



## ANALYSIS

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1965, No. 69

**An Act to consolidate and amend the Government Service Tribunal Act 1948, and provide for the constitution of a tribunal to receive applications from service organisations for the review of determinations of controlling authorities prescribing scales of salaries or wages and conditions of service of employees of the Government service**

[22 October 1965]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title**—This Act may be cited as the Government Service Tribunal Act 1965.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Commission” or “State Services Commission” means the State Services Commission as constituted under section 3 of the State Services Act 1962:

“Controlling Authority”,—

(a) In relation to the Public Service, means the State Services Commission:

(b) In relation to the Education Service, means the Director-General of Education:

“Determination” means—

(a) A determination made by the Commission, being a Public Service determination within the meaning of the State Services Act 1962, or a wage worker determination within the meaning of that Act; or

(b) A determination made by the Director-General of Education, being a teachers determination within the meaning of the Education Act 1964:

“Director-General” means the Director-General of Education:

“Education service” means the branch of the Government service comprising:

(a) Teachers employed by any Education Board, or by the governing body of any technical institute or secondary school, or by any Free Kindergarten association; and

(b) Students and trainees receiving allowances or salaries from any such Board, governing body, or Association; and

(c) Teachers who have ceased to be subject to the State Services Act 1962 by reason only of an Order in Council that has been made under section 164 of the Education Act 1964 and is for the time being in force:

“Employee”,—

(a) In relation to the Public Service, means any person employed in the Public Service in New Zealand, whether permanently, temporarily, or as a wage worker; but does not include any person holding a position to which is attached an annual salary in excess of the amount for the time being prescribed by Order in Council, whether made before or after the commencement of this Act, as the maximum salary within the jurisdiction of the Tribunal; and

(b) In relation to the Education service, means any person employed in the Education service in New

Zealand, whether permanently or temporarily; but does not include any person holding a position to which is attached a salary in excess of the amount for the time being prescribed by Order in Council, whether made before or after the commencement of this Act, as the maximum salary within the jurisdiction of the Tribunal:

Provided that it shall not include any person holding a position bearing a salary under the maximum salary so prescribed if the Prime Minister has, at any time within the immediately preceding five years, directed that the position shall come within the jurisdiction of the Advisory Committee on Higher Salaries in the State Services in terms of paragraph (d) of subsection (1) of section 19 of the State Services Act 1962:

“Government service” means the service of Her Majesty in respect of the Government of New Zealand, not being honorary service; and includes the Education service:

“Official Circular” means,—

(a) In relation to the Public Service, the *Public Service Official Circular*:

(b) In relation to the Education service, the *New Zealand Education Gazette*:

“Prescribed” means prescribed by regulations or Order in Council under this Act:

“Public Service” means the Public Service within the meaning of the State Services Act 1962:

“Public Service order” means a Public Service order made by the Tribunal pursuant to paragraph (a) of subsection (2) of section 15 of this Act:

“Service organisation”,—

(a) In relation to the Public Service, means any organisation which may for the time being be prescribed as representing employees of the Public Service or any class or classes thereof:

(b) In relation to the Education service, means any organisation which may for the time being be prescribed as representing employees of the Education service or any class or classes thereof.

“Teachers order” means a teachers order made by the Tribunal pursuant to paragraph (c) of subsection (2) of section 15 of this Act:

“Tribunal” means the Government Service Tribunal constituted under this Act:

“Wage worker order” means a wage worker order made by the Tribunal pursuant to paragraph (b) of subsection (2) of section 15 of this Act.

Cf. 1948, No. 80, s. 2

### *The Government Service Tribunal*

**3. Government Service Tribunal**—(1) There shall be a tribunal to be known as the Government Service Tribunal.

(2) Subject to the provisions of subsection (3) of section 8 of this Act, the Tribunal shall consist of three persons who shall be appointed by the Governor-General in Council on the recommendation of the Prime Minister, and of whom—

(a) One, to be the Chairman of the Tribunal, shall be a Judge or an additional Judge or a temporary Judge of the Court of Arbitration or a Stipendiary Magistrate, whose appointment as Chairman of the Tribunal is agreed upon by the Prime Minister and the service organisations, or in default of agreement is recommended by the Prime Minister:

(b) One shall be appointed as the Government member:

(c) One shall be appointed on the nomination of the service organisation if there is only one service organisation, or, if there are two or more, on the joint nomination of the service organisations or, in default of a joint nomination, after consultation by the Prime Minister with each of the service organisations:

Provided that a nomination made by the service organisations under such system of voting as may be agreed to by the service organisations, or, in default of any such agreement, as may be prescribed, shall be deemed to be the joint nomination of the service organisations.

(3) Except as provided in subsection (4) of this section, every member of the Tribunal shall be appointed for a term not exceeding three years, but may from time to time be reappointed, or may be at any time removed from office by the Governor-General in Council for disability, insolvency, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Prime Minister.

(4) If any member of the Tribunal dies, or is removed from office, or resigns, the vacancy so created shall be filled by the appointment, in the manner prescribed by subsection (2) of this section for appointment to the vacant office, of some

person qualified for that office. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed.

(5) Unless he sooner vacates his office as provided in subsection (4) of this section, every member of the Tribunal shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

(6) The powers of the Tribunal shall not be affected by any vacancy in the membership of the Tribunal.

(7) The presence of the Chairman and of at least one other member entitled to be present shall be necessary to constitute a sitting of the Tribunal.

(8) The decision of a majority of the members present at a sitting of the Tribunal shall be the decision of the Tribunal. If the members present are equally divided in opinion, the decision of the Chairman shall be the decision of the Tribunal.

Cf. 1948, No. 80, ss. 3, 19 (1), (2)

**4. Deputies of Chairman or members of Tribunal**—In the event of the incapacity of the Chairman or any other member of the Tribunal by reason of illness or absence or any other cause, the Governor-General in Council may, in the manner prescribed by section 3 of this Act for appointments to the office concerned, appoint some other person qualified for appointment to that office to act in the place of the Chairman or other member. Every person so appointed shall, while the incapacity continues, be deemed for all purposes to be the Chairman or other member of the Tribunal, as the case may be.

Cf. 1948, No. 16, s. 4

**5. Existing members of Government Service Tribunal**—Any member of the Government Service Tribunal established under the Government Service Tribunal Act 1948 who holds office at the commencement of this Act shall be deemed to have been appointed to the Government Service Tribunal under the provisions of this Act for the balance of the term for which he was originally appointed.

**6. Services for Tribunal**—The Department of Labour shall furnish such secretarial, recording, and clerical services as may be necessary to enable the Tribunal to discharge its functions.

Cf. 1962, No. 132, s. 65

**7. Tribunal to be a Commission of Inquiry—**(1) For the purpose of carrying out its functions under this Act, the Tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act and of any rules or regulations made under this Act, all the provisions of that Act except sections 11 and 12 (which relate to costs) shall apply accordingly.

(2) The Chairman of the Tribunal, or any other person purporting to act by direction or with the authority of the Chairman, may issue summonses requiring the attendance of witnesses before the Tribunal, or the production of documents, or may do any other act preliminary or incidental to the hearing of any application or other matter by the Tribunal.

Cf. 1948, No. 80, s. 6

**8. Assessors—**(1) For the purposes of the hearing of any application, the applicant (or the applicants jointly if there are two or more) may appoint one assessor, and the respondent (or the respondents jointly if there are two or more) may appoint one assessor.

(2) No person shall be qualified to be appointed to be an assessor unless he is employed in or retired from the Government Service or is an officer or employee or a retired officer or employee of a service organisation.

(3) The assessors appointed in respect of any application shall be deemed to be members of the Tribunal for the purposes of the hearing and determination of that application.

(4) The Tribunal's powers in relation to any application shall not be affected by any failure to appoint an assessor or by the absence of any assessor.

Cf. 1948, No. 80, s. 16

**9. Fees, travelling allowances, and other expenditure—**

(1) The Tribunal is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to the members of the Tribunal and to assessors appointed under this Act remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the assessors (as well as the members of the Tribunal) were members of a statutory Board within the meaning of that Act.

(3) All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money appropriated by Parliament for the purposes of this Act.

Cf. 1948, No. 80, s. 23

**10. Service rights and superannuation rights of members of Tribunal—**(1) In the event of any person being appointed to be a member of the Tribunal while he is an officer of or is employed in any branch of the Government service, he shall, on the termination of that appointment, have the same rights in relation to employment in the Government service as if his service as a member of the Tribunal had been service in the branch of the Government service in which he was so employed immediately before his appointment as a member of the Tribunal.

(2) In the event of any person being appointed to be a member of the Tribunal while he is a contributor to the Government Superannuation Fund under Part II of the Superannuation Act 1956, his service as a member of the Tribunal shall be deemed for the purposes of the Superannuation Act 1956 to be employment in the Government service.

(3) On the termination of the appointment of any such contributor as a member of the Tribunal (otherwise than by his removal from office under subsection (3) of section 3 of this Act), he shall, unless he is reappointed as a member of the Tribunal or appointed to another office in the Government service, or has declined to accept such reappointment or any such appointment as aforesaid, or has ceased to be a contributor to the Government Superannuation Fund, be entitled to receive from the Fund an annual retiring allowance for the rest of his life computed in the manner prescribed by Part II of the Superannuation Act 1956, notwithstanding that he may not have attained the age or have had the length of service which would entitle him in accordance with that Act to a retiring allowance.

Cf. 1948, No. 80, s. 24

### *Powers, Applications, and Hearings*

**11. Powers of Tribunal—**(1) The Tribunal shall, subject to the limitations and provisions prescribed in this Act, have jurisdiction to hear and determine any application made to it in terms of:

(a) Subsection (9) or subsection (10) of section 41 of the State Services Act 1962:

- (b) Subsection (2) of section 41A of the State Services Act 1962, as inserted by section 5 of the State Services Amendment Act 1965:
- (c) Subsections (7) and (8) of section 42 of the State Services Act 1962:
- (d) Subsection (6) or subsection (7) of section 49 of the State Services Act 1962:
- (e) Subsection (5) or subsection (6) of section 164A of the Education Act 1964, as inserted by section 8 of the Education Amendment Act 1965.

(2) Any determination of a controlling authority shall continue in force notwithstanding the lodgment of an application in respect of that determination with the Tribunal, and shall remain in force until varied by any order of the Tribunal.

(3) In exercising its functions in terms of this section in connection with prescribing salary rates or scales of salary rates or wage rates or scales of wage rates, the Tribunal shall have regard to the matters specified in subsection (5) of section 41 of the State Services Act 1962 in relation to the Public Service, and in subsection (2) of section 164A of the Education Act 1964 (as inserted by section 8 of the Education Amendment Act 1965) in relation to the Education Service, as the case may be.

(4) The Tribunal shall not have jurisdiction to alter any salary or wages rate or conditions of service prescribed in a determination in respect of employees who receive salary or wages exceeding such amount or rate as may from time to time be fixed by Order in Council made in that behalf under this Act, or in respect of any senior persons or classes of senior persons or positions referred, at any time within the immediately preceding five years, by the Prime Minister to the Advisory Committee on Higher Salaries in the State Services in terms of section 19 of the State Services Act 1962.

(5) In determining any application, the Tribunal may confirm, modify, or cancel the decision of the controlling authority which is the subject of the application.

**12. Excluding appeal in certain cases**—Notwithstanding anything in section 46 or section 64 of the State Services Act 1962 or any other enactment,—

- (a) No person shall have any right of appeal under those sections against any determination of the Commission under section 41, section 42, or section 49 of the State Services Act 1962 in respect of which any Service organisation is entitled to apply to the Tribunal under the last-mentioned sections:



- (b) The Public Service Appeal Board constituted under that Act shall not have any jurisdiction to alter any scale of salaries prescribed or determined under section 41 or section 42 of the State Services Act 1962.

**13. Applications—**(1) Any application made pursuant to section 11 of this Act shall be in writing in accordance with the provisions of this Act, and shall be invalid unless the provisions of the State Services Act 1962 or the Education Act 1964, as the case may be, in respect of the making of applications to the Tribunal have been first complied with.

(2) An application under this section shall be deemed to be made on the day on which it is lodged with the Tribunal.

(3) Every application under this section shall name the applicant, the controlling authority, the occupational class or group involved, and the type of order required, and shall contain a detailed statement of the claims made by the applicant.

(4) The applicant shall, immediately the application is lodged with the Tribunal, deliver to the controlling authority or to each controlling authority if there are two or more and to every service organisation as defined in this Act, whether or not the service organisation is affected by such an application, a copy of the application bearing the date stamp of the Tribunal, so as to verify it as being a copy of an application lodged with the Tribunal and to indicate the date on which it was received.

(5) Subject to the provisions of any rules or regulations made under this Act, an applicant under this Act may amend its application at any time.

**14. Hearings of the Tribunal—**(1) At any time after the expiration of one calendar month from the date of the receipt of any application, the Tribunal shall appoint a day and place for the hearing of the application, and shall notify the applicant and the controlling authority of the day and place so appointed.

(2) The Tribunal may adjourn the hearing of any application from time to time and from place to place.

(3) All applications shall be heard in public unless the Tribunal in any particular case, due regard being had to the interests of all persons concerned and to the public interest, considers that the hearing or any part thereof should take place in private.

(4) At the hearing of any application the Tribunal shall hear all evidence tendered and representations made by or on behalf of the applicant and other persons which it considers relevant to the subject-matter of the application, save that at any time during the hearing it may decide not to receive further evidence or representations.

(5) At the hearing of any application the controlling authority shall be represented and shall, subsequent to the presentation of evidence by the applicant, furnish to the Tribunal reasons for the decision appealed against in the application and all available evidence on which that decision was based.

(6) In any hearing the Tribunal may receive such evidence as it thinks fit and receive any statement, document, information, or matter which in the opinion of the Tribunal may assist it to deal with the matters before it, whether or not the same would be admissible in a Court of Law.

(7) At the hearing by the Tribunal of any application, the applicant and the controlling authority may be represented by an advocate or advocates. No person shall be an advocate unless he is employed in the Government service or is an officer or servant of a service organisation:

Provided that a party to any proceedings may be represented by a barrister or solicitor—

(a) Where any question of law arises; or

(b) On an application for an order pursuant to section 16 of this Act to interpret the provisions of an order or determination; or

(c) With the consent of all the parties in any other case.

(8) Subject to the provisions of this Act and of any rules or regulations made under this Act, the Tribunal may regulate its procedure in such manner as it thinks fit, and for this purpose may make such rules as to it shall seem appropriate.

(9) Proceedings before the Tribunal shall not be held bad for want of form. No appeal shall lie from any order of the Tribunal and, except upon the ground of lack of jurisdiction, no proceedings or order as aforesaid shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

**15. Orders of the Tribunal—**(1) The Tribunal shall issue its decisions in the form of Tribunal orders which shall be signed by the Chairman.

(2) Orders of the Tribunal shall be—

(a) Public Service orders if made in respect of applications pursuant to any of the provisions of subsections (9)

and (10) of section 41 of the State Services Act 1962, subsection (2) of section 41A of the State Services Act 1962 (as inserted by section 5 of the State Services Amendment Act 1965), and subsections (7) and (8) of section 42 of the State Services Act 1962:

- (b) Wage worker orders if made in respect of applications pursuant to subsection (6) or subsection (7) of section 49 of the State Services Act 1962:
- (c) Teachers orders if made in respect of applications pursuant to subsection (5) or subsection (6) of section 164A of the Education Act 1964 (as inserted by section 8 of the Education Amendment Act 1965).

(3) Every order made by the Tribunal shall either be published in the *Gazette* or be notified by the sending of a copy of the order to every controlling authority and every service organisation, whether or not they were parties to the application. Every such publication or notification shall include any dissenting opinion given by any member of the Tribunal.

(4) Every order made by the Tribunal in accordance with this Act shall be binding on—

- (a) The controlling authority, which shall forthwith amend any determination affected by it; and
- (b) Every employee whom the order purports to affect, whether or not any such employee is a member of any service organisation.

(5) Any order or provision of an order may be made by the Tribunal so as to come into force on a day to be specified in that behalf in the order, being the date of the order or any other date whether before or after the date of the order.

(6) Every order or provision of an order in respect of which no date is specified as aforesaid shall come into force on the day of the date of the order.

(7) No order made by the Tribunal shall be deemed invalid on the ground that it delegates to, or confers on, the controlling authority or any other person any discretionary authority.

**16. Power of the Tribunal to interpret determinations or orders—**(1) The Tribunal may from time to time during the currency of any order or determination, on the application of a service organisation or a controlling authority, make an order for the purpose of interpreting the provisions of the order or determination.

(2) Every applicant under this section shall, at the time of lodging the application with the Tribunal, deliver a copy of his application to all service organisations and controlling authorities affected by the order, and every such service organisation and the controlling authority shall have one month from the date of the delivery of the notice to it in which to lodge any statement with the Tribunal commenting on the application.

(3) The Tribunal may, with the consent of the parties to any application made under this section, determine the application on the papers without hearing.

(4) All orders made by the Tribunal pursuant to this section shall be published or notified as provided in section 15 of this Act.

#### *Miscellaneous Provisions*

**17. Attempts to influence improperly the decision of the Tribunal—**(1) No person shall in any manner attempt to influence the Tribunal or any member of the Tribunal in respect of any matter within the functions of the Tribunal.

(2) Nothing in this section shall be so construed as to prohibit any person from giving information or advice or making representations with respect to any such matter at the request or invitation of the Tribunal, or as an assessor, or as an advocate or witness before the Tribunal.

(3) Every person who commits a breach of the provisions of this section commits an offence, and is liable on summary conviction to a fine not exceeding one hundred pounds.

Cf. 1948, No. 80, s. 22

**18. Regulations—**(1) The Governor-General may from time to time, by Order in Council, make regulations not inconsistent with this Act for all or any of the following purposes:

(a) Prescribing a system of voting by service organisations in respect of nominations under paragraph (c) of subsection (2) of section 3 of this Act:

(b) Providing for such matters as are contemplated by or necessary for giving effect to the provisions of this Act and for the due administration thereof.

(2) Regulations made under this section shall come into force on a date to be specified therein in that behalf (whether before or after the date of the Order in Council making the regulations), and if no such date is specified shall come into

force on the date of the publication in the *Gazette* of a notification of the making of the regulations.

Cf. 1948, No. 80, s. 25

**19. Repeals, amendment, and saving—**(1) The enactments specified in the Schedule to this Act are hereby repealed.

(2) Section 2 of the State Services Act 1962 is hereby amended by repealing the definition of the expressions “Government Service Tribunal” and “Tribunal”, and substituting the following definition:

“ ‘Government Service Tribunal’ or ‘Tribunal’ means the Government Service Tribunal established under the Government Service Tribunal Act 1965:”.

(3) All matters and proceedings commenced under any enactment repealed by this section and pending or in progress at the commencement of this Act may be continued or completed under the said enactment as if the enactments repealed by this section continued in force.

(4) Every principal order or determination made under the Government Service Tribunal Act 1948 and its amendments, so far as it was subsisting immediately before the commencement of this Act, shall continue in force as if it had been made under this Act and shall be deemed to be a Public Service order, or a wage worker order, or a teachers order, or a Public Service determination, or a wage worker determination, or a teachers determination, as the case may require.

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## SCHEDULE

Section 19 (1)

## ENACTMENTS REPEALED

- 1948, No. 80—The Government Service Tribunal Act 1948. (1957 Reprint, Vol. 5, p. 795.)
- 1949, No. 45—The Government Service Tribunal Amendment Act 1949. (1957 Reprint, Vol. 5, p. 810.)
- 1950, No. 78—The Government Service Tribunal Amendment Act 1950. (1957 Reprint, Vol. 5, p. 811.)
- 1951, No. 79—The Fees and Travelling Allowances Act 1951: So much of the First Schedule as relates to the Government Service Tribunal, and so much of the Second Schedule as relates to the Government Service Tribunal Act 1948 and the Government Service Tribunal Amendment Act 1949.
- 1952, No. 23—The Government Service Tribunal Amendment Act 1952. (1957 Reprint, Vol. 5, p. 812.)
- 1955, No. 109—The Government Service Tribunal Amendment Act 1955. (1957 Reprint, Vol. 5, p. 812.)

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This Act is administered in the State Services Commission.

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