CRITICAL ASSESSMENT OF EMPLOYEE'S RIGHT TO EFFECTIVE ADMINISTRATIVE AND JUDICIAL REMEDIES IN THE PUBLIC SERVICE IN TANZANIA

Gaspardus K. Rwebangira and William Miigo***

Abstract
Access to effective administrative and judicial remedies is one of the rights recognized and protected by national and international laws. Victims of administrative decisions and orders, including servants in the public and private sector, must be able to access competent and independent tribunals and courts for pursuit of labour justice and enforceable remedies. The existing labour framework in Tanzania appears to guarantee workers in the private sector with adequate protection compared to workers in the public sector. This article critically analyzes the existing legal framework on protection of employee's right to effective and administrative and judicial remedies in the public service. It applies doctrinal and comparative research methodologies and provides possible legal reforms.

Keywords: *Employees, access, effective administrative and judicial remedies, public service, dispute settlement, Public Service Commission for Mediation and Administration.*

1.0 Introduction

This article examines the adequacy of the Tanzania labour dispute resolution system for public servants on protection of employee's access to effective administrative and judicial remedies. It critically scrutinizes the existing legal and institutional framework governing labour justice in the public sector and the extent to which it guarantees right to administrative and judicial remedies for public servants. The article employs a human rights approach in evaluating key attributes of labour justice, namely: ability to institute or file a complaint before the tribunal/court, independence of labour tribunals and courts; availability of rules which govern labour proceedings; legal representation; judicial remedies and enforceability of related orders and possibility of appeal against disciplinary orders.

To understand dynamics and trends in the regulation of labour market, it applies doctrinal method supplemented with comparative analysis of legal regime governing labour matters in South Africa, India and Kenya for purposes of generating best practices for possible reform in Tanzania.

Generally, this paper is a reaction of the amendments made in the Employment and Labour Relations Act (ELRA) which prevents/prohibits a public servant

* (PhD) Law lecturer in the Faculty of Law at the Catholic University of Mbeya (CUoM). He also serves as the Head of Department of Public Law.
** Assistant Lecturer in the Faculty of Law at the Catholic University of Mbeya (CUoM). He has been a labour law practitioner for more than twenty years.

from seeking avenues under the general labour framework in case of labour dispute but mandatorily required to apply for the avenues under the Public Service Act. Principally, the amendment distinguished workers in Tanzania in terms of their sectors whereby remedies under the ELRA belong to workers in private sectors, while public employees are obliged to exhaust internal remedies prior accessing general labour law remedies. This exclusion occasioned public outcry for labour justice for public servants and culminated into conflicting decisions by judges of the High Court of Tanzania. The first approach based on non-restrictive theory maintained that both workers in the public and private sectors could enjoy remedies prescribed by the general labour framework.

The second approach maintained that CMA lacks jurisdiction to resolve labour disputes falling squarely under the Public Service Act.[1] The third approach based on restrictive theory maintained that CMA had jurisdiction to hear and determine labour matters involving public servants provided the applicant had exhausted local remedies.[2]This dilemma of conflicting approaches on whether or not public servants could have access to CMA was resolved by the Court of Appeal of Tanzania in the case of *Tanzania Posts Corporation vs. Dominic A. Kalangi*[3]where it was held that CMA does not have jurisdiction to hear and determine disciplinary matters or disputes involving public servants; instead, the power is exclusively vested in the Public Service Commission as court of first instance and the President as the final appellate body.

Basically, the impact of the above judicial interpretation has been described by various scholars. Mramba, and Rwebangira, [4]aver that this judgment has far-reaching effects in terms of public servant's access to effective administrative and judicial remedies. This view is also shared by Sabby, [5]who avers that the current legislative provisions and judicial interpretation implies that the Commission for Mediation and Arbitration (CMA) lacks jurisdiction to determine complaints from the public sector. The authors however, do not

1 See the cases of *Jeremiah Mwandi vs. Tanzania Posts Corporation*, Labour Revision No.06 of 2019, High Court of Tanzania-Labour Division at Kigoma (unreported); *Attorney General vs. Tanzania Ports Authority and Another*, Civil Application No.78 of 2016, High Court of Tanzania (Unreported); *Henry G. Mareale vs. Moshi Municipal Council*, Revision No.24 of 2019, High Court of Tanzania-Labour Division at Moshi (unreported); *Bariadi Town Council vs. Donald Ndaki*, Revision No.03 of 2020, High Court of Tanzania-Labour Division at Shinyanga (unreported); *Mlenga KalundeMirobo vs Trustees of the Tanzania National Parks & the Attorney General*, Labour Revision Application No.6 of 2021, High Court of Tanzania-Iringa District Registry at Iringa (Unreported).

2 See the case of *Deogratias John Lyakwipa and Another vs. Tanzania-Zambia Railway Authority*, Revision No.68 of 2019, High Court of Tanzania-Labour Division at Dar es Salaam (Unreported); *Patrick Mugolozi Mongela vs. The Board of Registered Trustees of Public Service Pension Fund*; Revision No.90 of 2016, High Court of Tanzania-Labour Division at Dar es Salaam (unreported); *Dar es Salaam City Council vs. Generose Gaspar Chambi,* Revision No.584 of 2018, High Court of Tanzania-Labour Division at Dar es Salaam (unreported).

3 Civil Appeal No.12 of 2022, Court of Appeal of Tanzania at Mtwara (Unreported).

4 Mramba, S.J & Rwebangira, G.K., Labour Law and Practice in Tanzania: Cases and Materials, Juris Publishers Limited, 2023 at p.212.

5 Sabby F., An Assessment of the Commission for Mediation and Arbitration's Jurisdiction over Public Servants, East Africa Law Review (EALR) Volume 49 No.2 of December 2022, pp.174-196.

describe the extent to which the right to administrative and judicial remedies in the public sector is likely to be affected by the above legal reforms as will be explored.

2.0 Labour Dispute Settlement Framework in Tanzania's Public Sector

The adoption of the Public Service Act,[6] introduced a systematic grievance redress mechanism within the civil service by allowing civil servants to appeal decisions of their employer before the Public Service Commission and later to the President of the United Republic of Tanzania. This framework was further improved by the enactment of two labour statutes, namely: the Employment and Labour Relations Act and the Labour Institutions Act. These statutes set a general labour regime which applied to workers in both public and private sectors, except employees on call. Impliedly, workers in the public sector were now free to seek remedies either under the new labour statutes including filing a suit before the Commission for Mediation and Arbitration (CMA) and Labour Court or file the complaint to the public service labour regime including Public Service Commission and the President of the United Republic of Tanzania. Literally speaking, a worker in the public sector had freedom to make a choice (forum shopping) of legal regime to seek for labour justice prior the year 2016.

Nevertheless, the implementation of the socialistic policies by the fifth Government of Tanzania under the late President Magufuli had impact on labour regime for workers in the public sector. Hence, the amendment of Public Service Act vide Written Laws (Miscellaneous Amendments) (No.3) Act of 2016 introduced new sections, particularly section 32A of the Public Service Act which provided that 'a Public servant shall, prior to seeking remedies provided for in the Labour Laws, exhaust all remedies as provided for under this Act.' According to Sabby, F., requiring a public servant to first exhaust remedies under the Public Service Act prior pursuing remedies under the Employment and Labour Relations Act read together with the Labour Institutions Act, was unrealistic and contradicting the dictates of Order F.29 of the Public Standing Orders of 2009 which permits the application of general labour law framework to public servants. Further, the author avers that the amendment posed a challenge to workers in terms of law of limitation of labour disputes and ineffectiveness of judicial review as judicial remedy in case one is aggrieved by the decision of the President because of the finality clause. [7]

Similarly, section 25(1)(c) of the amended Public Service Act which provided categorically that,

6 Act No. 8 of 2002 which was also amended in 2016.

7 Sabby F., An Assessment of the Commission for Mediation and Arbitration's Jurisdiction over Public Servants, East Africa Law Review (EALR) Volume 49 No.2 of December 2022, pp.174-191.

> Where a public servant or the disciplinary authority is aggrieved with the decision in (a) and (b) that public servant or disciplinary authority shall appeal to the President, whose decision shall be final.

This means that only the Public Service Commission and the President of Tanzania have jurisdiction to hear and determine labour disputes involving public servants. This is supported by the case of *David Mwang'ombe v. The Board of Trustees of Marine Parks and Reserves Unit,*[8] in which it was held that courts have no jurisdiction to entertain disputes of public servants which are vested at the Public Service Commission.

Generally, the above amendment ousted jurisdiction of tribunals and courts established by the Labour Institutions Act with regard to settlement of disputes involving public servants. Thus, the current position of the law is that public servants can only resort to administrative and judicial remedies available under the PSA, which excludes CMA from determination of the disputes involving public workers. This has given rise to critical issues surrounding protection of employees' right to effective administrative and judicial remedies in the public sector, a focus of this paper.

3.0 Legal Standards Governing Public Servants' Right of Access to Administrative and Judicial Remedies

Principally, the right of access to affective administrative and judicial remedies for victims of labour practices in the public sector is governed by legal standards under national laws and international laws. While the former comprises of the Constitution of the United Republic of Tanzania 1977 and various Statutes including the Basic Rights and Duties (Enforcement) Act, the latter comprise of United Nations Human Rights instruments,[9] the African Charter on Human and Peoples Rights 1981 and ILO Conventions.[10] These national and international laws provide for the state organs and administrative authorities to comply with procedural fairness, including principles of natural justice. Promotion of the right of access to administrative and judicial remedies has to meet five key standards.

First, victims of labour right violations must be guaranteed access to courts and tribunals. This comprises of the possibility to institute a case in a court of law. Access to court is an integral part of the due legal process. It means that persons (natural or juristic) whose rights have been violated should have a *locus standi*

8 Miscellaneous Application No. 380 of 2018 (unreported).

9 This consists of the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the European Convention on Human Rights (ECHR), core International Labour Organization (ILO) conventions; and the African Charter on Human and Peoples' Rights (ACHPR) of 1981

10 These ILO Conventions consist of the ILO Convention No. 151 of 1978 on Labour Relations (Public Service) Convention; ILO Convention No. 158 of 1982 on Termination of Employment Convention.

to file a claim to courts or tribunals, without any unreasonable, illegitimate and un-proportional limitations such as costs or requirement to prove harm directly inflicted on the victim. [11]Impliedly, access to court refers to availability of procedural rules which do not restrict competence of the court to hear and determine suits (ouster clauses).

The above standard is prescribed by various international instruments. For example, article 8 of the Universal Declaration of Human Rights 1948 provides that every person has the right to an effective remedy by competent national tribunals for acts contravening fundamental rights. This provision evidences the existing principle of customary international law which provide for possibility of seeking justice whenever one's right is violated. Similarly, article 2(3)(a) of the International Covenant on Civil and Political Rights) directs that each State Party should ensure that any person whose rights or freedoms are infringed shall have access to competent authorities. Likewise, article 13 of the European Convention on Human Rights (ECHR) 1950[12] reinforces the state obligation to create accessible legal avenues for individuals seeking justice before competent national courts or tribunals. Furthermore, article 7(1) of the African Charter on Human and Peoples Rights of 1981 provides that every person has the right to have his/her case heard, as well as the right to defense and legal support before national courts. To be adjudged to have protected one's right to judicial and administrative remedies, the national law must first designate organs for resolving dispute, provide legal capacity to natural and juristic person to institute civil suit in courts, subject to fair rules of procedures.

Secondly, the national courts or arbitral tribunals must be adjudicated by officers who are fully independent. Generally, independence of decision makers refers to the ability of individuals or groups responsible for making decisions to do so without undue influence or pressure from external sources. It signifies that responsible judicial organs make impartial and unbiased decisions based on objective standards than external pressures or influences. Wallace, J.C.,[13] avers that judicial independence is relevant in situations where courts are called upon to resolve disputes between individuals and the state or between different branches of government, with possibility of ruling against the government should the law so dictate. He concludes that independence of judicial organs from political pressures is an essential aspect of justice at any level.[14]Impliedly, it means that adjudicators must be free from unlawful interference in the

11 Mengjesi, S &Skenderal, K., The Right of Access to Court, Academic Journal of Business, Administration, Law and Social Science, Volume 1 No.1 of 2015, pp.7-15 (accessed at https://iipccl.org/wp-content/uploads/2015/03/Ajbals-7-16.pdf, retrieved on 18th December 2024 at 5.34 pm.

12 Adopted in 1950 and entered into force in 1953.

13 Wallace, J.C., An Essay on Independence of the Judiciary: Independence from What and Why? NYU Annual Survey of American Law, Volume 58 of 2001.

14 Ibid., pp.242-245.

exercise of their duties from other branches of government or from private or partisan interests. This would ensure that decision makers decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, immunity from prosecution and security of tenure. [15]

Article 14 of the International Covenant on Civil and Political Rights of 1966 provides *inter alia*, that in the determination of one's rights and obligations in a legal suit, there must be fair hearing by a competent, independent and impartial tribunal established by law. Article 8 of the Labour Relations (Public Service) Convention[16] also requires disputes arising out of employment to be resolved by either negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved. This means that national authorities should establish Alternative Dispute Resolution (ADR) mechanisms and neutral and independent organs for settlement of disputes involving public servants and the government. This envisages the need for effective settlement of labour disputes, namely: applying negotiation to resolve the conflict; and if not successful to refer the dispute to an independent and impartial tribunal for determination through ADR methods. As a condition, mechanisms and machinery established must respect the parties' confidence.

Tanzania's commitment to comply with international labour standards can be derived from enactment of the Employment and Labour Relations Act and Labour Institutions Act which among the objectives was to stipulate core labour standards applicable in the public and private sectors, except for employees on calls.[17] This position was maintained from the year 2004 when the new labour statutes were enacted until the shift by the government in the year 2016 when all public servants were required to exhaust internal remedies under the Public Service Act and its regulations; hence excluded from invoking the dispute settlement provisions under the general labour framework. This tremendous shift could be regarded as implied withdrawal from international obligation to designate independent and impartial dispute settlement mechanisms.

However, since Tanzania is still a party to the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples Rights and other ILO Conventions safeguarding the civil, political and labour rights, then it is still bound to designate independent and impartial organs for settlement of

15 Refer to UN Basic Principles on the Independence of the Judiciary of 1985 as adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

16 Convention No.151 of 1978.

17 Employment and Labour Relations Act, s.2(1).

conflicts between public servants and the government. Hence, Convention No.151 is relevant with regard to public employee's right to effective administrative and judicial remedies in Tanzania.

The third criterion for determination of the right to effective administrative and judicial remedies is equality before the law. All people are born equal and deserve similar treatment without any form of discrimination, except in circumstances provided by law, such as affirmative action or national treatment. Various international instruments provide for state obligation to ensure equal treatment of people, such as workers regardless of the place of work, form of contract or status.[18] From labour law point of view, all workers are entitled to equal labour rights, including the right to effective administrative and judicial remedies. This means that laws protecting workers' rights should be similar for both workers in the public and private sector. Any differentiation in treatment of workers or limitations by law should meet the international standards, namely: be prescribed by law, necessary in a democratic society and should pursue legitimate aim including but not limited to: public or social needs, national security, public health, public morals and public safety.[19]It's important to note that national authorities, notwithstanding prevailing internal conditions, have the duty to protect right to fair hearing at all times, such as duty to give notice of charges without delay, opportunity to defense, presumption of innocence and trial in the presence of the accused.[20]

The last criterion for assessment of access to justice is the standard of effective remedies. The notion of effective remedies has been described to include several factors, namely: accessibility, affordability, promptness and capability to redress or restore the harm caused. The International Commission of Jurists (IC) defines effective judicial remedies to mean that remedies must be effective, prompt and accessible, before an independent authority and victim should have access to free legal assistance and that remedies be expeditious and enforceable by the competent authorities.[21]Furthermore, remedies are said to be effective if available, legitimate, predictable and equitable to redress the loss. In the Matter

18 See article 7 of the Universal Declaration of Human Rights 1948, article 26 of the International Covenant on Civil and Political Rights, article 14 of the European Convention on Human Rights and article 2 of the African Charter on Human and Peoples Rights and the Discrimination (Employment and Occupation) Convention No.111of 1958 (adopted in 1958 and entered into force in June 1960.) The convention lays out a definition for discrimination and forbids distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction, or social origin.

19 Refer to Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, para 1 to para 38.

20 Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, paras. 67 and 69.

21 The International Commission of Jurists (IC)., The Right to a Remedy and Reparation for Gross Human Rights Violations-A Practitioners'Guide No.2, Revised Edition 2018, pp.72-84 (accessed at https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf, retrieved on 19th December 2024 at 4.02 pm.

of *Dawda K. Jawara vs. Gambia*[22] the African Commission pointed out that a' remedy is available if it can be pursued by the Applicant without any impediment, it is deemed effective if it offers prospects of success, is found satisfactory by the complainant or is capable of redressing the complaint.'[23]

Further, access to judicial remedies is said to exist where there are no barriers to access court or tribunals including issue of costs or fees; and the order given by the court should be capable of being enforced by the court, be challenged by way of appeal or judicial review and restore or redress the harm, either by quashing the decision so made or through cessation, reparation and prevention of recurring violations. [24]This means for realization of effective administrative and judicial remedies there should be laws which designate organ for resolving conflict, procedures, time limit for reference and enforceability of court orders.[25]

4.0 Protection of Employees Right to Effective Administrative and Judicial Remedies in Public Service

There are various legislation which seek to protect and safeguard public employee's right to effective administrative and judicial remedies. These laws fall under three categories, namely: the constitution, the general labour framework and specific public labour legislations. Each of these pieces of legislation provides for employee's right to effective administrative and judicial remedies in various ways in Tanzania.

4.1 The Constitution of the United Republic of Tanzania, 1977

The Constitution of the United Republic of Tanzania, incorporates a range of rights and principles designed to protect right to effective administrative and judicial remedies. It guarantees access to legal proceedings and courts; prescribe for presumption of innocence, independence of decision-makers and equality before the law; provide for legal assistance to the indigent and provide for legal remedies including the right to appeal. Few articles of the Constitution deserve special mention. Article 13(1) and (2) of the Constitution of the United Republic of Tanzania provide for equality of the people and article 13(3) provides for protection and determination of interests and duties of people by courts of law or state agencies. This means that public employees are guaranteed access to courts or tribunals if it happens that their labour rights are violated.

Despite the above, access to court may be limited by an act of Parliament on a lawful cause. This was observed in the case of *Julius Ishengoma Frances Ndyanabo*

22 African Commission of Human Rights, Communication 147/95-149/96, paragraph 31.

23 See also the *Matter of Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and development vs. Zimbabwe*, the African Commission for Human Rights, Communication 293/04.

24 The International Commission of Jurists (IC)., The Right to a Remedy and Reparation for Gross Human Rights Violations-A Practitioners' Guide No.2, Revised Edition 2018, p.72.

25 See further Art 8 of ILO Convention on Termination of Employment No.158 of 1982.

v. Attorney General[26]where the court highlighted that access to court is indeed of cardinal importance and that very powerful considerations would be required for its limitation to be reasonable and justifiable. For limitation on access to court the law passed must pass the test of proportionality as expounded in the cases of *DPP v. Daudi Pete*[27] and *Kukutia Ole Pumbun and Another v. Attorney General and Another*[28]where the court held that for determination of validity of any law made by the Parliament seeking to limit access to court, the law must not be arbitrary. It must make adequate safeguards against abuse by those in authority when using the law, and the limitation imposed must not be more than is reasonably necessary to achieve the legitimate object. This signifies that courts in Tanzania have powers to determine lawfulness and validity of laws enacted by the Parliament through interpretation, in which case the High Court of Tanzania may declare the provisions contravening the above standards to be unconstitutional.

Furthermore, Articles 107 and 107B of the Constitution of the United Republic of Tanzania provides for independence of judiciary. The article affirms the autonomy of the judiciary, which is essential for impartial decision-making. It requires judges to operate without bias or interference from other governmental branches or outside influences, but be guided by the Constitution and the laws of the land.[29]On the other hand, article 13(6) of the Constitution read together with provisions of Legal Aid Act[30] recognize the provision of legal aid services in civil and criminal matters to indigent persons who cannot afford the cost of hiring legal services offered by advocates. This means that all persons without consideration as to economic status or other social orientations have equal opportunity to seek for judicial remedies.

Finally, Articles 13(6) and 30(3) of the Constitution of United Republic of Tanzania delineate the principles for prompt access to justice, including opportunity to lodge an appeal to the High Court of Tanzania where one's rights and freedoms have been violated. Public servants whose rights have been violated by third parties including state organs have opportunity to seek redress and enforce remedies before the national courts. This means that regardless of whether or not one is a public servant, it is a constitutional norm that state authorities protect employee's access to independent administrative and judicial remedies whenever labour rights are in question. The extent the national and international standards have been complied by the government of Tanzania

26 Civil Appeal No. 64 of 2001 (unreported).
27 (1993) TLR 22 (CA).
28 (1993) TLR 159 (CA).
29 *Refer to Emmanuel Kilasa Kisabo v. Attorney General,* Miscellaneous Cause No. 09 of 2022 High Court (Main Registry DSM).
30 Legal Aid Act No 1 of 2017.

when legislating laws regulating dispute settlement between public employees and the government is explored in the next section.

4.2 Public Service Act and Public Service Regulations

The Public Service Act (hereinafter known as PSA)[31] and the related Public Service Regulations in Tanzania play a crucial role in protecting the rights of public employees, especially in relation to their ability to obtain effective administrative and judicial remedies. Generally, the PSA establishes structures and procedures which allow public servants to pursue remedies against administrative decisions impacting them. Section 4(1), (2) and (3) of the PSA establishes the Office of Chief Secretary appointed by the President to be the disciplinary authority in respect of public servants appointed by the President. On the other hand, the PSA vests power and authority to designated presidential appointees including the Permanent Secretary, Head of extra-ministerial department, Chief Court Administrator, Regional Administrative Secretary and Local Government Authority, to monitor and control performance and disciplinary matters of public workers, except presidential appointees.[32] Similarly, section 9 of the PSA establishes the Public Service Commission (hereinafter known as PSC) as an organ for appealing disciplinary measures imposed by public service authorities[33].

The PSC hears and determines disciplinary appeals from various public offices namely: the civil service, the local government service; the health service; the teacher's service; the executive agencies and the public institutions service; and the operational service.[34] The PSC is composed by the Chairperson and not more than six members appointed by the President, who serve for a period of three years subject to reappointment for another term of three years.[35] As a requirement, a member of the PSC must have served in the senior level in the public or professional body, respected and with provable personal probity and integrity; and should not be holding any political office.[36] The daily to daily functioning of the PSC is handled by the Secretary to the Commission who is appointed by the President and serves as the Chief Executive Officer, assisted by deputies or assistants.[37]

By reading the provisions of the Public Service Act and its regulations, it can be argued that the responsibility of resolving labour disputes for public servants in Tanzania is completely under the control of the executive arm of the

31 Cap 298 R.E 2019.
32 Public Service Act, s.6(1).
33 Section 10(1)(d) to receive and act on appeals from the decisions of other delegates and disciplinary authorities
34 *Ibid*, s.10(1)(d) read together with s.9(3).
35 *Ibid*, s.9(4).
36 *Ibid*, s.9 (5) and (6).
37 *Ibid*, s.14(1), (2) and (4).

government. This is because by virtue of section32A of Public Service Act[38]all disputes in the public service first be determined by the statutory bodies established or recognized by the laws governing service in the public sector. For example, the Ports Act of 2004[39]establishes the Tanzania Ports Authority and its management structure; the Tanzania Posts Corporation Act[40] establishes the corporation as a legal entity and sets management structure, including the Board and Post Master General;[41] and Energy and Water Utilities Regulatory Authority Act of 2001[42] which establishes the Board of Directors and the Director-General.

Similarly, the Teachers Service Commission Act of 2015 establishes the Teachers Service Commission under the Ministry responsible for local government,[43] which *inter alia* is responsible for determination of appeals from disciplinary authorities.[44] The Teachers Service Commission is comprised of Chairperson and Secretary General who are appointed by the President and eight other members appointed by the Minister from designated public offices including Attorney General's office.[45] All the above authorities represent set of government institutions which are autonomous, independent, with capacity to hire and fire and contain internal dispute resolution mechanisms.

It implies that disputes in the public sector must pass through three statutory stages, namely: the internal disciplinary processes in a public office or department including appeals to the senior management employee, the Public Service Commission or the Chief Secretary and the President as the final appellate body. This was also observed in the case of *Asseli Shewally v. Muheza District Council*[46] and *Alex Gabriel Kazungu and Two Others vs. Tanzania Electric Supply Company Limited*[47] where the court held that prior institution of a complaint at the Public Service Commission, an aggrieved party must first exhaust internal remedies within the specific government department. This represents the extra labour regime theory and finality school of thought theory which subjects public servants to regime established by the Public Service Act with only chance for judicial review as a remedy.[48] However, in case of appeals

38 This provision was introduced through the Written Laws Miscellaneous Amendment Act of 2016.
39 Act No.17 of 2004.
40 Cap 303. R.E 2002
41 *Ibid*, ss.5,6,7 and 8.
42 Cap 414 R.E 2019.
43 Teachers Service Commission Act of 2015, s.4.
44 *Ibid*, s.5(e).
45 *Ibid*, ss.6, 8, 9 and 10.
46 Revision No.6 of 2018, High Court of Tanzania at Tanga (Unreported)
47 Revision No.40 of 2020, High Court of Tanzania at Shinyanga (Unreported)
48 Mramba, S.J. and Rwebangira, G. (2023) *Labour Law and Practice in Tanzania, Cases and Materials*, Juris Publishers Limited DSM Tanzania, pp.210-211; also refer the case of *Tanzania Posts Corporation vs. Dominic A. Kalangi,* Civil Appeal No.12 of 2022, Court of Appeal of Tanzania at Mtwara (Unreported).

against the decision by the Teachers Service Commission (TSC) one must file the matter to the President and not the Public Service Commission. [49]

Any person who is aggrieved by the decision of the disciplinary authority, may lodge an appeal to the Public Service Commission or the President as the case may be.[50] The appeal must be in writing, within forty-five days and should be attached with copy of proceedings and copied to the disciplinary authority against which decision is challenged.[51] Then, the disciplinary authority shall be required to submit its representations within 14 days to the appellate authority, which shall make the determination within 90 days from the date of receipt of representations.[52] The appellate authority may on appeal allow both the appellant and disciplinary authority or either of them an opportunity to be heard by presenting themselves or in writing in support or against the appeal.[53]Furthermore, the appellate authority may determine the appeal in the absence of the appellant, unless exceptional circumstances permit.[54] However, the appellate authority is not allowed to set aside any findings or punishment by the disciplinary authority on the grounds only of any irregularity in the appointment of the enquiry committee or conduct of disciplinary proceedings, except if the appellate authority is of the opinion that injustice was occasioned, in which case the matter shall commence de novo.[55]

The decision of the PSC is made through consensus or three quarters vote of the members present whereby the quorum of the Commission is five members including the Chairperson.[56] PSC may also invite any person who is not a member to participate in the deliberations of the PSC, but such person has no right to vote.[57] The PSC has power to summon any person to appear and give out information including production of documents in the course of its meetings, failure of which is an offence punishable by fine not exceeding five hundred thousand shillings or imprisonment for a term of not exceeding one year or both.[58] Giving false information to PSC including its officers, is an offence punishable by fine and imprisonment.[59]On the other hand, the information of the PSC including deliberations cannot be disclosed in any proceedings unless the Chief Secretary consents in writing;[60] hence preserving personal and secret information of the public servants.

---

49 Teachers Service Commission Act, s.13(3).
50 Public Service Act, s.60(1), (2) and (3).
51 *Ibid*, s.61(1) and (5).
52 *Ibid*, ss.61(2) and 61(3).
53 *Ibid*, s.62(1).
54 *Ibid*, s.62(2).
55 *Ibid*, s.62(4).
56 Public Service Regulations, GN No.444 of 2020, regulations 74 and 75.
57 Public Service Regulations, GN No.444 of 2020, regulation 76.
58 *Ibid*, regulations 81 and 82.
59 *Ibid*, regulation 83.
60 *Ibid*, regulation 79.

The above dispute resolution framework under the Public Service Act leaves a lot to be desired in terms of guaranteeing access to effective administrative and judicial remedies to public servants. All holders of office in the PSC and TSC are public servants[61] which means they are bound by the code of conduct for public servants. Among the duties of public servant is the duty of loyalty to the government, including duty to implement policies and lawful instructions given by the Minister and the government leaders.[62] Breach of the Code of Ethics and Conduct for Public Servants may give rise to disciplinary action or criminal prosecution as provided under regulation 67 of the Public Service Regulations. The overriding obligation to respect the government orders together with the composition above have given rise to crucial and critical questions concerning the ability of the PSC as a quasi-judicial body to guarantee effective administrative and judicial remedies to public servants. First, there is no provision which fully protects members of the PSC from any civil or criminal liability arising from decisions they make per section 13(1) and (2) of the PSA protects.

The law imposes a burden of proof on the person who alleges that the act done was bona fide. Impliedly, it means that officers of the PSC are required to prove whether or not the act complained of was bona fide; hence exposing them to risks of being subjected to disciplinary proceedings. Since the PSA does not designate a specific disciplinary body or lay down procedures for taking disciplinary measures against PSC members, it is no doubt that they lack adequate immunity capable of protecting them from political influences by those exercising authority over them.

Secondly, independence of decision makers is not fully guaranteed, like the case for judicial officers. Autonomy of those making decisions is vital for guaranteeing equitable administrative procedures. Although regulation 23 of the Public Service Regulations highlight the necessity of neutrality in disciplinary actions, however difficulties emerge when decision-makers are selected by entities that might have personal stakes in specific results. Looking at the composition of members of PSC and TSC it is evident that members of the PSC and TSC are not independent because their existence and functioning is subject to a political figure, the President who constitutionally appears to be the Head of the government, Head of State and the Commander in Chief of Armed Forces. A good inference of this conclusion can be derived from the provision of section 21 of PSA which clearly stipulates that decision or matters performed by the Commission cannot prevent the President from exercising his or her lawful mandates.

61 Public Service Act, s.14(6).

62 Code of Ethics and Conduct for Public Service of 2005, rule 3(1) and (2). This Code is made under s.34 of the Public Service Act and regulation 65(1) of the Public Service Regulations 2003.

Thirdly, the status of the decision made by the PSC is merely advisory and not binding. This is because section 22 of the PSA clearly states that matters attended by the PSC on delegation by the President shall not be binding. Impliedly, the President has fully powers over all matters, including disciplinary matters by PSC; hence eroding away its autonomy. Fourth, the provisions of PSA provide unlimited discretionary powers to the President to terminate or dismiss public servants at any given time as one deems fit. This is because section 24(1) of the PSA read together with regulation 29 of the Public Service Regulations[63]give power to the President to remove any public servant from the service of the Public on ground of public interest. This exposes all public servants to wishes or orders of the President except for judicial officers whose tenure is guaranteed by the Constitution. As a matter of law, orders or directives by the President are binding and cannot be set aside or questioned by any administrative body.[64]Thus, although the provisions on public interest are crafted to conserve prerogative powers of the President as the Head of State, it would be prudent if the PSA contained a definition as to public interest or criteria for determination of validity of orders. This gap is likely to affect independence of all administrative officers including senior government employee.

Fourthly, the Public Service Act and the Teachers Service Commission Act directly infringe the equality of the people provisions guaranteed under article 13(2) of the Constitution of the United Republic of Tanzania. Previously, all employees in the public and private sector had equal opportunity to challenge fairness of the decisions by the administrative officers at the institutions established by the Labour Institutions Act, namely: Commission for Mediation and Arbitration (CMA) and the Labour Court. Prior 2016, all employees had equal access to CMA and Labour Court which have played significant and proactive roles in protection of workers' rights. There is a wide range of jurisprudence that has been developed by the above two institutions with regard to protection of public employees against unfair labour practices, including unfair dismissals. For example, the cases of *Gasper Peter v. Mtwara Urban Water Supply Authority (MTUWASA);*[65]*James Leonidas Ngonge v. DAWASCO*; [66]*Mussa Andrea Mtunga v. Tanzania Electric Supply Company Limited;*[67] *Tanzania Telecommunication Company Limited v. Justus Tihairwa*;[68]*Tanzania Revenue Authority v. Isack Kola*[69] and *Tanzania Revenue Authority v. Michael E. Mshinghati,*[70] the CMA and the High Court of Tanzania

63 GN No.444 of 2022.
64 Presidential Affairs Act, Cap 9 Laws of Tanzania, s.2.
65 Civil Application No.35 of 2017, Court of Appeal of Tanzania at Mtwara (Unreported).
66 Labour Revision No.382 of 2013, High Court of Tanzania at Dar es Salaam (Unreported).
67 Labour Revision No.6 of 2015, High Court of Tanzania at Kigoma (Unreported).
68 Labour Revision No.203 of 2010, High Court of Tanzania at Dar es Salaam (Unreported).
69 Miscellaneous Application No.78 of 2010, High Court of Tanzania at Dar es Salaam (Unreported).
70 Revision No.173 of 2010, High Court of Tanzania at Dar es Salaam (Unreported).

interpreted the labour laws without any form of discrimination; hence promoting equality of all workers. This is because section 2 (1) of the Employment and Labour Relations Act RA provides that "the Act shall apply to all employees including those in the public service of the Government of Tanzania."

Conversely, the introduction of section 32A of Public Service Act through the Written Miscellaneous Amendment Act, which expressly necessitates public servants to exhaust internal remedies prescribed by the Public Service Act, clearly waters down the purpose of enactment of the Employment and Labour Relations Act and the Labour Institutions Act. The dispute settlement framework was designed to engage both workers and employers in the establishment of institutions and resolution of disputes through amicable ways, including conciliation, mediation and arbitration. The 2006 labour reforms sought to accommodate democratic and liberal systems of dispute settlement which respects freedom of the parties in reaching a settlement or agreement through Alternative Dispute Resolution (ADR) mechanisms, by the politically-free organs so as to avail workers access to natural justice.[71]This commitment is depicted under s.3(e), (f) and (g) of the Employment and Labour Relations Act which provides, *inter alia,* that the objects for enactment of the law was to comply with labour standards prescribed by the State Constitution and International Labour Organization (ILO) including resolution of disputes through mediation, arbitration and adjudication. Thus, restricting public employees from instituting claims to CMA and later the Labour Court by way of revision is a deliberate deviation from the prescribed standards.

The above state of affairs has potentially led to conflict of laws between the Employment and Labour Relations Act and the Public Service Act which adversely affects the public employee's right to equality before the law. Basing on the principles of statutory interpretation where there is a conflict between a special and general law, the provisions of the special law must prevail. [72]This principle was reiterated in the case of *Ejaj Ahmad v. The State of Jharkhand and Binay Kumar,*[73] in which it was held, *inter alia,* that 'a special law is applicable to a particular and specified subject...special law is a provision of law which is applicable to a particular or specified subject or class of subject...it will apply on special class of case and have no application in general cases.' Similarly, the Court of Appeal of Tanzania in the case of *James Sendama v. Republic*[74], held that

71 United Republic of Tanzania-Law Reform Commission of Tanzania, Report on the Labour Law, Presented to the Minister of Justice and Constitutional Affairs, Dar es Salaam -Tanzania, 2001, paragraphs 6.1 to 6.14 at pp.49-54.

72 Sabby F., An Assessment of the Commission for Mediation and Arbitration's Jurisdiction over Public Servants, East Africa Law Review (EALR) Volume 49 No.2 of December 2022, pp.171-173.

73 High Court of Jharkhand at Ranch C.M.P. No. 911 of 2007.

74 Criminal Appeal No. 279 "B" of 2013, Court of Appeal of Tanzania at Tabora (Unreported)

'normally, statute of general application would not apply where there is specific legislation in existence on a specific subject unless the wording of the particular provision suggests otherwise.' Faced by the same issue, the High Court of Tanzania in the case of *Benezer David Mwang'ombe v. The Board of Trustees of Marine Parks and Reserves Unit*[75] held, *inter alia,* that:

> […] despite the fact that Labour Laws cater for disputes between employers and employee's relations as a general rule, where there is specific or special law governing a certain category of employer-employee relationship like the Government and Public Servants as it is, in this case, the specific law should prevail.

Borrowing the wisdom of the South African Court in the case of *Gcaba v. Minister of Safety and Security and Others*[76] which held that judgments should be applied and followed because it is in the interest of legal certainty, equality before the law, and the satisfaction of legitimate expectation, it is no doubt that under current legal regime there is no way public employees in Tanzania could benefit from remedies provided by the general labour framework. Hence, it is doubtful if statutory remedies for unfair termination and other terminal benefits including reinstatement, re-engagement and compensation could be imposed by the PSC or TCS.[77] This is because neither of them is a court or arbitrator within the meaning of the Employment and Labour Relations Act. Impliedly, there is no any express obligation on the part of the above two commissions to implement the provisions of the general labour framework, unless the specific law provides so. The only remedies or orders defined by s.60(1) and (2) of the Public Service Act is that the appellate authorities may confirm, vary or rescind the decision; hence not clear as to what should be the final remedies to the victim. Leaving fate of employee's rights in the discretion of administrative personnel, this adversely affects realization of public servant's right to equality before the law, including inability to access labour courts.

Fifth, the Public Service Act and its regulations do not adequately guarantee accessibility and affordability of administrative remedies. While section 60(1) and (2) of the Public Service Act designates the PSC and the President as appellate bodies, yet s.60(4) clearly states that the President's decision shall be final. This finality clause purports to set limitations for seeking any judicial remedies including the possibility for review or revision by the High Court of Tanzania. Mramba & Rwebangira, observe that the finality clause in the Public Service Act implies that neither the Commission for Mediation and Arbitration

75 Misc Appl No.380 of 2018, *High Court of Tanzania at Dar-es-Salaam (unreported)*

76 (2010) 31 ILJ 296 (CC); also (2009) 12 BLLR 680 (CC)

77 Section 40 of the Employment and Labour Relations Act requires the arbitrator or the Labour Court, upon establishing that termination by the employer was unfair to order reinstatement, re-engagement or compensation of not less than twelve months remuneration.

nor the High Court of Tanzania has the mandate to question the President's orders.[78]This position originates from the feudalistic societies where the King was regarded as incapable of doing any wrong. However, courts in Tanzania have consistently held that decisions of the President can only be challenged at the High Court by way of judicial review.[79] Nevertheless, judicial review can only give rise to prerogative orders such as *mandamus, certiorari* and prohibition, which under the current legal framework cannot be enforced against the Head of State, who enjoys absolute immunity from any civil or criminal proceedings. It could be better if the law established appellate bodies other than the office of the President so as to give more opportunity to public servants to seek for effective judicial remedies in a democratic society.

Similarly, the Public Service Act vests discretionary powers to appellate bodies to allow parties' attendance and submission of defence or presentations during determination of appeals. This is because s.62(1) and (2) of the Public Service Act applies the word 'may' and not 'shall' which in light of s.53 of the Interpretation of Laws Act[80]signifies that it is not mandatory for the parties to attend or even submit written correspondences to the appellate committee, unless considered appropriate by the appellate authority. This legal position adversely affects the public servant's right to be heard during determination of appeals against disciplinary authorities because appeals largely are determined without appellant's presence. This does not only deny the appellate bodies the opportunity to acquire relevant information for correct determination of the issues at hand, but also affects appellant's right to test credibility and validity of representations by the disciplinary authority. Unlike laws governing legal proceedings at the Commission for Mediation and Arbitration and Labour Court which provides for openness in the legal proceedings, the appellate bodies in the public service do not provide for open hearing of appeals, including the right to be represented by advocates or personal representative. This is an anomaly which needs to be addressed for effective realization of labour justice in the public sector.

On the other hand, the Public Service Act limits the powers of the appellate authority in situations where the decision of disciplinary authority is tainted with irregularity. S.62(4) of the Public Service Act mandatorily restricts the appellate authority from faulting or reversing findings or punishment imposed by disciplinary authority where there was irregularity in the composition of enquiry committee or disciplinary proceedings. Worse enough, the Act provides that where the appellate body *is of the opinion* that the said irregularity

78 Mramba, S.J. and Rwebangira, G (2023) Labour Law and Practice in Tanzania, Cases and Materials, Juris Publishers Limited, India, p.212.

79 Refer the case of Tanzania Posts Corporation vs Dominic A, Kalangi, Civil Appeal No.12 of 2022, Court of Appeal of Tanzania at Mtwara (Unreported),

80 Cap. 1 R.E 2019.

occasioned injustice, the matter shall commence de novo. This provision subjects public servants to the wisdom of the appellate bodies. It also contravenes the protection of employee against reconviction by the same trial body contrary to the double jeopardy rule, which provides that no one shall be tried twice for the same offence or charge. On the same account, irregularity in the composition of the enquiry committee and irregularity in the disciplinary proceedings suffice to constitute ground for nullifying the output or end result.

As a matter of law, irregularity in the composition of enquiry committee or in the disciplinary proceedings may be associated with procedural unfairness or substantive unfairness, both of which affects validity of the decision. Procedural irregularities may take different forms, such as failure to avail the employee a right to prepare defence within reasonable time; failure to provide chance to an accused person to cross examine a witness during disciplinary proceedings; and direct participation of the employer as a member of the disciplinary committee contrary to the principle of bias, *nemo judex in causa sua*. Likewise, substantive irregularities may include defectiveness of the charges, summary dismissal pending criminal proceedings or failure to serve the charges on the accused person. From the jurisprudence established by the High Court of Tanzania, once the decision to terminate an employee is influenced by the above irregularities, then there is no other remedy except re-engagement or reinstatement of an employee as the case may be. [81]Thus, the act of determination of the disciplinary matter by the same disciplinary authority, notwithstanding irregularity in the previous disciplinary proceedings, may further occasion injustice to the public servant. There is a need for amendment of the law to clearly protect the right of the public servant to natural justice, including right to be heard, right to be represented and right against bias. The appellate authority should not be restricted from reversing findings and punishment where it is proved that there was irregularity in the composition of enquiry committee and during disciplinary proceedings.

Conclusively, the Public Service Act and its regulations are very important instruments for protection of public servant's right to effective administrative and judicial remedies. The two laws appear to have significant provisions on protection of employee's right against unfair termination, including provisions on investigation and enquiry committee, provisions on drafting and serving the accused person with charges, opportunity to respond and provisions on disciplinary proceedings. However, gaps exist in the legal and institutional framework governing dispute resolution in the public sector, whereby

81 See the case of *Jimson Security Services vs. Joseph Mdegela*, Civil Appeal No.152 of 2019, Court of Appeal of Tanzania at Iringa (Unreported); also, the case of *Coca Cola Kwanza Limited vs. Emmanuel Mollel,* Application No.22 of 2008, High Court of Tanzania at Dar es Salaam (Unreported); also, the case of *BIDCO Oil and Soap Ltd vs. Robert Matonya & 2 Others*, Revision No.70 of 2009, High Court of Tanzania at Dar es Salaam (Unreported).

employees are mandatorily required to file their complaints to bodies which are not as independent and impartial as expected. These gaps need to be addressed so as to ensure labour justice in the public sector, like it is with employees in the private sector. The next section provides some evidence-based dispute settlement framework in the public sector from selected countries namely; South Africa, India and Kenya.

5.0 Experience on Protection of Public Servants' Right to Effective Administrative and Judicial Remedies from Selected Countries

Promotion of public servant's right to administrative and judicial remedies is vital in different countries. In South Africa, the rights of public servants to obtain effective administrative and judicial remedies is protected by various laws. The Constitution of the Republic of South Africa of1996 under section 33 guarantees individuals the right to fair administrative action. For emphasis purposes the provision may be paraphrased as follows:

> Section 33, guarantees the right to fair administrative action, requiring lawful and reasonable actions. Affected individuals are entitled to a written explanation of decisions. Furthermore, laws must facilitate judicial review of decisions to ensure government compliance and promote effective administration.

The above provision sets a foundation for access to administrative and judicial remedies by all citizens in South Africa. It sanctions any administrative action against persons to be lawful and comply with procedural fairness, including enactment of the law which provides the opportunity to accused persons to be given written notice on the reasons of the intended action, and be availed an opportunity to challenge an administrative action by way of review. Further, the provision requires that such review of administrative action be done by the court or an independent and impartial tribunal established by the law. The provision guarantees public servants with a right to pursue justice in the independent and impartial judicial and administrative bodies. This finds further support from section 34 of the Constitution which guarantees resolution of disputes fairly by independent and impartial tribunal or forum.

The Promotion of Administrative Justice Act (PAJA) of 2000[82] seeks to enforce s.33 of the Constitution of the Republic of South Africa by clearly outlines processes and procedures for challenging administrative decisions that impact them.[83] Fair administrative action is dependent on various factors, including providing notice to the victim, reasonable opportunity to make representations, providing clear statement of administrative action and reasons for the decision;

82 Amended by Act No.53 of 2002.
83 Promotion of Administrative Justice Act 2000, s.1.

right to be represented and right of review or internal appeal.[84] The Act provides for judicial review and remedies for judicial review which include: directing the administrator to give reasons; or to act in the manner the court or tribunal requires; prohibiting the administrator from acting in a particular manner; and setting aside the administrative action. Other remedies which would be granted by the court or tribunal include: remitting the matter for reconsideration by the administrator; substituting or varying the administrative action or correcting a defect resulting from the administrative action; directing the administrator or any other party to the proceedings to pay compensation; temporary injunction and declaratory orders.[85]

Thus, in South Africa, unless the administrative decision is exempted by the Act of Parliament,[86] every administrative decision against public servants, must comply with the standards laid down by s.33 of the Constitution. This was observed in the case of *Trend Finance (Pty) Ltd and another v. Commissioner for SARS and another*[87] where the court observed *inter alia* that there was mandatory requirement for every administrator to observe the conditions laid down by the Constitution and that lack of sufficient justification for an administrative decision violated the right to just administrative action. Similarly, in the case of *Bato Star Fishing (Pty) Ltd. v. Minister for the Environment and Others*[88] *and Chirwa v. Transnet Ltd & others*[89]the Court emphasized on the importance of procedural fairness in administrative action and employment-related matters, including respecting the principles of lawfulness and impartiality. Furthermore, in the case of *Maleka v. Health Professionals Council of SA and Another*[90] the court determined that failing to adequately consult with those affected by decisions constituted a violation of their rights as outlined in the Promotion of Administrative Justice Act. Thus, public employees whose labour rights are extinguished or affected by an administrator has an opportunity to petition for judicial review before appropriate court.

Also, public servants whose labour rights have been affected, including unfair termination of employment contracts, may file complaints before the Commission for Conciliation, Mediation and Arbitration (CCMA). The CCMA has mandate to hear and determine disputes involving employees and employers in both public and private sectors. There is significant evidence which proves that all labour disputes involving employees in the public and

84 *Ibid*, ss.3,5, 6 and 7.
85 *Ibid*, s.8
86 *Ibid*, s.2(1) and (2).
87 [2005] 4 All SA 657 (C)*:*
88 CCT 27/03) [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) (12 March 2004)
89 Case CCT 78/06 (2007) ZACC 23. It is an appeal of a pervious case known as Transnet Ltd and others v Chirwa 2007 (2) SA 198 (SCA); [2007] 1 All SA 184 (SCA); [2007] 1 BLLR 10. (SCA).
90 [2005] 4 All SA 72 (E).

private sectors. For example, the cases of *Mabitsela vs. Department of Local Government and Housing and others*;[91]*South African Social Security Agency vs. NEHAWU and Others*;[92]*Myers vs National Commissioner of South African Police Service*;[93] S*outh African Revenue Services vs. CCMA and others*;[94] and *Lekwa Local Municipality vs. South African Local Government Bargaining Council (SALGBC) and Others*, [95] involved public employees and both the CCMA and Labour Court were at different times approached to resolve the conflicts. This means, that the CCMA and the Labour Court have jurisdiction to try and hear labour disputes involving public servants.

In India, public servants can also obtain effective administrative and judicial remedies through constitutional provisions and statutory laws such as the Administrative Tribunals Act[96]. The Administrative Tribunals Act of 1985 creates specialized tribunals to resolve disputes concerning recruitment and selection processes and employment conditions of all government employees including public corporations. The Act establishes the Central Administrative Tribunal and other Administrative Tribunals for States to determine appeals from administrative authorities involving recruitment and service-oriented matters for public servants.[97]

The Administrative Tribunals Act vests powers and jurisdiction to the Tribunal similar to the powers enjoyed by ordinary courts of India. The Tribunal has powers to summon witnesses, enforce parties' attendance, require discovery and production of documents, and receiving evidence on affidavits. Similarly, the tribunal has power to review its own decisions, decide the matter *ex -parte*, set aside any order made *ex-pate* and impose interim orders, subject to fair hearing;[98] and power to punish for contempt of its orders[99] The Central Administrative Tribunal and its Benches are obliged to determine applications or appeals as expeditiously as possible by perusing documents and written submissions and through oral submissions, in accordance with procedures set by the Tribunal (excluding the Code of Civil Procedure, 1908). [100]The Tribunal is enjoined to designate its own rules of procedure, determine place and time for its meetings and comply to principles of natural justices in its proceedings.[101]The procedure for lodging an application or appeal is provided under s.19 of the Administrative Tribunal Act, whereby a person aggrieved by

91 (2012) 8BLLR 790 (LC).
92 C-233/14.
93 (2014) 5BLLR 461 (LC).
94 (2017) 38 ILJ 97(CC).
95 (2017) ILJ 90 (LC).
96 Act No.13 of 1985.
97 Administrative Tribunals Act (India), s.4(1)-(6).
98 *Ibid*, s.22(3) and s.24.
99 *Ibid*, s.17.
100 *Ibid*, s.22(2).
101 *Ibid* s.22(1).

administrative order pertaining to recruitment and service in the public sector,[102] lodges an application in the prescribed form. The application or appeal to the Tribunal must be made within one year after the final decision or six months after making an appeal for internal remedies.[103]

As a matter of procedure, the application to the Tribunal is accompanied by documents or evidence and payment of fee, if any, but not exceeding one hundred rupees and other fees prescribed by the government.[104] Then, after making an inquiry, the Tribunal may admit the application or reject the application subject to recording reasons.[105] Section 20 of the Act requires the Tribunal not to admit an application unless the applicant has exhausted internal remedies prescribed under the relevant service rules.[106] This means that the Tribunal admits application were the order sought to be challenged is final, except in circumstances where the public officer responsible for determination of appeals does not determine the matter within six months of lodging an appeal.[107] The applicant in any proceeding is guaranteed a right to present issues in person or seek legal assistance of legal practitioners.[108] The decision of the Tribunal is obtained through unanimous decision, majority decision and where the difference in opinion makes it impossible to get majority, the Chairman may determine the matter or transfer the same matter to another Bench for determination.[109] The decision of the Central Administrative Tribunal disposing the matter is final and not questionable in any court (including the High Court).[110] However, this does not affect the jurisdiction of other courts established by law, including the Supreme Court, Industrial Tribunal and Labour Court.[111]

The Constitution of India nevertheless, gives public servants a right to file writ petitions under article 226 before the High Court in order to protect their rights against unjust actions taken by authorities. Public servants' right to effective administrative and judicial remedies is protected under articles 14 and 21 of the Constitution of India.[112] Whereas article 14 guarantees equality before the law and forbids discrimination, article 21 secures the right to life and personal liberty, which has been interpreted by courts to encompass a right to a fair hearing. This was observed by the court in the case of *Moti Lal Saraf v. Union of*

102 Public sector involves central government, local government, public bodies and agencies.
103 Administrative Tribunal Act, s.21.
104 *Ibid*, s.19(2).
105 *Ibid*, s.19(3).
106 *Ibid*, s.20(1)
107 *Ibid*, s.20(2) and (3).
108 *Ibid*, s.23(1).
109 *Ibid*, ss,25 and 26.
110 *Ibid*, s.27.
111 *Ibid*, s.28.
112 It came into force on 26th January, 1950.

India[113] where it was observed, *inter alia,* that the concept of fair trial flows directly from the provisions of article 21 of the Constitution of India. Similarly, in the case of *Union of India v. Tulsiram Patel,*[114] the Supreme Court of India affirmed that public servants have the right to due process prior to being terminated from their positions as guaranteed by articles 310 and 311 of the Indian Constitution.

The last experience can be extracted from one of the countries in the East African Community, the Republic of Kenya. The Constitution of Kenya of 2010is provides for protection of public workers' right to administrative and judicial remedies. Article 47 of the Constitution states that if someone is affected by an administrative decision, they have the right to receive reasons in a written form. Similarly, article 233(1) of the Constitution of Kenya establishes the Public Service Commission which comprise of Chairperson, Vice Chairperson and seven Commissioners who are appointed by the President, subject to approval of the National Assembly. The Commission, *inter alia,* plays a crucial role in establishing the framework for managing disciplinary issues within government organizations. Nevertheless, functions, powers and administration of the Public Service Commission of Kenya are prescribed under the Public Service Commission Act. [115]

The Public Service Commission enjoys absolute powers to determine disciplinary matters involving public servants in Kenya.[116] However, it may delegate its powers to its authorized officers in respect to interdicting or suspending any public officer, reprimanding any public officer, stopping or deferring any increment. [117] To ensure proper discharge of its functions, the law vests the Commission with powers to issue summons, compel attendance of any person, administer oath and require production of information and documents from any person.[118] Unlike the Public Service Commission in Tanzania, the Kenyan Public Service Commission has the power and jurisdiction to resolve disputes through ADR mechanisms, specifically conciliation, mediation and negotiation subject to providing parties with opportunity to be heard.[119]

Generally, the Public Service Commission in Kenya is a disciplinary both a disciplinary authority and appellate body for decisions made by other administrative bodies other than the Commission, including decisions from

113 2007 (1) SCC Cri,180.
114 (1985) AIR 1416; (1985) 2 CURLR 117.
115 Act No 10 of 2017, Revised 2023 (amended by Act No. 19 of 2023).
116 *Ibid*, s.65(1).
117 *Ibid*, s.65(2).
118 *Ibid*, s.5.
119 Public Service Commission Regulations of 2020 (Kenya), regulation 78(1) and (2).

county governments' disciplinary bodies.[120] This differs with the Public Service Commission of Tanzania which hears and determines appeals from other disciplinary authorities. Its procedural matters are governed by the Public Service Commission Regulations (2020)[121] and the Guidelines.[122]These guidelines apply to all public institutions including ministries, departments and agencies at the national and county levels of government, constitutional commissions, independent offices, Parliament and the Judiciary. The Commission is obliged to observe the principles of natural justice, including right to receive notice or charge, opportunity to file defence and be represented during disciplinary hearing and appeals.[123]

The appeal to the Commission must be filed within a period of ninety day, unless determined otherwise by the Commission.[124] On appeal, the Commission may uphold the decision, set aside the decision, vary the decision as it considers to be just or give such directions or orders as it may consider appropriate so to do.[125] As a matter of law, the decision of the Public Service Commission of Kenya must be communicated by the Secretary, in writing and must state reasons for specific conclusions.[126] Any person aggrieved by the decision of disciplinary body first must use internal review process prior seeking for judicial review including applying for review by the Commission within six months.[127]

The Kenyan legal framework safeguards public servant's right to administrative and judicial remedies as it guarantees autonomy of decision makers, stipulates powers of the Commission to supervise its proceedings, and provides clear powers of the Commission upon determination of appeals or review. These factors are crucial for safeguarding right to access independent quasi-judicial bodies. Tanzania, needs to harmonize its laws governing dispute settlement in the public sector to meet experiences from the above three countries. Because of historical factors, Tanzania may reform its Public Service Act and Regulations to reflect standards and labour practices from either South Africa or India.

6.0 Conclusion and Recommendations

This part sets out the conclusion of this article as well as recommendations for concrete redress of the key issues considered herein above.

120 Powers and procedures to hear and determine appeals from country governments is regulated by the Public Service Commission (County Appeals Procedures) Regulations 2022, Legal Notice No.92 of 2022.
121 Legal Notice No.3 of 28th January 2020.
122 Discipline Manual for Public Service in Kenya, 2022, and the Guidelines on the Public Service Commission (State Corporations and Public Universities) Disciplinary Appeals Procedures, 2024.
123 Public Service Commission Act, s.69.
124 *Ibid*, s.74(1), (2) and (3).
125 *Ibid*, s.74(5)
126 Public Service Commission Regulations 2020 (Kenya), regulation 79(1) and (2).
127 *Ibid*, s.75.

6.1 Conclusion

This article has examined promotion of public employees' right to effective administrative and judicial remedies in Tanzania. It has revealed that the existing labour dispute settlement framework available for public servants is not adequate to guarantee employee's access to independent and competent tribunal. The Public Service Act and its Regulations fall short of the requirements and standards prescribed by international labour standards. Unlike employees in the private sector whose disputes are resolved by independent bodies competent to award enforceable remedies and subject to fair rules of procedures, the public service legal regime restricts public servants to institutions and systems that are politically and state-driven, vested with discretionary powers and not compliant to cardinal principles of natural justice. Hence, there is need to create a comprehensive legal structure which would guarantee workers in public service adequate access to administrative remedies and judicial processes.

6.2 Recommendations

From the above analysis, the gaps pointed above could be avoided if the government amended the PSA to allow public servants to access administrative and judicial remedies established by the general labour framework without necessarily exhausting remedies under the PSA. This would require repealing the provisions of s.32A of the Public Service Act in order to provide access to the Commission for Mediation and Arbitration and the Labour Court, both of which are independent and free from employers, trade unions and political party affiliations. [128] This would ensure that public servants and workers in the private sectors have access to common judicial and administrative remedies. This approach would be similar to the system of South Africa and would be cost effective since it does not require setting new labour systems or establish new fora.

Alternatively, the government could continue provide a separate system of dispute settlement under the Public Service Act, subject to major legal reforms. First, the government of Tanzania has to amend the Public Service Act and its Regulations to permit employees a right to appeal against decisions by administrative bodies, including the President of Tanzania. This would require express provision in the Public Service Act which define the time limit, procedure and appellate body other than the High Court of Tanzania. It is recommended that a government adopts a law similar to the Promotion of Administrative Justice Act (PAJA) of 2000 (as amended by Act No.53 of 2002)

128 Labour Institutions Act (Tanzania), s.13; also, Rutinwa, B, et al.(eds) The New Employment and Labour Relations Law in Tanzania: An Analysis of Labour Legislation in Tanzania, University of Dar es Salaam School of Law & Institute of Development and Labour Law, Faculty of Law-University of Cape Town, pp.258-265.

from South Africa so as to guarantee access to administrative and judicial bodies; hence remove finality clause from the laws of Tanzania.

Secondly, the government could establish an independent administrative tribunal to be known as Public Service Appeals Tribunal for determination of applications and appeals by public servants against decisions or orders of disciplinary authorities. This tribunal would ensure independence of decision makers and tenure security including financial security and immunity from dismissals by the President, except in cases of misconduct subject to fair hearing. Furthermore, it should be constituted by judicial and administrative personnel with vast experience in law from professional bodies and legal departments in the public service. The Chairperson of the Public Service Appeals Tribunal should be a Judge of the High Court, while other members of the Tribunal be appointed from experienced practicing advocates, retired state attorneys or senior retired public servants from the government agencies, ministry of legal and constitutional affairs with knowledge in legal or labour matters. Members of the Tribunal should be appointed by the President after consultation with the Chief Secretary and the Chief Justice of Tanzania.

Furthermore, the law should vest powers to the Public Service Appeals Tribunal to regulate its proceedings, including such powers as vested to ordinary courts, including powers to procure parties' attendance, power to convict persons for contempt of the tribunal and powers to enforce its decisions.

Thirdly, the government of Tanzania must enact procedural rules to govern the proceedings of the Appeals Tribunal. These rules should stipulate time for making an application or appeal, necessary forms and documents for instituting a complaint; and opportunity to be represented by personal representatives or legal practitioners. Further, the rules should require all proceedings at the Tribunal to be public and allow written and oral submissions from parties. It is recommended that the government adopts rules similar to the Procedural rules governing labour proceedings at the Commission for Mediation and Arbitration or any other tribunal with quasi-judicial functions such as the Fair Competition Tribunal and Tax Revenue Appeals Tribunal. Furthermore, these procedural rules should provide the powers and competence to the Tribunal to set aside decisions or orders of disciplinary authorities if found to be unfair or tainted with procedural irregularities.

The government should harmonize labour law regimes governing dispute settlement for public servants regardless of sectors, except for military and judicial personnels. For example, setting an independent framework for resolving disputes involving teachers in Tanzania does not make them special employees different from other public servants. In fact, establishing one system

for determination of appeals from disciplinary authorities across public service guarantees certainty, consistency and predictability of decisions for similar incidences. It would also guarantee equality of all employees in the public sector, whereby remedies availed to aggrieved teaching staffs would be the same to other public servants; hence effectively guarantee equal treatment of all public servants without any form of discrimination. By redressing all the above issues, the government of Tanzania would be promoting public servants' right to effective administrative and judicial remedies.