

# TEACHERS SERVICE COMMISSION



8<sup>TH</sup> AUGUST, 2019

## SETTING THE RECORD STRAIGHT

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### 1. Why is the Commission in this situation between TSC and KNUT?

#### Background

The Commission is committed to continuous improvement of terms and conditions of service for all teachers in the Public Service. In this regard, following the release of the Job Evaluation Report in the Teaching Service by the Salaries and Remuneration Commission (SRC) in 2016, the Commission signed the 2017 - 2021 Collective Bargaining Agreements (CBA) with the Kenya Union of Post Primary Education Teachers (KUPPET) and the Kenya National Union of Teachers (KNUT) in October, 2016.

The CBAs introduced a paradigm shift in the remuneration of teachers which was hitherto not dependent on the worth of the job, as now provided, but on the job group of a teacher.

To fully implement the CBAs, the Commission developed Career Progression Guidelines (CPG) since it realized that the Schemes of Service (SoS) in place were inferior tools in that regard. Under the CPG, the Commission implemented Phases I and II of the CBAs for ALL teachers regardless of their respective unions of affiliation.

However, the KNUT has since agitated against the implementation of the CBA using CPG. Instead it has clamored for the use of Schemes of Service for Teachers. It is worth noting that there are 3 Schemes of Service for Teachers: *Schemes of Service for Non-Graduate Teachers; Schemes of Service for Graduate Teachers; and Schemes of Service for Technical Teachers.*

#### KNUT'S LEGALITY OF THE STRIKE NOTICE OF 17/12/2018

On 18<sup>th</sup> December, 2018, KNUT served TSC with a "Notice of critical outstanding issues" between the KNUT and TSC dated 17<sup>th</sup> December, 2018. In the said Notice, KNUT DEMANDED

that TSC implements the issues raised in the said Notice before 2<sup>nd</sup> January, 2019 to avoid disruption of learning in public schools.

### **TSC'S ISSUE WITH THE KNUT'S STRIKE NOTICE**

- i. TSC filed a Petition at the Employment & Labour Relations Court on **31/12/2018** challenging the legality of the strike notice. TSC's case was that in issuing the Notice of Withdrawal of Labour by teachers in the public service with effect from **2<sup>nd</sup> January, 2019**, **KNUT** acted irregularly, unfairly, unprocedurally and grossly offended the provisions of the **Labour Relations Act, 2007** and **Clauses 12 to 17** of the **Recognition Agreement**. Hence the Notice was unlawful, null and void.
- ii. In its replying affidavit, KNUT Secretary General raised issues on:
  - *Promotion of Teachers;*
  - *Transfer of teachers;*
  - *Performance Contracting System; and*
  - *Teachers' Professional Development Modules*
- iii. **On 2/1/2019**, the Court issued restraining orders against the strike notice; promotion; transfer; PC tools; and TPD modules. The Court further directed parties to attend conciliation at the Ministry of Labour on **3/1/2019**. [*See Order dated 2/1/2019*].
- iv. **KNUT** snubbed the conciliation meetings and did not avail themselves to joint sessions organized by the conciliator.
- v. The conciliator compiled its report based on parties' written submissions and filed the same with the Court on **30/1/2019**. [*See Report dated 30/1/2019*].
- vi. The Court directed parties to file their joint memorandum of agreement/disagreement with the court on **8/4/2019**. [*See Order dated 2/1/2019*].
- vii. **On 12/7/2019**, the Court issued Judgment in the matter. [*See Judgment dated 12/7/2019*].
- viii. The Commission noted that Order (d) of the Judgment meant to disadvantage teachers who are members of KNUT. Accordingly, the Commission instructed its lawyers to seek stay orders from court as it pursues an appeal against the entire judgment. On **26/7/2019**, the Court declined to grant stay of its Judgment.
- ix. Following the Court's ruling against stay orders, and in full compliance with the Court Judgment, the Commission has reverted members of KNUT to the Schemes of Service as ordered in Order (d) of the Court Judgment.

## **2. Why did the Commission separate the payroll for KNUT from the rest of Teachers?**

Order (d) of the Judgment directs TSC in part to “*undertake teacher promotion in accordance with the relevant provisions of the CORT and the Schemes of Service with respect to all unionisable teachers eligible to join the Respondent trade union...*”

In order to comply with this Order, without disadvantaging teachers who are not KNUT members, TSC has been forced to run two parallel payrolls: *one for members of KNUT under Schemes of Service and the other for non-members of KNUT under CPG.*

The payroll under Schemes of Service has posed numerous challenges which the Commission hoped to side step through stay orders. Significantly, it translates overpayment of salaries which the Commission is bound by the law to determine and recover as government liability against the respective teachers.

In addition, the Commission is mandated under the law to ensure prudent utilization of public finance.

## **3. What is the difference between Schemes of Service and Career Progression Guidelines (CPG)?**

- Schemes of service were guidelines used to promote teachers before signing of the CBA.
- The Commission adopted CPG in 2017 to enable implementation of the Job Evaluation (JE) and the CBA that were signed in 2016. The guidelines outline the descriptions, specifications, and competencies for each job.
- It is worth noting that prior to the implementations of CPGs, the Commission was promoting teachers using three schemes of service (certificate, degree and Diploma) based on qualification and experience; this caused stagnation in one job group.
- The Job evaluation introduced a paradigm shift in the grading and remuneration structure for teachers. The focus shifted to responsibility and Job worth (amount of responsibility assigned to a teacher) as opposed to experience and qualification alone. This was also observed by the judge in the second limb of Order (d) which provided:

*“...parties may within the CBA and Recognition Agreement consider reviewing the prevailing Schemes of Service with a view of bringing them into alignment with the prevailing CBA pay structure and related matters as will be necessary and without derogating from the provisions of the CORT on teacher promotion – as the policy of 02.05.2018 on Career Progression Guidelines and purporting to abolish and replace prevailing three Schemes of Service will not apply accordingly.”*

#### **4. Does the CPG have to be approved by Parliament?**

No.

CPG are tools for the implementation of the CBA. The CBA does not need to go through Parliament so are its tools of implementation. The CPG, which is the progressive name for the Schemes of Service, are enshrined in the CORT which was developed in accordance with the Statutory Instruments Act, 2013.

#### **5. What is the relationship between Collective Bargaining Agreement (CBA) and the Career Progression Guidelines?**

- CBA is a detailed agreement on how the Commission will promote teachers in its payroll within a period of four years. The Government of Kenya ring fenced **Ksh. 54 Billion** for this purpose.
- CPG are clear modalities designed to enable the Commission implement the CBA.

#### **6. What are the benefits of CPG in relation to promotion of Teachers?**

The CPGs have taken into account the new system and addressed the issues of stagnation. Key gains under this include;

- Promotion to the next grade after entry is automatic for Certificate, Diploma and Degree holders thus creating parity of treatment for all the groups. **NB: all teachers were promoted w.e.f 1st July 2017 when CBA implementation begun.**
- Teacher promotion can be accelerated without the requisite three years as was the case in the Schemes of Service. For instance; in the next financial year (2020/2021), 96,000 teachers currently in B5 will automatically move to C1. This implies that these teachers are moving two job groups (G –J), which is not tenable under the Schemes of Service.
- The CPG elongated the salary grades by introducing more salary 'bands' within a job group.

#### **7. Where ALL the Teachers promoted during the CBA implementation?**

Yes.

The salaries were immediately adjusted to reflect the promotions. The Commission has also been issuing promotion letters to the effect. The table below demonstrates the promotions effected during the CBA for primary school teachers and administrators.

CATEGORY	PREVIOUS JOB GROUP	NEW GRADE	EQUIVALENT JOB GROUP	NUMBER OF BENEFICIARIES
Primary School teachers	G	B5	H	85,611
	H	C1	J	21,347
Senior Teachers	G-K	C2	K	21,042
Deputy Head Teachers	G-L	C4	M	17,911
Head Teachers	G-L	C5	N	22,049
	M-N	D1	P	2,797

Notes:

- All Teachers who were in job group G were moved to B5 equivalent to job group H.
- All Teachers who were in job group H were moved to C1 equivalent to job group J.
- All Senior Teachers who were between job group G - K were moved to C2 an equivalent to job group K.
- All Deputy Head Teachers in G - L were moved to C4 equivalent to job group M.
- All Head Teachers who were in G - L moved to C5 equivalent of job group N.
- All Head Teachers in M and N moved to D1 equivalent of job group P.

**8. Why is the Commission not promoting teachers based on Higher Qualification?**

- Higher qualification is just but one criterion among others such as satisfactory performance, attainment of prerequisite qualifications of a mean grade of C+ in KCSE, and C+ in two teaching subjects.
- Promotions are guided by the CORT, which states that upward mobility is based on availability of vacancies.
- In a joint meeting between TSC and KNUT on 8<sup>th</sup> January, 2019, it was resolved that promotions based on higher qualification was no longer tenable. There is no way an employer would promote employees based on submission of certificates that are not relevant to the job they are undertaking. Therefore, with effect from the date of that resolution, all promotions based on attainment of higher qualifications were stopped.
- Job Evaluation was conducted where all the stakeholders were involved. These were the KNUT, KUPPET, KESSHA, KEPSHA and the Parents Association. Implementation of the job evaluation report stopped any further promotion of teachers on attainment of higher qualifications.

**9. What is the impact of the court Judgment on promotion of teachers?**

- The immediate consequence of the Court judgment with regard to teacher promotion is that some major promotional benefits that had been achieved through the CPG have been lost. Specifically, under the CPG, teachers formerly designated as P1 and who were promoted to B5 with effect from 1<sup>st</sup> July 2017 will not be promoted under common cadre to C1 on

1<sup>st</sup> July 2020. This is because promotion of teachers who are members of the KNUT shall strictly be as per the provisions of the Schemes of Service.

- Teachers who are members of the KNUT shall be selected to undertake Teachers Proficiency Courses (TPC) upon payment of requisite fee so as to be considered for promotion from P1 to ATS IV as was the case prior to 1/7/2017.

**10. What are the implications of the Judgment on teachers in reference to the SoS and CPG?**

- The Commission will revert the affected teachers to the old teaching grades provided for in the Scheme of Service, e.g. P1, ATS IV, ATS III, etc. This will automatically lead to teachers losing all the benefits embedded in the CPG as an implementation tool for the CBA. In addition, full reversion of the previously enhanced salaries shall subsequently follow by recovering the salary overpayments due to the affected teachers.
- Upon implementation of the CBA, it was no longer tenable to apply the SoS as the grading and designation structure had completely changed. The CBA had upgraded teachers to higher levels and salaries. It therefore became necessary to develop new guidelines to align with the new structure and guide promotions, going forward.
- The promotion to the next job group was based on successful completion of TPC in the case of certificate holders or attainment of higher qualifications, subject to availability of vacancies in the establishment and meeting the minimum requirements. Diploma and degree holders were being promoted using common cadre and competitive selection based on the available vacancies and budgetary allocation.

**11. Has the Commission recovered CBA funds from Teachers?**

No.

The Commission has not recovered any funds from the Teachers. It is important to note that in the normal course of its business, the Commission recovers erroneous payments as and when the same are detected e.g. allowances paid for a teacher who was transferred after the payroll is run. The Commission is currently analyzing the extent of the resultant overpayment.

**12. What is the effect of the Judgment on the teaching service?**

The current stalemate has divided the teaching service into two with two parallel payrolls.

**13. When will the judgment be implemented and for which period will it affect?**

The judgment takes effect from 12/7/2019 to perpetuity.

**14. Will the Commission appeal the Judgment of the High Court?**

Yes. Meanwhile, the Commission shall obey all the court orders in the course of discharging its mandate.

**15. How can the situation be reverted to help all teachers benefit from the Third phase?**

This can only be possible if the court judgment is overturned.

**16. Why has the Commission issued a notice to remove Mr. Wilson Sossion from the register of teachers with effect from 29/7/2019?**

- He breached the provisions of clause (f) of the Third Schedule to the TSC Act, 2012 as read together with Regulation 141 (f) of the CORT by causing paralysis of the Competency Based Curriculum (CBC) training on 23/4/2019 in 11 Counties.
- He breached the provisions of clause (f) of the Third Schedule to the TSC Act, 2012 as read together with section 16 of the Public Officer Ethics, Act 2003; and regulation 141 (f) of the CORT by failing to act with impartiality and loyalty; honesty and objectivity regardless of his political views when he accepted nomination of the Orange Democratic Party (ODM-Kenya) as a Member of Parliament in 2017. This was in contravention of Regulation 187(1) and (2) of the CORT; Regulation 16 of the TSC Code of Conduct and Ethics for Teachers.

**17. When will the Commission meet the union as per the court Judgment?**

- The Commission is ready to meet the union (s) under the normal industrial relations.
- The Commission has also convened a meeting to validate the appraisal tools as ordered by the Court.

Finally, the Commission wishes to inform all teachers and other stakeholders that the CBA is of great benefit to ALL teachers.



**RITA WAHOME**  
**FOR: SECRETARY/CHIEF EXECUTIVE**  
**TEACHERS SERVICE COMMISSION**

For any further clarification, kindly contact the Commission via  
Tel: 020 289 2000  
[info@tsc.go.ke](mailto:info@tsc.go.ke)  
P.O. Box Private Bag - Nairobi

