

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 58 of 1983

Between:

PUBLIC EMPLOYEES UNION

Appellant

and

PENI KALOKALO

Respondent

Mr. G.P. Lala & Mr. M. Patel for the Appellant

Mr. V. Maharaj for the Respondent

Date of Hearing: 27th March, 1984

Delivery of Judgment:

JUDGMENT OF THE COURT

Mishra, J.A.

The respondent, a member of the appellant union, sought from the Supreme Court the following declarations:-

- "(a) A Declaration that the Annual General Meeting of the Public Employees Union held at Suva on the 26th day of March, 1983 was unlawful, void and contrary to the Constitution and Rules of the said Public Employees Union;

- (b) A Declaration that the General Secretary of the said Public Employees Union was in breach of Clause 21 (iv) of the Union's Constitution in failing to include the Plaintiff's motion in the Agenda for the Annual General Meeting of the said Union;
- (c) A Declaration that all business purporting to have been conducted at the said Annual General Meeting is Unconstitutional, null and void;
- (d) A Declaration that the General Secretary shall be elected at the Annual General Meeting in accordance with Clause 67 (a) of the Constitution of the Public Employees Union. "

The learned Judge declined to grant (a), (c) and (d). He granted (b) but substituted "rule 23" for "Clause 24 (iv)" expressing the view that it was rule 23 alone that had been breached by the General Secretary. The Union's Constitution calls its provisions "Rules" and we will use that term as did the learned Judge.

The Union appeals against the Judge's decision on 5 grounds. It is, however, unnecessary to deal with them at any length because the respondent concedes that the declaration could not properly have been made in the form it was made.

Rule 23 of the Union's Constitution reads :

"23. The General Secretary shall prepare an agenda of the Annual General Meeting and shall make it known by inserting a notice including such agenda in two newspapers circulating in the Colony not less than twenty eight days before the meeting is due to take place. "

The motion in question was received by the Union on 4th March, 1983. The Annual General Meeting of the Union was scheduled for 26th March, 1983. Rule 23 requires that the agenda be advertised at least twenty-eight days before the date of the meeting i.e. in this instance, before 26th February, 1983. That being the case the motion could not possibly have been included in the agenda under rule 23 and the question of its breach could not, therefore, arise.

Both Counsel submit, and we agree, that the learned Judge fell into an error when he granted that unsought declaration. The appeal, therefore, succeeds and the declaratory Order is set aside.

By way of cross-appeal the respondent's only submission is that the learned Judge erred in refusing to grant the declaration sought in paragraph (d). All other grounds were abandoned.

Rule 67 (a), referred to in paragraph (d), reads :

"67(a) The General Secretary shall be elected by secret ballot at an Annual General Meeting and shall be paid official of the union when elected. He shall hold office during the pleasure of the union. "

The learned Judge, quite correctly, came to the view that the meaning of the rule was clear and required no assistance from any declaratory order.

The General Secretary cannot be elected otherwise than at an annual general meeting. He, however, holds office during the union's pleasure and need not be elected at every annual general meeting.

When the Union's pleasure is withdrawn a vacancy must occur and there is provision for the appointment of an acting General Secretary.

Rule 25 reads :

"25. The nominations for the election of President, General Secretary and General Treasurer shall reach the General Secretary twenty one clear days before the date fixed for such election. "

This precludes nominations for the election of General Secretary being received from the floor at an annual general meeting.

Submissions made before us reveal uncertainty in some quarters as to the precise procedural limits imposed by the constitution of the Union upon removal of the General Secretary. This, however, is not an issue before us calling for a decision.

As we have already stated, we concur with the learned Judge's view that warrant for a declaration in terms of paragraph (d) was not sufficiently established by the evidence before him.

The cross-appeal, therefore, fails.

No costs were awarded by the Supreme Court and none are sought here. There will, therefore, be no order as to costs.

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Judge of Appeal

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Judge of Appeal

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Judge of Appeal