

Każ Nru CEDUC-24-4991

23 ta' Jannar 2025

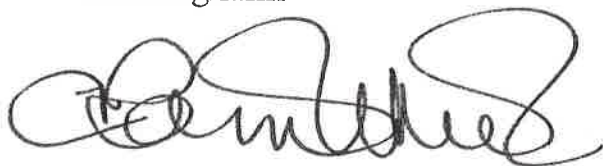
L-Onorevoli Dott Angelo Farrugia
Speaker
Kamra tad-Deputati
Pjazza Helsien
Il-Belt Valletta
VLT 1111

Onorevoli Speaker

Naghmlu referenza għall-komunikazzjoni tas-16 ta' Settembru 2024 fil-każ numru CEDUC-24-4991.

In segwitu għall-korrispondenza riċenti bejn dan l-Uffiċċju u l-Uffiċċju tas-Segretarju Permanenti Ewlieni, qed ngħaddulek kopja ta' din il-korrispondenza sabiex, fit-termini tal-Artikolu 22(4) tal-Kap. 385, din titqiegħed fuq il-mejda tal-Kamra tad-Deputati għall-attenzjoni tal-Membri tal-istess Kamra.

Insellu għalik



Joseph Zammit McKeon
Ombudsman



Vincent A De Gaetano
Kummissarju għall-Edukazzjoni

Dokumenti annessi:

1. Ittra tas-Segretarju Permanenti Ewlieni
2. Risposta tal-Kummissarju għall-Edukazzjoni
3. Kopja ta' Ċedola ta' Depożitu



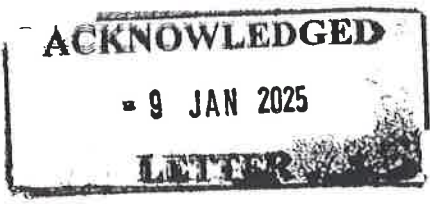
CEDUC-24-4991

7th January 2025

Judge Emeritus Joseph Zammit McKeon
Ombudsman

Chief Justice Emeritus Vincent A De Gaetano
Commissioner for Education

Dear Sirs



I refer to your letter dated 9 September 2024 addressed to the Prime Minister in accordance with article 22(4) of the Ombudsman Act, forwarding the Final Opinion on the case, drawn up by the Commissioner for Education (CoE) on 27 August 2024.

The findings and recommendation in the Final Opinion have been analysed. Consideration was also taken of arguments brought forward by the Permanent Secretary, Ministry for Education, Sport, Youth, Research, and Innovation (MEYR) in his reply dated 2 September 2024, and of the counter arguments made by the CoE in his rejoinder dated 9 September 2024.

Regarding the recommendation made to the Education Authorities to desist from giving effect to the complainant's "dismissal", we are submitting valid reasons which support the decision taken by MEYR. In addition to the arguments made by the Permanent Secretary (MEYR), we are submitting the following:

1. The complainant was neither dismissed nor was his contract terminated. On 10 April 2024, approval was requested to extend the complainant's employment by a further year, as he was over 65 years of age. This approval was not granted.
2. This decision was not in breach of the pertinent law. Clause (a) of the third proviso of article 36(14) of the Employment and Industrial Relations Act (Cap 452), while referring to termination of employment, states:

... the employer can terminate the employment of an employee when the employee reaches pension age as defined in the Social Security Act;



In this case the employment was not terminated but not extended, and the complainant was well beyond pension age.

3. The decision not to extend the complainant's employment cannot be termed as 'unfair dismissal'. Article 2 of Cap 452 defines unfair dismissal as termination of employment in breach of the Act and specifies *that the expiration of a fixed term contract of employment shall not be deemed to be a termination of the fixed term contract of employment.*

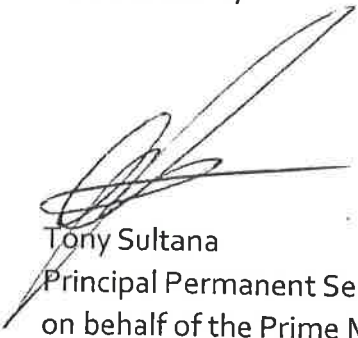
The complainant's term of employment effectively expired annually as he required approval to extend his employment on a yearly basis, in line with established standards regulating employment in the Public Administration, and applicable only to persons over 65 years of age.

4. By not acceding to the complainant's request to extend his employment beyond age 67, the Education Authorities did not act in breach of the MCAST Act and did not unlawfully assume any of the powers of the MCAST's Board of Governors (BoG). The BoG has the power to appoint the Principal following a call for applications. However, removal from office does not fall within the functions of the BoG. In fact, it was MCAST who sought approval for an extension from the Ministry, in line with established procedures.

None of the above-quoted legislation is considered to be oppressive, unjust or improperly discriminatory.

For the above reasons, in addition to the submissions made by the Permanent Secretary (MEYR), the recommendation made by the Commissioner for Education cannot be accepted.

Yours sincerely



Tony Sultana
Principal Permanent Secretary
on behalf of the Prime Minister

cc The Honourable Prime Minister
Permanent Secretary (MEYR)

Case No CEDUC-24-4991

23 January 2025

Mr Tony Sultana
Principal Permanent Secretary
Office of the Prime Minister
Auberge de Castille
Valletta

Dear Mr Sultana

Thank you for your letter minute of the 7th instant in connection with the case in caption, which letter minute was received at this Office on the 9th January.

Said letter minute simply *confirms* the constructive dismissal of the complainant under the guise or pretext of “not renewing” Professor Calleja’s appointment. Playing with words does not instil confidence in the public administration or the public service. A law may in itself not be oppressive, unjust or improperly discriminatory, but be so in the way it is applied in a concrete case.

The reference to Clause (a) of the third proviso to sub-article (14) of Article 36 of the Employment and Industrial Relations Act (Cap. 452) is irrelevant. According to basic legal hermeneutics, all the provisos to that sub-article are provisos to the *chapeau* of the sub-article which refers to a contract of service for an indefinite time. Professor Calleja’s contract was for definite, not an indefinite, period of time.

Likewise, your reference to the proviso to paragraph (d) in the definition of “unfair dismissal” of Article 2 of Cap. 452, is even more irrelevant, since that proviso just states the obvious, and there was nothing in the complainant’s contract of service about “annual expiration”.

More critically, however, is the fact that before the Industrial Tribunal, the Malta College of Arts, Science and Technology (MCAST) presented a Schedule of Deposit on the 10th September 2024 admitting that Professor Calleja’s contract was terminated before the stipulated date of the expiration of his contract of

service, and depositing before that tribunal the sum of over €40,000 in compliance with Article 36(11) of Cap. 452. MCAST, therefore, has confirmed the constructive dismissal of Professor Calleja. A copy of that Schedule of Deposit is attached.

Your letter minute aforementioned and this reply are being forwarded to the Speaker of the House of Representatives.

Yours sincerely

A handwritten signature in black ink, appearing to read "Vincent A De Gaetano". The signature is written in a cursive style with a large, sweeping flourish at the end.

Vincent A De Gaetano
Commissioner for Education

Enclosed: Copy of Schedule of Deposit

Copy: The Ombudsman

19/09/24

FIL-PRIM AWLA TAL-QORTI CIVILI

Il-Kulleġġ Malti għall-Arti, Xjenza u t-Teknoloġija (MCAST)

VS

Joachim James Calleja
(I.D. 374557M)

Cedola tal-Kulleġġ Malti għall-Arti, Xjenza u t-Teknoloġija (MCAST)
Jesponi bir-rispett:

Illi l-intimat kien ingaġġat mal-Kulleġġ esponenti bħala Principal permezz ta' kuntratt definit validu sa 30 ta' April tas-sena 2026;

Illi l-ingaġġ tal-intimat gie terminat b'effett minn 31 ta' Awwissu 2024. Illi skond l-artikolu 36(11) tal-Kap 452, "Principal li jitermina kuntratt ta' impjeg ta' impjegat qabel ma jagħlaq iż-żmien speċifikat f'kuntratt ta' servizz, ikollu jħallas lill impjegat somma li tkun daqs nofs il-paga kollha li kienet tkun tmiss lill-impjegat dwar il-bqija taż-żmien espressament miftiehem";

Illi għalhekk, is-somma dovuta lill-intimat skond l-artikolu 36(11) tal-Kap 452 hija ta' €41,058.33, liema somma għal xi raguni mhux qed tiġi aċċettata mil-intimat għalkemm lill offruta;

Għaldaqstant il-Kulleġġ esponenti, sablex jezimi ruhu minn kwalunkwe responsabilità, qed jadixxi din il-Qorti u taht l-awtorità' tagħha qed jiddepożita' s-somma ta' €41,058.33 f'isem ta' C. 593.63 spejjez ta' din il-proċedura jammontaw għal €41,058.33, biex jittiehdu mil-istess intimat wara li jhalli debita ricevuta.

Av. David Farrugla Sacco
Palazzino Del Monte, 61, St. Lucija Str., Valletta
David@fsgm.partners
MOB 99423049

Av. Jean Carl Abela

P.L. J.P. Busuttil

Depożitant:
Intimat:

MCAST - Triq Kordin, Paola
10, Triq Il-Markiz J. Scicluna, Madliena, Is-Swleq

Adnan Mulla
Deputat Rappreżentant

11 SEP 2024

Il-Kulleġġ Malti għall-Arti, Xjenza u t-Teknoloġija
P.L. J.P. Busuttil
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