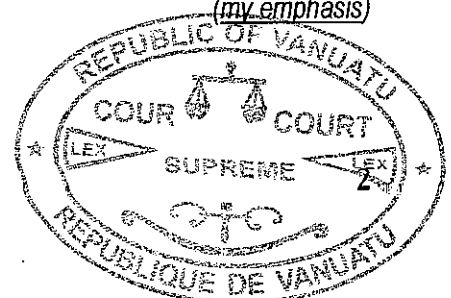
...

(d) *where the employee has been in continuous employment with the same employer for a continuous period of not less than 6 consecutive years and the employee resigns in good faith; or*

...

*the employer shall pay severance allowance to the employee under section 56 of this Act.*

(my emphasis)



10. Subsections 56(1) and (2) of the Act provide as follows:

56. (1) *Subject to the provisions of this Part, the amount of severance allowance payable to an employee shall be calculated in accordance with subsection (2).*
- (2) *Subject to subsection (4) the amount of severance allowance payable to an employee shall be –*
- (a) *for every period of 12 months – 1 months remuneration;*
- (b) *for every period less than 12 months, a sum equal to one-twelfth of the appropriate sum calculated under paragraph (a) multiplied by the number of months during which the employee was in continuous employment.*

11. Severance allowance is payable at the rate of 1 month's remuneration for each year of service pursuant to para. 54(1)(d) and subs. 56(2) of the Act.

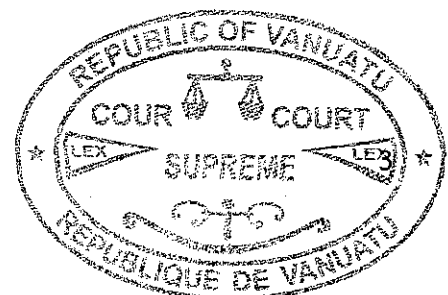
C. Evidence

12. **Mr Baniuri** relied on his Sworn statement filed on 7 July 2023 [Exhibit C1]. He deposed that after receiving the 14 December 1995 re-instatement letter, he attended for work at the Department of Finance but the Deputy Director of Finance told him that Noeline Thomas already occupied the position therefore to wait for the PSC to look for a new position for him. He deposed that he waited on the PSC without salary from 16 December 1995 to 17 November 2008 (12 years and 11 months) then was appointed to a new position as Principal Human Resource Officer at the Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity.

13. In cross-examination, Mr Baniuri agreed with the positions and time periods that he was employed by the PSC. He agreed that he spoke with Neil Stephens who was a member of the PSC though he agreed that Mr Stephens was only a member and that he had not followed up with the Commission itself. In the last question in cross-examination, it was put to Mr Baniuri that in the period 1995-2008, he did not work for the PSC. He confirmed that he did not work during that time.

14. In re-examination, Mr Baniuri explained his last answer in cross-examination, stating that he received the reinstatement letter but the position was already occupied. He stated that he could not work because the position was already occupied.

15. **Jonathan lavere** is the Acting Secretary of the PSC. He relied on his Sworn statement filed on 26 January 2024 disclosing PSC records in relation to Mr Baniuri's employment [**Exhibit D1**] and the PSC Flying Minutes No. 07/2023 dated 1 August 2023 [**Exhibit D2**]. The PSC in those Flying Minutes purported to revoke Mr Baniuri's reinstatement letter dated 14 December 1995 even though the present proceeding had already commenced with Mr Baniuri relying on the letter for his claim. Accordingly, I do not have any regard to **Exhibit D2**.



D. Was Mr Baniuri employed by the PSC in the period 16 December 1995 to 17 November 2008 hence is entitled to severance allowance?

16. Mr Baniuri's evidence was that he received a letter dated 14 December 1995 from the PSC reinstating him to the position of Supervisor Cashier effective from 16 December 1995 but he never worked in that position because when he attended for work on 16 December 1995, he was told that Noeline Thomas already occupied the position. In his own words, he could not work because the position was already occupied. I so find.

17. I also find that no employment contract was formed between Mr Baniuri and the PSC. The PSC in the reinstatement letter offered Mr Baniuri employment in a position however did not actually provide that position, or any position, for him to work in. On Mr Baniuri's part, he did not perform any work for the PSC in any position during that period. It is also telling that there is no evidence of any written acceptance by Mr Baniuri in response to the 14 December 1995 letter. He asserted that he followed up with the State without success however has not called other witnesses to give supporting evidence, nor is there any written evidence of him following up with the PSC.

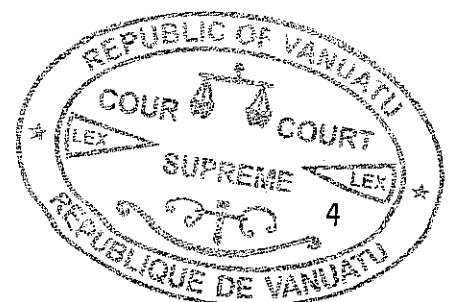
18. Accordingly, I find that Mr Baniuri was not employed by the PSC in the period 16 December 1995 to 17 November 2008.

19. Mr Baniuri was therefore not in the continuous employment of the State from 16 December 1995 to 17 November 2008, and therefore not entitled to payment of severance allowance for that period.

20. Mr Tari submitted that the State's payment of the huge sum of VT4,401,084 of Mr Baniuri's annual leave for the period 16 December 1995 to 17 November 2008 indicated that the PSC had accepted that Mr Baniuri was in the State's continuous employment therefore he is entitled to the balance of his severance allowance of VT8,612,100. The State paid Mr Baniuri annual leave for that period. However, as held above, Mr Baniuri was not in the continuous employment of the State from 16 December 1995 to 17 November 2008 therefore he is not entitled to payment of severance allowance for that period.

E. Was the PSC negligent?

21. No duty of care has been pleaded on the part of the PSC much less breach of duty and causation. I rule therefore that there is no cause of action in negligence disclosed in the Claim.

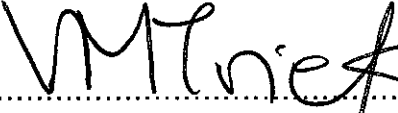


22. It was also pleaded in the Claim that the PSC breached the employment agreement, the *Employment Act*, the *Public Service Act* and the *Public Service Staff Manual* and/or was negligent in acting as a good employer to fulfil its obligation under the agreement. However, I have held that there was no employment contract or employment agreement. No particulars have been provided as to alleged breaches of legislation or the staff manual however even if such breaches occurred, there is no statutory cause of action provided to enable Mr Baniuri to sue for damages arising from such breaches.
23. For the reasons given, the PSC was not negligent and Mr Baniuri is not entitled to damages.

F. Result and Decision

24. The Claim is **dismissed**.
25. Costs must follow the event. The Claimant is to pay the Defendant's costs fixed summarily in the sum of VT200,000 **by 4pm on 23 December 2024**.

**DATED at Port Vila this 25<sup>th</sup> day of November 2024  
BY THE COURT**

  
.....  
Justice Viran Molisa Trief

