

THE HIGH COURT

[2013 No. 608 J.R.]

BETWEEN

VINCENT GORMLEY AND JAMES SCOTT

APPLICANTS

AND

MINISTER FOR AGRICULTURE, FOOD AND MARINE (No.2)

RESPONDENT

JUDGMENT of Mr. Justice Hogan delivered on 19th June, 2014

1. The applicants are both technical agricultural officers who are employed by the Department of Agriculture and Food in Co. Galway. In these judicial review proceedings the applicants challenge the Minister's decision to exclude them from consideration from certain internal competitions for the post of Assistant Agricultural Inspector. These internal competitions were held during the course of 2013. The issue arises in the following way.

2. Both applicants hold a BSc in Rural Development and the second applicant holds a Masters qualification in rural environmental conservation and management. While both applicants were informally advised that their present posts were surplus to requirements in July 2009, they were only formally advised of this by letter dated 15th March, 2011.

3. The Public Service Agreement 2010 – 2014 ("the Croke Park Agreement") provides for mechanisms whereby surplus staff within a given Department may be deployed within the civil service. Staff so redeployed are generally entitled to priority under the terms of that Agreement save where special skills are required. For various reasons, however, the applicants were not in fact so redeployed.

4. In November, 2012 the Department sought applications for seven posts of Assistant Agricultural Inspectors ("AAI") by way of open competition. The application form required that applicants hold an honours degree in Agricultural Science or its equivalent. The functions of the AAI were described in the competition circular as:

"implementing of EU and National Legislation, providing relevant scientific, technical based evidence and other knowledge to bear on policy evaluation and analysis, administration of schemes, programmes and services, monitoring developments in trade and industry, participation in negotiations and meetings related to the development of EU legislation, representing the Department at international scientific and other fora, provide the specialist and professional knowledge and skills required to formulate and implement policies relevant to the development of the agriculture and food sectors."

5. The advertisement also stated that it was necessary for the applicants to be competent in professional skills and scientific knowledge and it was also necessary for applicants to demonstrate "a wide knowledge of the food and agricultural sectors" and to have "a broad scientific knowledge of the sectors."

6. Although the applicants maintain that their degree qualifications should be regarded as equivalent for this purpose to that of the degree in Agricultural Science, their applications for the open competition were nevertheless rejected by letter dated 30th January, 2013, on the ground that they did not satisfy "the essential requirements" as outlined in the application form.

7. The applicants were naturally disappointed with this and arranged for their trade union to engage with the Department regarding their status and redeployment. To this end there was much correspondence and several meetings took place between the parties. One practical suggestion which was made was that as the Department was holding internal competitions for these positions, these were positions to which the applicants might also apply. Indeed, Mr. Gormely alleges without contradiction that a meeting held on 29th January, 2013, senior departmental officials were prepared to offer the applicants these posts if they would also agree to maintain their present rates or, at least, accept a lower salary than that commensurate with the position of AAI.

8. Such an internal competition was advertised on 12th April, 2013, and interviews for these positions were held on 3rd July, 2013. The specifications regarding the requisite skills and specifications were the same as those contained in the advertisement for the open competition, save that on this occasion it was to be the Department (rather than the Public Appointments Service) which was to be the judge of this.

9. The applicants had naturally applied for these internal posts. They were then crestfallen to learn by letter dated 24th June, 2013, that they were again deemed ineligible for these positions. The letter stated that:

"Following a detailed examination of your application it has been established that you do not meet the educational requirements as set out in the competition circular."

10. A critical feature of the proceedings is the claim advanced by the applicants that their exclusion from the internal competition on this ground is unfair and arbitrary on the basis that the Department could not properly have rejected their educational qualifications as not being equivalent to those possessed by honours Agricultural Science graduates. Specifically, they maintain that the disqualification is unfair in circumstances "where an individual with identical qualifications holds the post of AAI within the Department."

11. The applicants further contend that the reasons stated by the Department are inadequate.

12. As already indicated, the essential requirements for candidates for these positions were set out in the internal advertisement of 4th May, 2013. These requirements were that candidates must hold an honours degree in Agricultural Science (having majored in particular sub-specialties which were set out) "or a relevant qualification which is acceptable to the Department of Agriculture, Food

and the Marine as equivalent.”

13. While the Department acknowledge that there are in fact two individuals who hold a degree in rural development who have been appointed to the post of AAI, this was a result of a competition conducted in 2006 by the Public Appointments Service (“PAS”) and not by the Department. It appears that once the appointments were made, the Department considered that it was not in a position to reject these candidates and their appointment appears to have been regarded with some misgivings, both then and indeed now.

14. In this context, the evidence led by the Department stresses what it considers to be the fundamentally different nature of the two degrees. The degree in Agricultural Science is a full-time four year course with demanding entry requirements. All Agricultural Science students are required to take courses in the core science subjects (chemistry, physics, animal and plant biology) in their freshman years before taking more specialist subjects (such as, for example, genetics, animal husbandry or crop husbandry) in their final years.

15. The degree in Rural Development is by contrast a three year part time distance learning course which is essentially designed for mature students with some experience in rural development. The subjects covered in the course covered by NUI Galway include rural development, rural organisation, rural economy, rural environment and integrated rural community planning.

The oral evidence tendered by the parties

16. In addition to the affidavits filed, the Court had the benefit of actually hearing three witness called to give evidence on the equivalence issue. It may be convenient at this juncture briefly to summarise their evidence.

17. Mr. Beehan gave evidence that he was the Chief Agricultural Inspector in the Department. The Department itself had about 3,500 staff, the bulk of whom were in administrative grades. There were some 700 technical staff, some 300 veterinarians (all of whom had veterinary science qualifications) and 200 agricultural inspectors. So far as the agricultural inspectors are concerned, the vast majority of them had undergraduate degrees in Agricultural Science.

18. Where the recruitment was by way of external competition, then the competition was organised by PAS. In those cases the actual appointment would be made by PAS, but the assignment of the person so appointed would rest with the Department. The terms of the internal competition mirrored that of the external one, save that the Department itself sought to identify suitable candidates in terms of appropriate skills and expertise. Specifically, there were a number of staff who had degrees in Agricultural Science who might be suitable.

19. Mr. Beehan stated that he was responsible for the insertion of the reference in the circular to a relevant qualification which was acceptable to the Department as being equivalent to that of the degree in Agricultural Science. He further stated that what he had in mind was that there might well be candidates who possessed a broadly-based science degree with an application to agriculture.

20. When the applications were received some 19 candidates were deemed not to have equivalent qualifications by reference to these criteria. While some candidates were deemed to have equivalent qualifications, this was where the undergraduate degree was science-based and met the criterion of the application of science to agriculture in that degree programme. Mr. Beehan maintained that there was no real comparison between this degree of agricultural science and the degree in rural development.

21. Mr. Beehan acknowledged that it was true that in 2006 PAS had appointed two applicants with these latter degrees to the post of Assistant Agricultural Inspector. While the Department thought that this decision was wrong at the time, it did not object at the time because it considered that it was restricted in so doing. In those circumstances, it felt that had no alternative but to accept these two candidates. But these two candidates, while diligent and hard working, were, he said, limited in respect of the duties to which they could be assigned by reason of the fact that they did not have a degree with a science based foundation.

22. Professor Evans gave evidence that he was the Head of School of the Department of Agriculture and Food Science at UCD. He rejected the suggestion that the degree of Rural Development could be compared with the degree in Agricultural Science. One was a science-based degree, whereas the degree in Rural Development could not be so compared. He accepted that he was not having regard to the experience acquired by the applicants in making this assessment of equivalence.

23. Dr. Chadd gave evidence that he was Dean of Agriculture at the Royal Agricultural University in the United Kingdom. He accepted that in terms of content there was an obvious difference between the degrees, in that one was science based, while the other was in rural development. While he further accepted that the agricultural component of the applicants’ degree was at the level of a Certificate in Agriculture, there was no real comparison between this qualification and an undergraduate degree in Agricultural Science. Dr. Chadd did think, however, that the Department should have taken into account the experience of the two applicants in making this comparative evaluation and that they would be well able to carry out the duties of the post of Assistant Agricultural Inspector.

Whether the decision to exclude the applicants can be said to be arbitrary or unreasonable

24. Contrary to what has been suggested at some points by the Department, it is not correct to say that the applicants should be regarded as disqualified ex ante simply because they did not possess an honours degree in agricultural science. The advertisement stipulating the essential requirements for the internal competition expressly envisaged that other candidates might apply, provided that they held a relevant qualification “which is acceptable to the Department of Agriculture, Food and the Marine as equivalent”.

25. As the Department officials have explained in their supporting affidavits and as Mr. Beehan further stated in his oral evidence, there have, in fact, been candidates who held equivalent qualifications. Thus, for example, in the internal competition of 12th April, 2013, the Department considered that two candidates possessed equivalent qualifications, even though they, strictly speaking, did not hold a degree in agricultural science *as such*. One such candidate held a degree of Bachelor of Science in Agriculture from a Scottish university and the other held a Bachelor of Science in Agriculture with Animal Science from a Welsh university. To some degree, insofar as these qualifications differed from those specified in the advertisement, this would appear to have been largely a matter of nomenclature in the case of these particular candidates. What was critical was the fact that the two candidates in question had a scientific degree with a focus on either agriculture or animal science.

26. It is clear, therefore, that the Department was required to perform a broadly similar exercise in the case of the present applicants. The Departmental officials were in effect required to exercise a judgment as to whether in their opinion the applicant’s degree in Rural Development could be regarded in this context as being the equivalent of a degree in Agricultural Science. In exercising a judgment of this nature the Department officials were required to abide by the three prong test of *bona fides*, factual sustainability and a showing that the decision was not unreasonable: see, *e.g.*, *Mallak v. Minister for Justice* [2012] IESC 59, [2013] 1 I.L.R.M. 73, 91 *per* Fennelly J.

27. The *bona fides* of the Department officials were at one point very belatedly called into question. This matter was not, however, pursued at the hearing and given that the matter was never squarely pleaded, it would have been most unfair to allow this point to be canvassed. I do not, therefore, propose to entertain any such argument.

28. The real question is whether it be said, therefore, that the decision to reject the degree in Rural Development as not meeting the equivalence requirements is not factually sustainable or is unreasonable. While not unsympathetic to the plight of the applicants, I do not think that, measured by these standards, the Departmental officials can be faulted for the conclusions which they reached.

29. So far as factual sustainability is concerned, there is a difference between the two degrees in terms of entry level requirements, the duration and nature of the courses and the fact that the Agricultural Science degree is a science-based degree programme. One is a full-time standard undergraduate university science-based degree over four years and the other is a three year, part-time course focussing on matters such as the rural economy, the rural environment and rural affairs generally. Specifically, the degree in rural development does not include a grounding in the core elemental sciences – such as physics, chemistry, biology – which are a staple of the undergraduate Agricultural Science degree. Even the expert witness called by the applicants, Dr. Chadd, very fairly admitted as much.

30. Given the tasks of the AAI, it is plain that the Department was entitled to take the view that the two degrees in question were appreciably different. This is especially true given that a broad scientific knowledge of the food and agricultural sectors was prescribed as an essential professional skill required of all applicants. One must also bear in mind that s. 24(9) of the Public Service Management (Recruitment and Appointment) Act 2004 provides that:

“A candidate shall not be appointed to a post unless he or she is fully competent....to undertake and be fully capable of undertaking the duties attached to that position having regard to the conditions under which those duties are, or may be required to be, performed.”

31. In these circumstances one is obliged to admit that the Department’s decision was factually sustainable and in these circumstances cannot be regarded as unreasonable.

Were adequate reasons given to the application?

32. So far as the duty to give reasons is concerned it must be accepted that in a competitive forum such as this the duty to give reasons will often be somewhat attenuated for the very simple reason that of necessity in a competition such as this there will be winners and losers: see generally *Orange Communications Ltd. v. Office of Director of Telecommunication Regulation (No.2)* [2000] 4 I.R. 159 and Case T-19/95 *Adia Interim SA v. European Commission* [1996] ECR II – 321. As Geoghegan J. pithily put it in *Orange Communications* ([2000] 4 I.R. 136, 271) “the simple statement that the appellant was not the winner of the competition was the most substantive reason one could expect to get.”

33. To that extent, therefore, the present case is very different from a case such as *Mallak* where the administrative decision – in that case, the decision to refuse to grant citizenship – was *unique and personal* to the applicant. Moreover, no reasons at all had been given in respect of that decision and as Fennelly J. observed, the applicant must have been “mystified” by the decision. He had, after all, been living here for a considerable period with his family, all of whom had been granted refugee status. No questions of character or public policy had been raised as a ground of objection and the applicant’s wife had been granted citizenship. One can easily see how the failure to give reasons for this decision was perplexing.

34. In the present case, reasons were certainly given for the decision – namely, that the applicants did not possess the requisite qualifications. It is true that these reasons might have been amplified by the Department. It might, perhaps, have possibly been more helpful if the Department had fully explained its views regarding the status of the applicants’ qualifications in the manner which has been done in the course of these proceedings.

35. Yet in view of the Supreme Court’s comments in *Orange Communications* regarding the more attenuated duty to give reasons in a competition environment, I am not persuaded that the reasons actually given in the present case were in fact inadequate. Even if I am wrong on this point, I do not consider that the applicants have suffered any real prejudice as a result. It was necessarily implicit in the Department’s reasons that their qualifications were not regarded as equivalent to that of the degree in Agricultural Science and while the applicants did not formally know precisely why this view had been taken, one is nonetheless forced to conclude that they probably suspected *aliunde* why the Department had formed this view.

Conclusions

36. It follows, therefore, that I am obliged to find that the Department were entitled to conclude that the applicants’ qualifications were not equivalent to that of the degree in agricultural science. As this conclusion was factually sustainable and not unreasonable, it follows that, although personally sympathetic to the position of the applicants, this application for judicial review of the Minister’s decision must as a result necessarily fail.