

THE LAW AND PRACTICE OF ADMINISTRATIVE COURTS IN ETHIOPIA: THE CASE OF ADDIS ABABA CITY ADMINISTRATIVE TRIBUNAL

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ABSTRACT

Addis Ababa city administration established an administrative tribunal based on proclamation No. 6/2008. Thus, the city administrative tribunal would revise administrative measures taken by the concerned city offices. In other words, it hears and decides on appeals which are brought to it by the civil servants. The study which adopted the survey research design mainly through personal interview with court administrators revealed that the city administrative tribunal has performed its function in proper manner and base on the laws. Besides, it is observed that in rendering decision the tribunal carefully followed the laid down procedures. Speedy trial was also one quality of the administrative tribunal. It was therefore concluded that the administrative tribunal operated in a legal and procedural sound manner. Nevertheless, for enhanced productivity, professional trainings for the staff of Addis Ababa City Administrative Tribunal in particular and Administrative Courts in Ethiopia in general should be taken seriously.

Keywords: *Administrative tribunal, law, Addis Ababa, proclamation*

INTRODUCTION

Administrative law is a branch of public law which focuses on or governs the exercise of power and duties of public authorities in relation to their civil servants. In every legal system, there are courts which are established for the purpose of ensuring the application of the law. To achieve these objectives, courts apply both procedural and substantive laws and based on these they handle the legal disputes in a fair and ordinary way. Ethiopia also is not an exemption to this situation. In Ethiopian legal system, there are both substantive and procedural laws with the aim to ensure that rights, privileges and duties are properly enforced. In principle, judicial powers are given to ordinary courts in Ethiopia. But, there are also institutions which are legally empowered with judicial function. Civil service Administrative Tribunal is one among them.

Administrative Tribunals are established to revise an administrative decision which is rendered by the government institution regarding civil servants. It would check the rightness of the administrative measures by entertaining a dispute between the concerned government offices and the civil servant. The Addis Ababa City Administration Tribunal was established based on the city Government of Addis Ababa Civil Servants¹ Proclamation No.6/2008. Accordingly, the city administrative tribunal would revise administrative measures taken by the city organ and which are submitted to it in the form of appeal by the civil servants.

With regard to power, the Administrative Tribunal shall have a power given to an ordinary court under civil procedure code to execute its own decision, decree, order and the court procedure. This implies that in the application of the law the Administrative Tribunal has the power which is equal of an ordinary court. This is also important in enforcing of its decision. The main objective of this study is to examine and review the law and the practice of administrative tribunal with particular emphasis on Addis Ababa city administration. It also deals with the major challenges and problems which would hinder the effective application of the law in the ground.

RESULTS AND DISCUSSION

According to Proclamation No.6/2008 there are basically three categories of grounds for employment contract termination. These are termination of employment by the operation of the Law, by unilateral action of the concerned government office and by the action of the civil servant. Each of these categories also entails many cases of termination under it.

Termination of Employment of Contract by the operation of the Law: In this regard the employment contract is terminated according to the provisions of the law. In other words, in the proclamation it is clearly stated that when and in which case that the employment contract is terminated by the operation of the law. These conditions which the employment contract is terminated by the operation of the law are listed hereunder.

Termination due to Death: It is a universal truth that death is natural phenomena which humankind couldn't avoid. This is also applicable to the case of employee. That means in the proclamation it is stated that the service of a civil servant shall be terminated on the day of his death². One can understand from this that a death of an employee would automatically result in the termination of the employment contract by the operation of the law. In case of employees the law as a remedy also forwards that the full salary for the month in which a civil servant has passed away shall be paid to his spouse or legal heir³.

Retirement: Retirement is one of among the reasons which result in termination of an employment contract by the operation of the law. In Ethiopia, retirement age for a public servants are settled by law. As a result, every civil servant that reached on that age limit its employment contract would be terminated by the operation of the law. The service of a civil servant, whose services is not extended beyond retirement age pursuant to Article 89, shall be terminated on the last month in which he attained the retirement age determined by law⁴.

Termination Due to Illness: In the Ethiopian civil service, health is one of the major requirements for the potential employee to join the civil service system. As a result, illness of a civil servant would bring the termination of the employment contract. In this regard, proclamation 6/2008 provided two possible conditions where the existing employment contracts come to an end by the operation of the law.

The first one is related to natural illness of the employee. That means where a civil servant is unable to resume work within the time specified (i.e. up to eight months in a year or twelve months in four years) shall be deemed unfit for service and be discharged⁵. This time period also work only for a civil servant who finished his probation period in accordance with stated law. In the second case, the employment contract is terminated when the civil servant sustained an injury due to his/her work. In other words, where a civil servant who has sustained employment injury and medically determined to be permanently disabled, his service shall forthwith be terminated⁶.

In relation to illness, there is also another possibility for the termination of employment contract. This is in case where medically certified that a civil servant could not work on his/her current position due to injury, then the office has the right to assign the civil servant to less positions if a vacant position of the same grade is unavailable. If the civil servant does not agree with this, then his/her employment contract would terminate by the operation of law.

Termination due to force Majeure: It is known that force majeure plays in situations which are beyond the control of human being. A civil servant as part and parcel of the community is also exposed and affected by force majeure situations. This is particularly observed when a civil servant is absent from his/her works due to force majeure. In this regard, proclamation No. 6/2008 entails different consequence of termination of employment contract due to force majeure. The first one is related to a civil servant who finished his/her probation period. In this case, there are two similar consequences:

- The government office that has received the reasons of absence of a civil servant keeps the post of the civil servant vacant for six months. However, the service of a civil servant may be terminated if he is unable to resume work within the six months⁷.
- When a civil servant who has completed his probation is absent from his work for ten consecutive working days due to unknown reasons the government office may terminate the employment after calling him in two notices in ten days' interval⁸.

One can understand from the above two cases that even if in both the time and cause for termination are a different one both effects are similar. That means both result in termination of employment contract due to force majeure. The second one is concerned about a civil servant who does not finish his/her probation period. Accordingly, the service of a civil servant who has not completed his/her probation shall be terminated without any additional formality, where he/she is absent from work for one month due to force majeure⁹. From this, it is possible to say that the law is more serious on a civil servant who does not finish his/her probation period than those who completed a probation period when it comes to termination of a contract due to force majeure.

Termination of Employment of Contract by the Employer: In this regard, the employer which is the concerned government offices would take the action of terminating the employment contract due to many reasons. But, basically the causes are related to the failure of the employee to follow up the rules and regulations of the concerned government offices. As a result, the offices are obliged to take measures of termination of the contract. It is also observed that disciplinary cases are the major ones which bring termination of the contract on the side of the employer. Here, we are going to examine the existing possibilities which would result in termination of employment contract by the concerned offices.

DISCIPLINARY CASES

Government offices have established rules and regulations that should be followed by each civil servants of the concerned office. The philosophy behind such rules is to facilitate a smooth interaction between the civil servants themselves and also with their external customers. As a result, a civil servant is obliged to strictly adhere and follow up these rules and regulations. Non-compliance to these rules also entails penalties including termination of employment contract by the concerned offices. In the proclamation No.6/2008, there are two types of penalties, namely simple and rigorous one. Here, we focus more on the rigorous one since it results in termination of the employment contract by the action of the employer. Accordingly, the following offences can result in rigorous penalties¹⁰.

- To undermine one's duty by being disobedient, negligent or tardy or by non-observance of working procedures:
- Deliberate procrastination of cases or mistreatment of clients:
- To accept or demand bribes:
- To commit an act of theft or breach of trust:
- Abuse of power
- To commit sexual violence at the place of work and others

The above mentioned and others are offences which resulted in termination of the employment contract by the employer under the proclamation No. 6/2008.

TERMINATION DUE TO INEFFICIENCY

This is basically related to the poor performance of the civil servant. In other words, a civil servant employment contract would terminate if he/she performs below the required standard or expectation. In such case the law gives the right to the employer to terminate the contract. The proclamation also stated that the civil servant who has completed his probation period may be terminated due to inefficiency where his performance evaluation result is below satisfactory for two successive evaluation periods despite exerting all his knowledge and ability to accomplish his work¹¹. Here, the problem comes with the absence of clear job performance evaluation methods in the city administration offices. Besides, old evaluation methods are more subjective and open for criticism.

As a result, most of the time it is observed that termination of employment contract through inefficiency grounds are subjective and depend on the type of relationships that is existing between the civil servant and its immediate boss. So, here it is obvious that the purpose of the law is not properly served in this case. Furthermore, the proclamation granted that even if the above provision is there a civil servant whose performance evaluation result is above satisfactory for five successive years may not be dismissed on grounds of inefficiency unless his performance result falls below satisfactory for the following three successive evaluation periods¹².

NULLIFICATION OF APPOINTMENT

In this regard, any appointment on the basis of false representation regarding educational qualification or work experience or made by unauthorized person or in contravention of this proclamation, regulation and directives issued hereunder or any other law shall be nullified by the decision of the head of the government institution or the agency¹³. From this it is also clear that the nullification takes place when the issue is investigated. That means there is no time limit for nullification of the appointment.

RETRENCHMENT

It is observed that the city administration offices passed through many organizational changes and restructuring process. Currently, these offices are also in the stage of implementing Business Process Re-engineering (BPR). This frequent changes also have both positive and negative impacts on the city's civil servants. Among these impacts retrenchment is the most important one. According to the proclamation, any civil servant shall be retrenched where¹⁴

- a) His position is abolished
- b) The government office is closed; or
- c) Redundancy of manpower is created;

And where it is not possible to reassign him in accordance with article 31(1) of this proclamation or where he is reluctant to accept a position of a lower grade. In addition, a civil servant is retrenched after he/ she competed with other civil servants holding the same position and proved that his/her performance and qualification are below those who competed with him/her.

Termination of Employment Contract by the Employee: In this case it is the employee who is going to terminate the employment contract. It is also known that employees take this action through resignation. The proclamation recognized a civil servant to leave his/her work by his own will but with some requirement such as any civil servant may, by giving a one month prior notice, resign any time¹⁵. Moreover, it also stated that failure to give notice entails both criminal and civil liability on the concerned civil servants. Furthermore, there is also an exception

case in the proclamation in the sense that where the service of the civil servant is indispensable and he could not be replaced easily, the Head of the government office may delay his release for a period not exceeding three months including the date of application¹⁶.

Correspondence of the Law and the Practice: All of the institutional set ups mandated to handle employment relation cases are required to follow the legal procedures provided by law. But, there are times when they deviate to some degree from the established procedures by taking in to account the cumulative effects of the provisions of the law. There are also times when deviations occur due to limited knowledge of the relevant law. In general, the analyses of twelve cases showed the following points that deserve attention:

- The Administrative Tribunal¹⁷ operates in accordance with the law in a legally and procedurally sound manner.
- Even though offices are in a better position in getting legal professionals advice, major defects are committed at institutional/office level in handling disciplinary cases and in managing affairs.
- Employees are more alert and effective in securing legal advice and/or professional's help than institutions/offices.
- It has been observed that there is high involvement of politically appointed heads in the affairs of the disciplinary committee so that unlawful decisions are passed.
- In disciplinary committee, members have lack of awareness about both the substantive and procedural laws. As a result, most of the time it is observed that their decision are not in conformity with the law.

CONCLUSION AND RECOMMENDATIONS

The civil service administrative tribunals are established with the sole purpose of revising the administrative decision which is rendered by the concerned government organs with regard to civil servants. By doing this the administrative tribunals would check the rightness of the administrative measures. In Ethiopia, the Civil Services Administrative Tribunals were established by the Federal Civil Servants¹⁸ Proclamation No. 515/2007. This enabling proclamation gives a number of duties and responsibilities to the administrative tribunals. Consequently, the administrative tribunals have the power to hear and decide an appeal relating to unlawful suspension or termination of service, an illegal attachment or deduction of salary or other payments. In addition, it would hear cases related to being penalized by rigorous disciplinary penalty and others. The proclamation also empowered the administrative tribunals to have a civil procedure power which is similar to ordinary courts to execute its decision.

Similarly, Addis Ababa city administration established an administrative tribunal based on proclamation No. 6/2008. As a result, the city administrative tribunal

would revise administrative measures taken by the concerned city offices. In other words, it hears and decides on appeals which are brought to it by the civil servants.

Furthermore, to make the system more effective, there exists the City Administration Decree¹⁹ Order No.24/2002 which is concerned about the procedural matters related to the administrative tribunal. It is possible to conclude that the city administrative tribunal has performed its function in proper manner and based on the law. Besides, it is observed that in rendering decision the tribunal carefully followed up the procedure. Moreover, the tribunal has given equal chance for both parties namely the appellant and defendant during the litigation time. Furthermore, speedy trial was also one quality of the administrative tribunal. Therefore, it is possible to conclude that the administrative tribunal operates in a legally and procedurally sound manner.

On the other hand, the practices in the disciplinary committee level are encountered with many problems and challenges. To begin with, the committees do not properly follow up the procedure while they give decisions. As a result, they decide without giving equal hearing opportunity to the defendant. Their major shortcomings also includes not to counter check the evidences in the manner the law required, recommended penalties which are not proportional to the committed act, failure to complete the trial process in a reasonably acceptable time period, failure to properly evaluate the relevancy and adequacy of evidences, giving recommendation on the basis of facts not stated in a charge. The cumulative effect of all these also bring a violation of the law in the disciplinary committee level.

Similarly, it is observed that there are high interferences of the executive organs of the city administration on the affairs of the disciplinary committee. Such interferences of the executive organs also expressed through influencing of members of the disciplinary committee to decide against the established law. In addition, heads of the concerned offices in some cases directly decide by themselves on cases which are not within their powers on reality. At the administrative tribunal levels, it is also observed that the concerned officer most of the time loss their cases against the appellant. This happened despite the fact that though offices are in a better position in getting legal professional advice, major defects are committed at institutional/office level in handling disciplinary cases and in managing affairs at the administrative tribunal level. With regard to employees, it is observed that they perform well compare to the concerned offices especially at the administrative tribunal level. That means employees are more alert and effective in securing legal advice and/or professional's help than institutions/offices.

Although, it is observed that the law and the practice are in correspondence in the city administrative tribunal there are many problems and challenges at the disciplinary committee level. Besides, the existences of high interferences of the executive organ at the disciplinary level aggravated the situations more. Therefore, the following measures are recommended to enhance the delivery of administrative justice in effective way in the city administration.

- The high involvement of politically appointed heads in the affairs of the disciplinary committee should be avoided and disciplinary committees should only perform their activities according to the established laws and regulations.
- Continues awareness creating trainings should be given to disciplinary committee members, the employees and concerned heads of offices about the need and importance of administrative tribunal so that all act accordingly.
- Provide Professionals trainings for the staffs of the administrative tribunal.
- Empower the disciplinary committee more so that it will perform its duties and responsibilities in better way.
- Concerned offices should utilize their legal professional's advice properly and try their best to avoid disputes with employees as possible.
- Once the case is submitted to the administrative tribunal all of the concerned parties should cooperate in providing the necessary evidences in order to serve the purpose of justice.
- Employees should first exhaust all the available remedies before they appealed to the administrative tribunal.

NOTES

¹Federal Democratic Republic of Ethiopia (2008). The city government of Addis Ababa Civil servants Proclamation No. 6/2008". In Addis Negarit Gazeta. 1st year, No. 1.

²Proclamation No. 6/2008, Article 86(1)

³Proclamation No. 6/2008, Article 86(2)

⁴Federal Democratic Republic of Ethiopia (2003). Public servants' pensions' proclamation" No. 345/2003 In Federal Negarit Gazeta 9th year, No 65.

⁵Proclamation No. 6/2008, Article 85(1)

⁶Proclamation No. 6/2008, Article 85(1)

⁷Proclamation No. 6/2008, Article 80(2)

⁸Proclamation No. 6/2008, Article 82(2)

⁹Proclamation No. 6/2008, Article 82(3)

¹⁰Proclamation No. 6/2008, Article 82(6)

¹¹Federal Democratic Republic of Ethiopia (2002). Council of Ministries Regulation to provide for Federal Civil Servants Disciplinary and Grievance Procedure Regulation No 77/2002" In Federal Negarity gazeta 8th year, Number 29.

¹²Proclamation No. 6/2008, Article 69(1-14)

¹³Proclamation No. 6/2008, Article 81(1)

¹⁴Proclamation No. 6/2008, Article 81(2)

¹⁵Proclamation No.515/2007, Article 82

¹⁶Proclamation No.6/2008, Article 79(1)

¹⁷Proclamation No. 6/2008, Article, 2

¹⁸Proclamation No.6/2008, Article 79(1)

¹⁹Proclamation No. 6/2008, Article ,2

²⁰Federal Democratic Republic of Ethiopia (2007). Federal civil servants proclamation No. 515/2007". In Federal Negarit Gazeta. 13th year, No. 15.

²¹Federal Democratic Republic of Ethiopia Rule No. 24/2002. "An order proclaimed for the purpose of determining the Disciplinary and Grievance Handling of Addis Ababa City Civil servants". Addis Ababa, Ethiopia.

²²Federal Democratic Republic of Ethiopia (1995). The constitution of the Federal Democratic Republic of Ethiopia. In Federal Negarit Gazeta. 1st year, Number 1 Addis Ababa.

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- ³Ato Getenet Tolosa Vs Nefas Silk- Lafto Sub City Kebele 16/17 Administration Office (Addis Ababa City Administration Administrative Tribunal, Tir 5, 2001 E.C. unpublished)
- ⁴Ato Kassa Demelay Vs Akaki- Kality Sub City Health Office (Addis Ababa City Administration Administrative Tribunal, Sene 30, 2001 E.C. unpublished)
- ⁵Ato Beyetem Tesgaye Vs Nefas Silk- Lafto Sub City Justice and Law Affairs Office (Addis Ababa City Administration Administrative Tribunal, Megabit 01, 2002 E.C. unpublished)
- ⁶Ato Dereje Kebede Vs Gulele Sub City Kebele 01/02 Administration Office (Addis Ababa City Administration Administrative Tribunal, Meskerem 21, 2001 E.C. unpublished)
- ⁷Ato Alemye Hailu Vs Kolfe- Keranyo Sub City Capacity Building Office (Addis Ababa City Administration Administrative Tribunal, Yekatite 1, 2001 E.C. unpublished)
- ⁸Ato Tena Alem Belete Vs Yeka Sub City Municipal Office (Addis Ababa City Administration Administrative Tribunal, Hedar 21, 2002 E.C. unpublished)
- ⁹Ato Leykun Berhanu Vs Yeka Sub City Administration Office (Addis Ababa City Administration Administrative Tribunal, Thasase 20, 2001 E.C. unpublished)
- ¹⁰Ato Ali Mohammed Vs Kirkos Sub City Kebele 10 Administration Office (Addis Ababa City Administration Administrative Tribunal, Megabit 5, 2001 E.C. unpublished)
- ¹¹Ato Tesgaye Alebachew Vs Addis Ababa Information Office (Addis Ababa City Administration Administrative Tribunal, Ykatite 05, 2001 E.C. unpublished)
- ¹²Ato Tesga Mekonnen Vs Genebot 20 Highschool (Addis Ababa City Administration Administrative Tribunal, Thasase 19, 2002 E.C. unpublished)

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