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FIJI SERVICE COMMISSIONS AND PUBLIC SERVICE DECREE 1987

INTERIM MILITARY GOVERNMENT OF FIJI DECREE NO. 5

IN exercise of the powers vested in me as Commander and Head of the Interim Military Government of Fiji I hereby make the following decree:

1. This Decree may be cited as the Fiji Service Commissions and Public Service Decree 1987.
2. The power to make appointments to the offices of Ambassador or other principal representative of the interim Military Government of Fiji shall rest in the absolute and sole discretion of the Head and Commander of the Interim Military Government.
3. The power to make appointments to such public offices other than those in section 2 being offices where the holders are required to reside outside Fiji; together with public offices in the department responsible for foreign affairs shall come within the jurisdiction of matters under the control of the Executive Council.
4. Questions concerning the entitlement of officers whose position is terminated during the period of office are to be resolved by the Public Service Commission on the same basis as applied immediately prior to 25th September, 1987.
5. There is established a Public Service Commission which shall consist of a chairman and not less than three nor more than five other members appointed by the Commander and Head of the Interim Military Government of Fiji.
6. Members of the Public Service Commission—
 - (a) shall not be eligible to serve as members of the Police Service Commission;
 - (b) shall not be eligible for any public office within 3 years from the day in which he last held or acted in the Public Service Commission;
 - (c) shall vacate his office at the expiration of three years from his appointment or forthwith upon commission of an act which would disqualify him for appointment as such:
7. Whenever the Chairman of the Public Service Commission is vacant or he is unable to perform the functions of his office those functions shall be performed by one of the other members of the Commission that the Commander and Head may appoint. Should the number of members fall below three members beside the Chairman then the Commander and Head may appoint a person eligible to fill the vacancy until the appointment is revoked by the Commander and Head.
- 8.—(1) Subject to the provisions of this and any other relevant Decree, power to make appointments to public offices and power to confirm the same together with power to remove and exercise disciplinary control over such persons (excluding those set out hereunder) holding or acting in such offices shall rest with the Public Service Commission.
- (2) This Decree shall not empower the Public Service Commission to exercise disciplinary control over the following office holders:
 - (a) office of any justice of the Court of Appeal or judge of the Supreme Court,
 - (b) apart from appointing thereto or to act therein the office of the Auditor-General;
 - (c) office of the Ombudsman;
 - (d) any office appointments within the competence of the Judicial Advisory Committee and/or Executive Council;

- (e) any office within sections 2 and 3 of this decree for which disciplinary action resides with the Commander and Head and the Executive Council respectively:
 - (f) office of any member of the Police Force or Navy, Military or Air Force; or
 - (g) employees including teachers employed in pursuance of a scheme of co-operation with the Government of New Zealand.
 - (h) any office or class of office in the public service the subject of any further decree to be pronounced by the Commander and Head of the Interim Military Government of Fiji.
 - (i) any office or officer on the personal staff of the Commander and Head of the Interim Military Government of Fiji.
- (3) Before making any appointment to hold or act in the office of Auditor-General or an Agricultural Tribunal or Ombudsman, the Public Service Commission will consult the Executive Council.
- (4) Selection for entry by candidates into the Public Service shall be governed:
- :by preference, (where other things being equal) to local candidates who, in its opinion are suitably qualified.
 - Non-residents of Fiji shall not be selected without prior express written approval of the Commander and Head of the Interim Military Government of Fiji.
 - :by ensuring that all Fijians irrespective of racial community receive fair treatment in the number and distribution of offices to which these candidates are appointed.
9. In so far as appeals are to lie from decisions of the Public Service Commission the provisions relating to the same as they existed at 25th September 1987 are still in force in accordance with Existing Laws Decree 1987.
10. A Police Service Commission is hereby set up and consists of a Chairman and two other members appointed by the Commander and Head of the Interim Military Government of Fiji.
11. Persons who become members of the Police Service Commission shall:
- (a) be prohibited from being eligible for appointment to or to act in public office within a three-year period on the day on which he last held or acted in office as a member of the Police Commission:
 - (b) vacate his office at the expiration of three years from the date of appointment or upon commission of or the arising of circumstances that would cause him to be disqualified as such.
12. During any period where the office of Chairman of the Police Commission is vacant or he is unable to perform the functions of his office, the Commander and Head of the Interim Military Government of Fiji shall appoint a person to replace the Chairman and he shall act until his appointment is revoked by the Commander.
13. The power to make appointments to office in the Police Force above the rank of Senior Inspector (including power to confirm appointments) and to remove and exercise disciplinary control over persons in such offices shall rest with the Police Service Commission.
14. Before making any appointment to hold or act in the office of Commissioner of Police or Deputy Commissioner of Police the Police Service Commission shall consult the Commander and Head of the Interim Military Government of Fiji.
15. The power to make and confirm appointments in the Police Force of or below the rank of Senior Inspector together with the power to exercise disciplinary control over persons holding or acting in such offices shall rest in the Commissioner of Police. Where any reduction in rank or removal from office is required the exercise of such power requires the concurrence of the Police Service Commission.
16. It shall be lawful for the Police Service Commission to delegate by directions in writing:
- (a) any of its powers to any member of the Commission:
 - (b) to such extent as the Commander and Head of Interim Military Government of Fiji may prescribe by directions in writing, any of its powers to the Commissioner of Police.

17. It shall be unlawful for the Police Service Commission or the Commissioner of Police to select for appointment to hold any office in the Police Force a person who is not a citizen of Fiji and is not a public officer unless the Commander and Head of the Interim Military Government of Fiji has agreed that such a person may be so selected.

18.—(1) In this Section 'Commission' means "Public Service Commission" and "Police Service Commission". The reference to the term "Commissioner" means a person holding office under the Commission so defined.

(2) A Commissioner shall be removed from office by the Commander and Head of the Interim Military Government of Fiji if the question of his removal has been referred to a Tribunal and it has advised the Commander and Head that he ought to be removed from the Office for inability to discharge the functions of office or for misbehaviour.

(3) If the Commander and Head of the Interim Military Government of Fiji considers after receiving representations that the question of removal of a Commissioner ought to be investigated then—

(a) a tribunal is to be set up to enquire into the matter and report on the facts thereof to the Commander and advise him whether the Commissioner should be removed;

(b) the members of the tribunal shall be persons who held or hold such office;

(c) pending investigation by the tribunal the Commander may suspend the Commissioner from performing the functions of his office; such suspension shall be revoked forthwith upon the Commander receiving a report that tribunal does not consider a case for the removal of the Commissioner has been made out.

19.—(1) There shall be a public office styled "Director of Public Prosecutions" and to which the power to make that appointment shall rest with the Commander and Head of the Interim Military Government of Fiji acting on the advice of the Judicial Advisory Committee.

(2) The Director of Public Prosecutions must be a person who is qualified for appointment as a judge of Supreme Court of Fiji must be a citizen of Fiji.

(3) The powers of the Director of Public Prosecutions shall be—

(a) institute and undertake criminal proceedings before any court of law except courts and tribunals established by disciplinary laws;

(b) take over and continue any such criminal proceedings instituted by any person or authority; and

(c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The Director of Public Prosecutions may act through persons acting in accordance with his general or specific instructions or by himself.

(5) The powers exercised by the Director of Public Prosecutions shall be vested in him to the exclusion of any other person or authority. The Director of Public Prosecutions is not accountable in the exercise of the powers conferred upon him by this Decree to anyone except the Commander and Head of the Interim Military Government of Fiji.

(6) (a) The Director of Public Prosecution shall vacate office on attaining the age of sixty (60) years.

(b) As a office holder the Director of Public Prosecutions shall be removed from office for:

(i) inability to discharge the functions of his office; or

(ii) for misbehaviour.

(c) If upon referral to the Judicial Advisory Committee it resolves to refer the question of whether the Director of Public Prosecutions should be removed a tribunal shall be appointed. It will consist of a chairman and two members all of whom shall be judges who have served on the Supreme Court or from Courts at that level if appointed from outside Fiji.

20.—(1) There Shall be an Auditor-General whose office shall be a public office.

(2) It shall be the function of the Auditor-General to audit and report on the public accounts of Fiji and of all courts of law and all authorities and offices of the Military Government of Fiji.

- (3) To carry out the functions required of him in this section the Auditor-General or any person authorised by him for that purpose shall have access to all records, books, vouchers, documents, cash, stamps, securities and stores or other Government property in the possession of any officer.
 - (4) Where a body corporate has been established directly by law its accounts shall be audited and reported on by the person so prescribed. In so far as there has been no such person named to audit the accounts the Auditor-General shall cause an audit to be carried out in like manner to the audit of the public accounts referred to herein.
 - (5) The Auditor-General shall submit his report to the Executive Council.
 - (6) In the exercise of his functions under this Decree the Auditor-General shall not be subject to the direction or control of any person or authority.
 - (7) The tenure of office of a person appointed Auditor-General shall be until he attains the age of sixty (60) years whereupon he shall vacate office.
 - (8) The person holding the office of Auditor-General may be removed from office only for inability to discharge the functions of office or, for misbehaviour such removal to be in accordance with the procedure set forth in this Decree.
 - (9) Upon referral of the question of whether the office-holder of Auditor-General should be removed a tribunal shall be appointed upon direction from the Executive Council.
 - (10) The tribunal appointed following on the direction of the Executive Council shall consist of a Chairman and not less than two members who are thereby empowered to enquire into the matter and investigate the facts and report to the Executive Council as to whether he ought to be removed.
 - (11) During investigation by the Tribunal the Executive Council may suspend the Auditor-General from performing the functions of his office. Such suspension shall at any time be revoked and it shall cease to have any effect if the tribunal advises the Executive Council he should not be removed.
- 21.—(1) The law with respect to pension benefits of Public Officers shall continue in respect of all recipients and beneficiaries of pensions in accordance with the operation and provision for the application of existing laws as provided by the Existing Laws Decree 1987.
- (2) Where no law prescribes the amount of pension benefit that may be granted, the amount of benefit to be paid shall be the greatest amount for which he is eligible unless the Executive Council and or the Public Service Commission concur in refusing to grant the benefit or withhold it reducing the amount or suspending its payment.
 - (3) The course proposed in subsection (2) of this Decree shall not apply in respect of the following office holders unless they have been found guilty of misbehaviour or removed from office by reason of misbehaviour:
 - (a) Justices of the Court of Appeal
 - (b) Judges of the Supreme Court
 - (c) Director of Public Prosecution
 - (d) Ombudsman
 - (4) Persons entitled to the payment of pension benefits and who are ordinarily resident outside Fiji, may within a reasonable time after receipt of payment, remit the whole of it to any country of his choice outside Fiji. The remittance of the pension monies shall be free from any deduction charge or tax made or levied in respect of its remission.
 - (5) Nothing in subsection (4) of section 21 of this Decree shall prevent where appropriate the attachment by order of a court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgement of a court or pending the determination of civil proceedings to which he is a party to the extent the attachment is permitted by law with respect to pension benefits that apply in the case of that person.
 - (6) It shall be lawful for the imposition of reasonable restrictions as to the manner in which any pension payment is to be remitted.
22. Where a person is appointed to an office under this Decree it shall be lawful for such appointee to be appointed for a term being not less than four years and not expiring after the day on which he would attain the retiring age applicable to the office, as specified in the instrument of appointment. The provisions of this Decree shall effect in relation to any person so appointed as if he would attain the retiring age applicable to the office on the day on which the specified term expires.

23. Any reference in this Decree to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer to that office and power to appoint a person to act in that office during any period during which it is vacant or the holder thereof is unable to perform the functions of that office.

24. Where power is vested by this Decree in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointments shall be called in question on the ground that the holder of the office was unable to perform those functions.

25. If any person has vacated any office established by this Decree, he may if qualified, be appointed again to hold that office in accordance with the provisions of this Decree.

26.—(1) Where a power is conferred by this Decree upon any person or body to make an appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office.

(2) Where two or more persons are holding the same office by reason of an appointment made in pursuance of this sub-section, then, for the purposes of any function conferred upon the holder of that office, the person appointed shall be deemed to hold the office.

27.—(1) Wherever in this Decree reference is made to the power to remove a public officer from his office, such power shall be construed as including reference to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed.

(2) Nothing in this subsection shall be capable of being construed to confer on any person or authority power to require any judge of the Supreme Court or the Court of Appeal, the Ombudsman, the Director of Public Prosecutions or the Auditor-General to retire from the public service.

28. Any provision in this Decree that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of the Commander and Head of the Interim Military Government of Fiji and/or the Executive Council to abolish any office or pass any decree providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

29. A person who has been appointed to any office established by this Decree may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed; and the resignation shall take effect, and the office shall become vacant—

(a) at such time or on such date as is specified in the writing;

(b) when the writing is received by the person or authority to whom it is addressed or such other person as may be authorised by that person or authority to receive it whichever is the later.

30. All Commissions established by or under this Decree may by regulation make provisions thereby regulating and facilitating the performance by the Commission of its functions under this Decree.

31. Where any power is conferred by this Decree to make any proclamation, order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such proclamation, order, regulation, rule or direction.

32. This Decree shall apply throughout Fiji.

Dated 3rd October 1987.

COL. SITIVENI LIGAMAMADA RABUKA, O.B.E. (Mil.)
Commander and Head of the Interim Military Government of Fiji