Report on Case No CEDUC-24-5136

The complaint

1. The complaint in this case was received at the Ombudsman's Office on the 26th August 2024. Notice of the investigation as per Art. 18(1) of the Ombudsman Act (Cap. 385) was served upon the Permanent Secretary at the Ministry responsible for Education on the 2nd September 2024.

2. The complainant graduated from the University of Malta in 1995 with a Bachelors (Hons.) degree in Business Management. After working in industry for almost 20 years, in 2013 she decided to change career and to teach. As her degree does not have a pedagogical component, she was employed as a supply teacher with the Department of Education with effect from the 4th April 2013, and was given indefinite status with effect from the 4th April 2017[1].

3. For the past 12 years she has been entrusted by the Education Authorities with the teaching of Accounts, Business Studies and VET Retail in Secondary Schools. In all these years she has given sterling service and there has never been any suggestion that she is not fully competent and able to teach these subjects to secondary school students. In fact, her past students have, to date, always obtained high grades in their MATSEC examinations, which clearly indicates that although she does not have the formal pedagogical component to her degree, she is giving her students the same level, quality and value of teaching as any other teacher with the pedagogical component to the degree. As

[1] The letter informing her of her indefinite status as an officer in then Scale 10, and signed by the then Permanent Secretary, Dr Francis Fabri, is dated 14th December 2017.

a supply teacher she is granted a temporary warrant by the Council for the Teaching Profession (CTP) which is renewed every scholastic year. In spite of all this, because she is considered to be a supply teacher, she was and continues to be paid less for her teaching than a regular teacher with the same number of years of teaching experience.

The investigation and findings

4. The complainant is not seeking to be given a permanent teaching warrant: her claim is limited to the fact that she is being paid – and has been paid ever since her engagement in 2013 – much less than a teacher doing exactly the same work as she does. Under the current collective (sectoral) agreement she is not paid the same allowances as a 'regular' teacher. In effect and in substance, the complainant is alleging a breach of the principle of equal pay for work of equal value.

5. It should be emphasised from the start that the functions of the Ombudsman and of the three Commissioners within his Office, while circumscribed by law, are not limited to enquiring solely whether something is done according to or in breach of a law. Such a hypothesis – compliance or otherwise with the law – is envisaged in paragraph (*a*) of sub-article (1) of Article 22 of Cap. 385 – indeed a finding of maladministration may even result if the "decision, recommendation, act or omission" simply "appears to have been contrary to law" (emphasis by the undersigned). The Ombudsman's and the Commissioners' task, however, extend much further: a "decision, recommendation, act or omission" may also be impugned if it "was in accordance with a law or a practice that is or maybe unreasonable, unjust, oppressive or improperly discriminatory" (paragraph (*b*) of Art. 22(1)), or if it

"was wrong" (which has always been interpreted as meaning wrong in principle – (paragraph (*d*) of said Art. 22(1)) – emphasis by the undersigned). There would also be an act of maladministration if a power is exercised "for an improper purpose" (Art. 22(2) of Cap.385). The above is being highlighted since a proper examination of the instant complaint requires careful analysis and navigation between law and practice over a number of years over the issue of supply teachers. Moreover, the undersigned is fully aware of Article 48(1) of the Employment and Industrial Relations Act (Cap. 452). However, no argument or exception was raised in this case by the respondent Ministry in connection with what is discussed in paragraphs 9 *et seq.* of this Report – the respondent Ministry did not attempt to argue, for instance, that the principle enshrined in Article 27 of Cap. 452 is not applicable to service with the government. It would, indeed, have been surprising had it done so, since one expects the public service (the 'civil service') to lead by example in matters regarding the proper treatment of employees. However, even *if* Article 27 were not legally applicable to the instant case by reason of Article 48, *that, by and of itself,* would bring the matter within the ambit of Article 22(1)(2) of Cap. 385 as explained above.

6. From the evidence received, it transpires that historically supply teachers were employed for a short period of time whenever there was a specific shortage of regular teachers either at a particular school or in a particular subject (usually at secondary level). The person employed was on a definite contract and in some cases his or her only academic asset was having obtained good grades in the A Level G.C.E exams (today replaced by MATSEC). People were often employed in this way during their 'gap year' after finishing sixth form and while waiting to start a degree course at the University or at some other institute of higher education. As the word 'supply' implied, such an appointment was meant to be short term and temporary. Over time, unfortunately, and owing also

to a number of changes in the law, including the law on the award of a teaching warrant, and also because of an endemic shortage of teachers, the extant practice arose of specifically recruiting 'supply teachers' and retaining them for an indefinite period of time.

7. From correspondence exchanged with the Permanent Secretary at the Ministry responsible for Education, the complainant's claim that she has exactly the same teaching duties and obligations as a regular teacher was confirmed. From this correspondence there is not the slightest suggestion that complainant's work or performance is in any way inferior to that of regular teachers, or that the students she teaches are faring worse because they are being taught by her instead of a regular teacher. Although during their first four years "*... supply teachers are supervised as they are regularly observed by the head of school and the education officers and a report stating recommendation or otherwise for renewal of contract is sent on a yearly basis*" (Permanent Secretary's letter of 15th November 2024), once the teacher is given indefinite status, she becomes for all intents and purposes a regular teacher – other than for purposes of remuneration.

8. This means, therefore, that the complainant is functioning in substance as a regular teacher, performing the same work of the same value as a regular teacher, but is paid less according to successive collective agreements (including the one correctly in force).

9. It is considered view of the undersigned that this anomalous situation has come about because of a misconceived interpretation of the provisions of law governing equal remuneration for work of equal value. It should be re-emphasised at the outset that in the case of the complainant – and *semble* of all those supply teachers who have been confirmed after four years in their post by being granted indefinite status – there is nothing that can objectively be

considered as of less value in the work by her performed when compared with that of other regular teachers.

10. Article 27 of Cap. 452 provides that "*Employees in the same class of employment are entitled to the same rate of remuneration for work of equal value*." This provision goes on to allow different salary scales (for the same class) for workers employed at different times (and provided these scales have a maximum which is achievable within a specified period of time). This 'exception', however, is not relevant for the purpose of the current investigation.

11. The crux lies in the definition of 'class' in Article 2(1) of Cap. 452:

> " *'class' when used in the context of a group or a category of employees shall refer to the groups or categories listed in a collective agreement: Provided that where there is no collective agreement or where a collective agreement does not stipulate groups or categories of employees, it shall refer to the work performed independently of the title or name given to the post*" (emphasis by the undersigned)

This definition, and particularly the underlined words in the *proviso,* underscores the true and common sense meaning of what is meant by equal remuneration for work of equal value: one must look objectively at the work actually performed and not at the creation of classes or categories or other nomenclatures created for the purpose of avoiding, or which ineluctably, even if possibly unintentionally, lead to the circumvention of, the principle of equal remuneration for work of equal value. Like in everything, laws must also be interpreted and applied in good faith. Nothing contained in Annex II of the current collective agreement – not even items 1.6 to 1.8 – appears to apply to the complainant's case, as was explained to the undersigned and to the complainant herself during a meeting at the Ombudsman's Office with a senior

member of management within the Education Department. In short, the complainant is destined to remain in Salary Scale 9 as a 'Supply Graduate Teacher – MQF 6/7 non-teaching qualification' until she retires, performing the same work and of the same value as a regular teacher, but paid less.

12. This can only be described as a form of exploitation. It has been argued that this discrimination in pay – a discrimination which has the *beneplacitum* of a collective agreement – is justified in order to ensure that supply teachers upgrade to a pedagogical degree or appendage to their degree: "*It is the Ministry's goal and vision that as much as possible supply teachers 'upgrade' themselves to become regular teachers through different opportunities and routes agreed in the sectoral agreement. The agreement encourages supply teachers to take these opportunities to make the necessary effort to move to regular teachers*." (Permanent Secretary's communication of the 15th November 2024). Even if – which does not appear to be the case – it were possible for the complainant to progress to become a regular (non-supply) teacher under some provision of the current sectoral agreement, the above-quoted statement undermines the whole *raison d'etre* of Art. 27 of the Employment and Industrial Relations Act, which article, for the purpose of ascertaining the equal value of work relies on the objective performance thereof and not on subjective qualities of the employee. If, because of the endemic shortage of teachers, the Education Department requires the services of teachers without a pedagogical degree, then those teachers thus employed are to perform duties which are substantially different (and less onerous) than those performed by regular teachers. Anything less than that would not only undermine Art. 27 of Cap. 452 but is likely to be also in breach of Article 1 of Protocol No. 12 to the European Convention on Human Rights (signed and ratified by Malta on the 8th December 2015). Regrettably, it would appear that the Education Authorities find the current situation 'convenient' – teachers like the complainant provide a quality service

within the educational field while the Education Department 'benefits' by paying less for that service. Of course, nothing in the above should be construed as undermining the system of top-up allowances post-recruitment upon attaining additional qualifications relevant to the work being performed – what is wrong is the initial and continued improper discrimination based on the 'supply' status.

Conclusion and recommendation

13. In view of all the above, the complaint is justified and is being sustained. Her receipt of a lower remuneration is both unjust and improperly discriminatory, and also wrong in principle (Art. 22(1)(*b*)(*d*), Cap. 385).

14. The undersigned recommends that the complainant be paid the same class allowance and works resources as a teacher in Salary Scale 9 (as per p. 72 of the current sectoral agreement) backdated to the date when the complaint was served upon the Permanent Secretary, that is backdated to the 2nd September 2024.

Vincent A De Gaetano
Commissioner for Education

30 May 2025