

# TEACHERS SERVICE COMMISSION



## **THE IMPLICATIONS OF THE JUDGEMENT OF JUSTICE BYRAM ONGAYA DATED 12/7/2019 ON TEACHER PROMOTION, CAREER PROGRESSION, PROFESSIONAL DEVELOPMENT AND APPRAISAL**

On 31<sup>st</sup> December, 2018, the Teachers Service Commission filed a Petition at the Employment and Labour Relations Court (ELRC) at Nairobi, after the Kenya National Union of Teachers (KNUT) issued a strike notice to take effect from 2<sup>nd</sup> January, 2019. In calling the strike, KNUT was opposing current promotion model, Career Progression Guidelines, Teacher Professional Development Programmes and Teacher appraisal system.

The Court issued its judgement on the above outlined issues on 12<sup>th</sup> July 2019. After studying the implications of the ruling on the various aspects of Teacher Management and the ongoing implementation of the 2017-2021 Collective Bargaining Agreements, the Commission immediately applied to the court to stay its orders to allow for appeal. The stay was not granted.

Arising from the Judgment, KNUT has maintained that the terms and conditions of service for all its members should be within the framework of the Schemes of Service (SoS) which were last revised in 2007. It is important to note that the Commission discontinued use of the Schemes and adopted Career Progression

Guidelines (CPGs) in 2017 for smooth implementation of the Job Evaluation and the 2017-2021 CBA signed between TSC and teachers' Unions in October 2016.

However, owing to the Court ruling of 12<sup>th</sup> July 2019, several challenges have been experienced particularly in the preparation of the teachers' payroll and implementation of the Kshs 54 Billion 2017- 2021 CBA. In view of the Court ruling and the position taken by the KNUT, the Commission wishes to explain the following:

### **1. Benefits of Career Progression Guidelines in teacher promotion**

The Career Progression Guidelines were developed in 2017 following a Job Evaluation in the teaching service which was carried out by TSC and SRC and CBAs signed in October 2016.

The Guidelines are considered superior because the implementation of the Job Evaluation and the CBA that were signed in 2016. The Guidelines outline the descriptions, specifications, and competencies required for each job.

Prior to the implementation of the CBA, teacher promotion was based on the provisions of the Schemes of Service. Even then, promotion was not automatic and was subject to availability of vacancies, among other factors.

The second key benefit of the CPGs is that all the serving 300,000 teachers were promoted with effect from 1<sup>st</sup> July 2017 when the implementation of the CBA commenced. Moreover, under the Career Progression Guidelines teacher promotion can be accelerated without the requisite three years' service in a grade which was the case in the Schemes of Service.

Third, under the CPG, the salary grades have been expanded such that a teacher will enjoy more annual incremental credits within a Grade.

The Court ruling that the terms and conditions of service for KNUT members be applied within the framework of Schemes of Service, and not CPG, has made it extremely difficult for the Commission to implement the CBA.

## **2. Impact of the Court Ruling on Teacher Promotion**

The immediate consequence of the Court ruling with regard to teacher promotion is that some major promotional benefits that had been achieved through the CPG have now been lost.

Specifically, under the CPG, 96,000 teachers, formerly designated as P1 and who were promoted to Grade B5 with effect from 1<sup>st</sup> July 2017, will not be promoted under common cadre to Grade C1 on 1<sup>st</sup> July 2020. This is because the court ordered that promotion of teachers who are members of the KNUT shall strictly be as per the provisions of the Schemes of Service as directed by the Court.

## **3. Implications of the Judgment on the Payroll**

The judgement of the ELRC has necessitated preparation of two parallel payrolls within very tight timeliness in order to comply with the Court ruling without disadvantaging teachers who are not KNUT members. In this regard, the following payroll adjustments have been done:

- I. The payroll for teachers who are not members of KNUT has factored in the implementation of Phase Three of the CBA which fell due on 1<sup>st</sup> July 2019. Their July payslips have, therefore, reflected the payrise as per the CBA.

- II. The payroll for KNUT members has not factored in Phase Three of the CBA because the Court ordered that their terms be based on the Schemes of Service and not CPG. Some 103,624 teachers who also include Head teachers, Deputy Head teachers and senior teachers are affected.

Inevitably, this will also lead to KNUT members losing all the benefits embedded in the CPG as an implementation tool for the CBA. In addition, reversal of grades and full recovery of the previously enhanced salaries and allowances since 1<sup>st</sup> July 2017 shall be effected.

#### **4. Conclusion**

In conclusion, the Commission wishes to inform all teachers and other stakeholders that it is committed to continuous improvement of terms and conditions of service for all teachers in the public service. This was the essence of the Job Evaluation and the 2017-2021 CBAs.



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