Public Sector Employees and the Right to Strike in Zimbabwe: A Legal and Practical Analysis

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Introduction
Zimbabwe’s public sector labour legislation is fragmented. It is divided into seven segments but the majority of the employees fall under the armpit of the Public Service Act Chapter 16:04 and the Public Service Regulations Statutory Instrument 1 of 2000. Others groups of employees are regulated by the Labour Relations Act Chapter 28:01, the Health Services Act Chapter 15:16, the Police Act Chapter 11:10, the Defence Force Act Chapter 11:02, the Prisons Act Chapter 7:11 and the Judicial Service Act Chapter 7:18. These legislations combine both administrative functions and labour relations. This presentation analyse the right to strike in the public service and work in progress.
Historical
* Zimbabwe has been a colony of the Britain for 100 years,(1890-980).
* It got independence on 18 April 1980.
* The Civil Service of Rhodesia Ordinance No. 6 of 1898 established the Civil Service of Rhodesia.
* The Ordinance did not provide for the right of employees to freedom of association, collective bargaining and strike.
* Conditions of service were determined by the master and employees had no recourse to strike.
* In 1901, the Master and Servants Ordinance was enacted to cater for all employees both private and public service.
* The Ordinance did not provide for the right to collective bargaining and to strike.
The Post Colonial Period

* The Old Constitution of Zimbabwe (SI1979/1600 of United Kingdom) provided for the establishment of the Public Service for the administration of the country (s73) and the Public Service Commission (s74)
* The Constitution provided for the right of every person to form, join and associate or disassociate.
* However, the Constitution did not directly provide for the right to strike implied under freedom of association, assembly and expression.
The New Constitution

* Zimbabwe adopted a new constitution on 22 May 2013 (Constitution of Zimbabwe Amendment (No. 20) Act, 2013).
* The new Constitution now provides for the right to strike except for members of the security services.
* Section 65 (2) provides for the following fundamental rights:
  Except for members of the security services, every person has the right to form and join trade unions and employee or employers’ organisations of their choice, and to participate in the lawful activities of those unions and organisations.
The New Constitution Cont’

* Except for members of the security services, every employee has the right to participate in collective job action, including the right to strike, sit in, and withdraw their labour and to take other similar concerted action, but a law may restrict the exercise of this right in order to maintain essential services.

* Every employee is entitled to just, equitable and satisfactory conditions of work.
The Constitution Cont’

* Except for members of the security services, every employee, employer, trade union, and employee or employer’s organisation has the right to engage in collective bargaining; to organize and to form and to join federations of such unions and organisations.

* The new Constitution marks a great departure from the old constitution that did not directly provide for the right to collective bargaining and to strike.
The Right to strike in Terms of the Labour Act Chapter 28:01
* The Labour Act Chapter 28:01 covers employees in the private sector and those engaged in quasi government institutions like local authorities, electricity distribution, National Railways of Zimbabwe, Air Zimbabwe, etc
* Employees intending to go on strike must have a dispute of interest
* Dispute must have been referred to conciliation and a certificate of no settlement must be issued by the conciliator (s93).
* Once the certificate is issued, employees must choose either to refer the dispute to arbitration or engage in a strike action provided they are not in an essential service.
Labour Act Procedure
* An essential service is described as ‘any service the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public’ and must have been declared so by the Minister in the government gazette.
* Give 14 days’ written notice to the employer and the employment council and the trade union in the industry if any
Labour Act Procedure:
* Conduct secret ballot, 51% of employees must vote in favour of the strike
  14 day period lapse, employees may engage in a strike action
* Employees are allowed to conduct a picket at the workplace
* Lawful strike protected from disciplinary action but no pay
* Failure to comply, criminal and civil liabilities, disciplinary action may be
  instituted (s108) and dismissals (Tel one Pvt Ltd v CASWUZ SC26/06
* No need for procedure if right to strike is in defence of workers’ committee,
  trade union, response to occupational hazard (104 (4) (National Railways of
  Zimbabwe (NRZ) vs Zimbabwe Amalgamated Railways Workers Union and
  others LC/JDT/MT/99/12

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The Public Service Act Chapter 16:04
* Refers to employees as ‘members’.
* Act for those who render direct services to government except the security services, the judiciary, Parliament and intelligence services
* Establish the Public Service Commission (now Civil Service Commission) which act in consultation with the Minister
* Provides for the recognition of employees’ associations or organisations (s24).
* Provides for consultations with the recognised associations (s20)
* Does not recognise the right to strikes, but strikes, a misconduct in terms of the Public service regulations (SI 1/2000).
* Members in the Attorney General’s office and parliamentary services have a constitutional right to strike.
The Health Services Act  Act Chapter 15:16
* Act covers (members) employees in the Health Sector.
* Establishes the Health Service Board
* The Act recognises the right of employees to form associations or organisation, Engage in consultations with the Board if so recognised by the Minister.
* The Board in consultation with the Minister has power to fix conditions of service for the health service employees (s13).
* The right to strike is not recognised in terms of this Act or service regulations.
* The Health sector is classified as an essential service.
The Judicial Service Act Chapter 7:18
* The Act applies to members (employees) in the administration of justice.
* Establishes the Judicial Service Commission, responsible among others for fixing conditions of service for its members (s5) (1)
* Recognise employees’ right to freedom of associations (s13) and consultations with regard to conditions of service (s11).
* Does not recognise the right to strike no prohibit strike action.
* Employees can use their constitutional right to strike.
The Defence Act, Prison Service Act and the Police Act
* Members of the defences forces, prison service and police service do not have the right to form trade unions or staff associations.
* The Conditions of service are imposed by the Defence Force Service Commission, Prison and Correctional Service Commission, Police Service Commission in consultation with the Minister responsible for Defence, Justice and Home Affairs respectively.
* Section 65 (2) (3) of the constitution of Zimbabwe prohibit these groups from enjoying the right to freedom of association and to strike.
Practical Strikes in the Public Service

* Zimbabwe Teachers Association and others v Minister of Education and Culture, unilateral withdrawal of bonus, PSC won the case in the Supreme Court but later restated the bonus.

* Jiah and Others v Public Service Commission and another, PSC reinstated the striking doctors’ leaders it had dismissed for embarking on an illegal strike. The Supreme Court ruled that the Commission had breached the parity principle by only disciplining the strike leaders leaving out all those who participated in the strike action.

* Railway artisan union and others vs NRZ
Way forward
* Zimbabwe is now in the process of aligning its labour legislation to comply with the new Constitution. All labour legislations have shortcomings on the right to collective bargaining and to strike.
* A draft of principles for harmonisation of labour laws is under discussion at the Tripartite Negotiating Forum having been inspired by the International Labour Organisation (ILO) Commission of Inquiry that recommended for harmonisation of labour laws to comply with international labour standards.
Conclusion
Employees in the public service (Civil Service) of Zimbabwe have the right to strike in terms of the Constitution except those in the security services and essential services. The different labour legislations’ provision that violates the constitutional right to strike is now void and the legislative review is in progress to comply with the new constitution and ILO Conventions. The practical part of it remains a challenge.

The End
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