

## CHAPTER 290

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## CHAPTER 290

### THE PUBLIC SERVICE (TEACHERS) ACT.

*Commencement:* 17 July, 1970.

**An Act to make provision for matters relating to teachers in the public service of the Government district administrations and urban councils, and to the Education Service Commission and for other matters related thereto.**

*Interpretation.*

#### **1. Interpretation.**

In this Act, unless the context otherwise requires—

- (a) “appropriate authority” means the President or, where he or she has delegated his or her functions under article 172(3) of the Constitution to any authority, that authority;
- (b) “commission” means the Education Service Commission established by article 167 of the Constitution;
- (c) “committee” means an education service committee established by section 12;
- (d) “Minister” means the Minister to whom functions under this Act are assigned;
- (e) “public officer” has the meaning assigned to it in article 257(1) of the Constitution;
- (f) “public service” has the meaning assigned to it in article 257(1) of the Constitution;
- (g) “teacher” means a person who regularly instructs persons in a school, other than a person who gives only religious instructions.

*The Education Service Commission.*

#### **2. Membership of the commission.**

(1) There shall be six members of the Education Service Commission in addition to the chairperson.

(2) The commission may act notwithstanding any vacancy in its membership or the absence of any member.

### **3. Secretary.**

There shall be a secretary to the commission who shall be a public officer.

### **4. Performance of delegated functions.**

Where any function of the President is delegated to the commission under article 172(3) of the Constitution, the commission may perform that function without seeking or acting on the advice of any person.

### **5. Consultation.**

Before the commission advises the President to appoint to the office of teacher any person holding any office to which article 147(b) or 166 of the Constitution applies, it shall consult the Judicial Service Commission or the Public Service Commission, as the case may be.

### **6. Enforcement of attendance.**

(1) The commission may require any person to attend and give evidence before it concerning any matter which it may properly consider in the performance of its functions under the Constitution and this Act and may require the production of any documents relating to any such matter by any person attending before it.

(2) Any person, other than a person who is notified to appear before the commission solely in connection with his or her application for appointment to the public service, who, without reasonable cause to do so, or who wilfully fails to produce any document in his or her possession when requested to do so by the commission under this section commits an offence and is liable on conviction to a fine not exceeding one hundred shillings.

(3) Any person attending before the commission at the request of the commission, other than a person who is applying for appointment to the public service, shall be entitled to be paid by the commission the same allowance as a witness who appears before the High Court as a witness in criminal proceedings.

## **7. Improper influence, etc.**

(1) Any person who otherwise than in the course of his or her duty, directly or indirectly by himself or herself or by any other person in any manner, influences or attempts to influence any decision of the commission commits an offence and is liable on conviction to a fine not exceeding four thousand shillings or to imprisonment for a period not exceeding two years or to both such fine and imprisonment; but nothing in this subsection shall be deemed to make unlawful the giving of a reference or testimonial to any applicant or candidate for any public office or the supplying of any information or assistance requested by the commission.

(2) Any person who, in connection with the performance by the commission of its functions, wilfully gives to the commission any information which he or she knows to be false, or does not believe to be true, or which he or she knows to be false by reason of the omission of any material particular commits an offence and is liable on conviction to a fine not exceeding four thousand shillings or to imprisonment for a period not exceeding two years or to both.

(3) For the purposes of this section “commission” means the commission, any member of the commission, any officer of the commission or any person or body of persons appointed to assist the commission in the performance of its functions.

## **8. Privilege of members.**

Every member of the commission shall have such and the like protection and privilege in case of any action or suit brought against him or her for any act done or omitted to be done in the bona fide execution of his or her duties as is by law given to the acts done or words spoken by a judge of the High Court in the exercise of his or her judicial office.

## **9. Privilege of communication.**

No person shall, in any legal proceedings, be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between—

- (a) the commission or any member or officer of the commission and the Minister, the Public Service Commission, the Judicial Service Commission, or any member or officer thereof or a public officer;

- (b) any member or officer of the commission and the chairperson; or
- (c) any member or officer of the commission in the performance of, or in connection with the performance of, the functions of the commission,

unless the Minister consents in writing to that production or disclosure.

#### **10. Divulgence of information.**

(1) Any member or officer of the commission and any other person who, without the written permission of the Minister, knowingly publishes or discloses to any person, otherwise than in the performance of his or her official functions, the contents of any document, communication or information which has come to his or her notice in the course of his or her duties in relation to the commission commits an offence and is liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding twelve months or to both.

(2) Any person who knows of any information which to his or her knowledge has been disclosed in contravention of subsection (1) who publishes or communicates it to any other person otherwise than for the purpose of any prosecution under this Act or in the course of his or her official duty commits an offence and is liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding twelve months or to both.

#### **11. Consent to prosecution.**

A prosecution in respect of an offence under section 7 or 10 shall not be instituted except with the consent of the Director of Public Prosecutions.

*Education service committees.*

#### **12. Education service committees.**

(1) There is established for each district and urban council a committee to be known as the education service committee, which shall consist of a chairperson and not less than three nor more than seven other members, all of whom shall be appointed by the Minister.

(2) A person shall not qualify for appointment as a member of a committee if he or she is a member of Parliament, a member of a district or

urban council, a member of any board or authority responsible for the management of a school or is a public officer.

- (3) The office of a member of a committee shall become vacant—
  - (a) at the expiration of two years from the date of his or her appointment; or
  - (b) if any circumstances arise that, if he or she were not a member of a committee, would cause him or her to be disqualified from appointment as a member.
  
- (4) A member of a committee may be removed from office by the Minister but may be so removed only for—
  - (a) inability to discharge the functions of his or her office whether arising from infirmity of body or mind or from any other cause;
  - (b) failure to discharge the functions of his or her office;
  - (c) gross misconduct;
  - (d) conduct unbecoming to the holder of the office; or
  - (e) misbehaviour.

### **13. Deputy chairperson.**

The Minister may designate any member of a committee, other than the chairperson, as deputy chairperson of the committee, so, however, that not more than one member of a committee shall be designated as deputy chairperson at any time.

### **14. Temporary vacancies.**

(1) If at any time there are less than three members of a committee besides the chairperson, or if any such member is appointed to act as chairperson, or is for any reason unable to perform the functions of his or her office, the Minister may appoint a person who is qualified for appointment as a member of a committee to act as a member.

(2) Any person appointed under subsection (1) shall, subject to section 12(3), continue to act until the office in which he or she is acting is filled or, as the case may be, until the holder of the office resumes his or her functions, or until his or her appointment to act is revoked by the Minister.

**15. Vacancy in the office of chairperson.**

If at any time the office of chairperson of the committee is vacant, or if the person holding that office is for any reason unable to perform the functions of his or her office, then—

- (a) until a person has been appointed to and has assumed the functions of that office; or
- (b) until the person holding that office has resumed those functions, those functions shall be performed by the deputy chairperson; or, if there is no member designated as deputy chairperson, or if a member so designated is unable to perform the functions of that office, by such one of the other members of the committee as may be designated in that behalf by the Minister.

**16. Secretary.**

There shall be a secretary to every committee who shall be a public officer.

**17. Functions of a committee.**

A committee shall make recommendations to the commission on matters in respect of which powers are conferred upon the President under article 172(1)(a) of the Constitution insofar as those powers relate to offices of teachers in primary schools, and may perform such other functions as may be assigned to it by virtue of this Act.

**18. Transaction of business.**

A decision of any committee shall require the concurrence of a majority of the members of the committee, but, subject to this section, a committee may act notwithstanding the absence of any member or any vacancy on the committee.

**19. Application of certain sections.**

Sections 6, 7 and 10 shall apply to a committee as if in all instances “committee” were substituted for “commission” wherever it appears in those sections.

**20. Procedure regulations.**

The commission may, by statutory instrument, make regulations—

- (a) providing for the organisation of the work of the commission and committees and regulating the manner in which they shall perform their functions;
- (b) providing for consultation by the commission and any committee with persons other than members of the commission or committee;
- (c) regulating the manner in which matters shall be referred to committees;
- (d) prescribing disciplinary penalties and awards.

**21. Remuneration.**

The chairperson and other members of the commission or of a committee may be remunerated by way of allowance for service rendered at such rates as are from time to time laid down by the Minister.

**22. Administration of the public service in relation to teachers.**

(1) The administration of the public service in relation to teachers and the ordering of conditions of service of teachers shall vest in the Minister responsible for public service.

(2) The functions of the Minister responsible for public service under subsection (1) may be performed by such public officer as is authorised by him or her in writing under his or her hand.

(3) The Minister may, after consultation with the Minister responsible for local governments—

- (a) require teachers in the public service of a district administration to serve any other district administration or urban council on any appropriate duties; or
- (b) require teachers in the public service of an urban council to service any other urban council or district administration on any appropriate duties.

(4) Transfers of teachers between the public service of the

Government, the public service of a district administration or an urban council may be made only with the approval of the appropriate authority after consultation with the Minister responsible for local governments and the Minister.

### **23. Standing orders.**

The Minister responsible for public service may make standing orders providing for the administration and conduct of the public service insofar as it relates to teachers and the terms and conditions of service of teachers in the public service.

**History:** Act 37/1969; S.I. 127/1970; Constitution of 1995.

### **Cross Reference**

Constitution of 1995.