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19 of 1994
G.N. 51/1994

An Act to make provision for the administration of the public service and for matters ancillary thereto or connected therewith

[1ST AUGUST, 1994]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Public Service Act.

Application

2. This Act shall apply with respect to the administration of the public service save as otherwise provided under any written law with respect to any part of the public service.

PART II

FUNDAMENTAL PRINCIPLES FOR THE ADMINISTRATION OF THE PUBLIC SERVICE

Character of
the public
service

3. The public service shall—

(a) aim to deliver services to the public in an efficient and effective manner;

(b) be the instrument for generating and maintaining public confidence in the Government;

(c) be impartial, independent and permanent so as to enable the public to continue to receive Government services and in order that the executive functions of the Government continue uninterrupted irrespective of which political party is in power;

(d) be guided only by concerns of the public interest and of the welfare of the public in the delivery of services and the formulation and implementation of development projects;

(c) aim to achieve and maintain the highest degree of integrity and proper conduct amongst the personnel at all grades

4. Entry into and advancement within the public service shall be determined solely on the basis of merit, namely, relative ability, knowledge, skill and aptitude after fair and open competition which assures that all citizens receive equal opportunity.

Entry and advancement to be based on merit

5.--(1) In selecting candidates for appointment to posts in the public service, the selecting authority shall have regard primarily to the need for promoting efficiency in the public service.

Appointment to posts

(2) No person shall be appointed in the public service except to fill a post which is appropriately established and is vacant and has been properly estimated for in the estimates of expenditure.

6. Subject to the Constitution, the power to appoint any person in the public service to a post above the rank of under secretary shall vest in the President.

Appointment of public officers above the rank of under secretary

7. All public officers shall be treated fairly and equally in all aspects of human resource management and development without regard to their political, tribal or religious affiliation or to their sex, age or origin in Malawi.

Fair and equal treatment of public officers

8. The basis for remuneration of public officers shall be equal pay for work of equal value and recognition for excellence in the performance of their duties as determined by an objective method of evaluation.

Equal pay

9. Disciplinary provisions to regulate the code of conduct of public officers shall be in accordance with regulations made, or deemed to have been made, under this Act.

Code of conduct

10. The deployment of public officers within the public service shall be based solely on the exigencies of the service, balancing the following factors—

Deployment of Public Officers

(a) the need to promote and achieve higher individual output of the public officer and to ensure his job satisfaction;

(b) the need to achieve higher organizational performance of the public service; and

(c) the attainment of national objectives.

11. The retention of a public officer in the public service at any time after his appointment shall be justified only on the basis of the need for his duties and his satisfactory performance of those duties.

Retention of public officers

Promotion
and training

12. All public officers shall be accorded opportunity for career advancement and self-development through promotions and appropriate available training.

Welfare etc.
for public
officers

13. All public officers shall be accorded facilities for staff welfare, job satisfaction, higher quality of working life, rewards and incentives through the establishment and institution of appropriate schemes and mechanisms.

General
approach
in the
management
of the public
service

14. The management of the public service shall be based on modern and appropriate human management concepts and techniques within a framework which meets the basic requirements for—

- (a) efficient and effective delivery of service to the public;
- (b) concern for the welfare of public officers, as employees;
- (c) adherence to law;

(d) administration of staff regulations with sensitivity to the social and economical impact of such administration on the individual public officer.

PART III

PUBLIC SERVICE ADMINISTRATION AND MANAGEMENT

Constitution
and
abolition of
public
offices

15. — (1) Subject to the Constitution and to any other written law, the power to constitute or abolish public offices and to designate the titles thereof shall be exercised by the Minister by order published in the *Gazette*.

(2) An order made under subsection (1) may provide for—

- (a) the title and number of offices;
- (b) the emoluments to be attached to offices;
- (c) such incidental, consequential or supplemental matters as, in the opinion of the Minister, are necessary or expedient to give effect to the order.

(3) Without restriction on the generality of subsection (2), such order may include provisions—

(a) making in any enactment regulating the number of offices in respect of which, or the number of office holders in respect of whom, emoluments may be paid, such modifications as may be expedient; and

(b) amending any enactment relating to the appointment, powers, duties, rights or liabilities of any officer holding the office specified in the order or bearing the same style and title as an officer appointed to an office specified in the order.

The head of
the public
service

16. The Secretary to the Cabinet shall be the head of the public service.

17. Subject to this Act and any general or special directives of the Minister, the Secretary to the Cabinet, as head of the public service, shall be responsible for the overall management and administration of the public service and, without restriction on the generality of the foregoing, he shall—

Functions of the head of the public service

(a) with the approval of the Minister, formulate, direct and co-ordinate the overall national policy in relation to the public service respecting—

- (i) objectivity and permanency of service;
- (ii) principles and criteria for recruitment, retention, advancement and termination of service;
- (iii) staff welfare, motivation and remuneration of public officers;
- (iv) deployment, utilization and performance evaluation;
- (v) career planning, training, development and performance of the public service; and
- (vi) discipline;

(b) provide leadership on all matters pertaining to the public service, including the development of—

- (i) a positive public image of the public service;
- (ii) high integrity and morale, and excellency in the performance of duty by the public service; and
- (iii) fair and equitable treatment of all public officers;

(c) develop specific public service goals and priorities, to be achieved within a medium and long-term time frame.

18. There shall be established the post of Secretary for Human Resource Management and Development (in this Act referred to as the "Secretary for Human Resource Management and Development") who shall be a public officer and shall be responsible for administering this Act.

Establishment of post of Secretary for Human Resource Management and Development

19. There is hereby established a department of the Government to be known as the Department of Human Resource Management and Development, to be headed by the Secretary for Human Resource Management and Development, and the principal objectives of which shall be—

Establishment of Department of Human Resource Management and Development

(a) to effectively and judiciously administer the provisions of this Act and regulations made thereunder;

(b) to continuously examine the public service related needs and priorities at various levels of the administration of the Government and assess the relevance and effectiveness of current administrative instruments of the public service with a

view to recommending appropriate measures to meet the requirements of this Act;

(c) to develop and maintain sound and effective public service systems and practices appropriate to the requirements of Malawi;

(d) to periodically review the extent of centralization or delegation of authority necessary for efficient and effective performance of the public service; and

(e) to develop, introduce and judiciously administer the public service conditions of service, codes of ethics, precedents and norms to ensure that the integrity of the service, staff morale and welfare and overall performance of the public service continuously remain high.

Responsibilities of the Secretary for Human Resource Management and Development

20.—(1) Subject of this Act, the Secretary for Human Resource Management and Development shall take overall responsibility and related functions, on behalf of the Secretary to the Cabinet, with respect to the administration and management of the public service.

(2) Without restriction on the generality of subsection (1), the Secretary for Human Resource Management and Development shall be responsible for the following—

(a) human resource planning;

(b) human resource training and development;

(c) human resource complement, grading and deployment;

(d) human resource management;

(e) recruitment and promotion policy;

(f) performance and productivity improvement;

(g) direction, co-ordination and control of all professional, technical and administrative activities relating to functions specified in paragraphs (a) to (f) of this section;

(h) co-ordination of the training, development and utilization of human resources allocated to the Department of Human Resource Management and Development;

(i) management of all human resources, finances, materials, supplies and equipment allocated to the Department of Human Resource Management and Development in all fields and at all levels of the operation of the Department in an effective and efficient manner;

(j) development and maintenance of close liaison with national, regional and international agencies, and project the needs of Malawi in the field of public service sector human resource management;

(k) ensuring effective and efficient overall management of the Department of Human Resource Management and Development through, among other things, the development and maintenance of an effective organizational structure, the

introduction of efficient personnel work systems and procedures, providing positive leadership and supervision and the introduction of appropriate internal efficiency evaluation measures to enhance the overall performance of the Department;

(l) submission of periodic management reports to the Secretary to the Cabinet, analyzing in detail the achievements and management constraints being encountered by the public service and a plan of action for achieving further progress; and

(m) such other functions as may be prescribed by the Minister by regulations.

PART IV

ADMINISTRATION OF MINISTRIES AND DEPARTMENTS

21.—(1) The Principal Secretary of every ministry or the head of department of every department, as the case may be, shall be the overall Controlling Officer of that Ministry or department.

Responsibilities of Principal Secretaries and heads of department

(2) Without restriction on the generality of subsection (1), a Controlling Officer shall, subject to the Constitution, be responsible for—

(a) the management and administration of all resources of the ministry or department in accordance with appropriate public service regulations;

(b) setting directions, objectives and appropriate guidelines and strategies for the ministry or the department; and

(c) initiating, formulating, implementing and reviewing the policies of the ministry or the department.

(3) Where the functions of a ministry or department have been assigned to a Minister, the Principal Secretary or head of department, as the case may be, shall be responsible for advising the Minister on all matters relating to the management and administration of the ministry or the department.

(4) In the performance of his functions, the Principal Secretary and the head of a department shall be subject to the general and special direction of the Minister.

22. Subject to the Constitution and to the general and special directions of the Minister, the supervision of the administration of a ministry (including any department of that ministry) shall at all times remain the responsibility of the Principal Secretary of that ministry.

Supervision of administration of Ministries

Accountability
of Principal
Secretaries
and heads of
department

23. The Principal Secretary of a ministry and the head of department, as the case may be, shall be accountable for all the administrative activities of the ministry or department for which that Principal Secretary or head of department is responsible.

Accountability
by
management

24. Subject to this Act, every public officer in the management level of a ministry or department shall be responsible for the efficient management of the resources of that ministry or department and shall be accountable in respect of the management of the resources of that ministry or department.

PART V

INDIVIDUAL RIGHTS AND RESPONSIBILITIES OF PUBLIC OFFICERS

Responsibility
and role of
officers

25. Subject to this Act, every officer employed in the public service shall be responsible for the execution of the duties and tasks properly assigned to him and shall be accountable for his actions in the mobilization and utilization of resources made available in relation to the execution of duties and tasks.

Right of
officers
regarding
terms and
conditions of
service

26. Subject to the Constitution and to this Act, every officer employed in the public service has the right of access to the terms and conditions on which he is employed.

PART VI

MISCELLANEOUS

Restriction
on
termination
of the service
of public
officers

27.—(1) Except in circumstances where a public officer has absconded from his duties within the meaning ascribed to the word "abscond" by the Minister by regulations made or deemed to have been made under this Act, or the post held by the public officer has been abolished, no public officer appointed to an established post in the public service on permanent and pensionable terms shall be dismissed or otherwise have his service terminated at the instance on the Government unless—

(a) he is proved to have committed a prescribed act of misconduct;

(b) he is presented with a notice of the disciplinary charge in writing specifying the prescribed act of misconduct he is alleged to have committed; and

(c) he is allowed a reasonable period, being not less than twenty-one days from the date of the notice of the disciplinary charge, within which he may reply to the charge in writing.

(2) Where a public officer has attained qualifying service for mandatory retirement or for retirement at his own option or with the approval of the Minister or other appropriate authority, termination of his service on the basis of a disciplinary charge

presented to him in accordance with subsection (1) shall be by way of retirement from service as if he had opted, or obtained the appropriate approval, to retire, unless the act of misconduct in question involves misappropriation of, or failure to account for, public funds or public stores entrusted to his control or custody.

28. Subject to the Constitution, the Civil Service Commission and every other Service Commission established under the Constitution shall, in the performance of its function, be bound and guided by the provisions of this Act.

The Civil
Service
Commission,
etc.

29.—(1) Subject to subsection (2), no officer shall continue to serve in the public service after attaining the mandatory retirement age of 55 years.

Retirement
age

(2) The Minister may, from time to time, by order published in the *Gazette*, revise the mandatory retirement age prescribed under subsection (1).

30.—(1) The Minister may, subject to the Constitution and this Act, make regulations for the administration, regulation and disciplinary control of the public service and for matters incidental thereto.

Regulations

(2) Without restriction on the generality of subsection (1), any such regulations may make provision for—

(a) the terms and conditions of service of public officers; and

(b) the performance of the functions of any appropriate authority and the forms and procedures to be followed by such authority in the exercise of its functions, or by a person to whom such functions may have been lawfully delegated.

31. Any regulations or other subsidiary legislation applicable with respect to the terms and conditions of service of public officers immediately before the commencement of this Act and which are or is capable of being made under section 30—

Savings

(a) shall continue in force and be deemed to be regulations or other subsidiary legislation made under this Act; and

(b) may be amended or replaced by subsidiary legislation made under this Act.