

**IN THE COURT OF APPEAL**  
**FIJI ISLANDS AT SUVA**

[Civil Appeal No. ABU 0060 of 2008]  
(High Court Action : HBJ No. 5 of 2008)

**BETWEEN** : ISIKELI LEQELEQE SOQONALAWA  
(APPELLANT)

**AND** : THE DISCIPLINARY COMMITTEE OF THE  
PUBLIC SERVICE COMMISSION AND 2 OTHERS  
(RESPONDENTS)

**CORAM** : BYRNE, AP  
INOKE, JA

**COUNSEL** : K. MARAIWAI (On instructions from Iqbal Khan)  
FOR THE APPELLANTS

: C. TUBERI for the 1<sup>st</sup> Respondent  
: S. SHARMA for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

**DATE OF HEARING** : 10<sup>th</sup> November 2009

**DATE OF JUDGMENT** : 16<sup>th</sup> July 2010

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**JUDGMENT OF THE COURT**

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## **INTRODUCTION**

- 1.0 This is an appeal from a judgment of Mr. Justice Jiten Singh delivered in the High Court at Suva on 15<sup>th</sup> August 2008 on an application for judicial review by the appellant.
- 2.0 The appellant was an Assistant Court Officer at the Magistrate's Court, Lautoka. One of his duties was to pay maintenance to women in whose favour maintenance orders had been made against their spouses. An internal inspection by the Judicial Department found a deficit of \$8,582.76 in maintenance payments between May 1999 and August 2001. The internal inspection was carried out on 4<sup>th</sup> September 2001.
- 3.0 The appellant was suspended with effect from 15<sup>th</sup> February 2002 on 40% salary. He was charged by the Police with 32 counts of Larceny by a Servant, Forgery and Fraudulent Falsification of Accounts. On 27<sup>th</sup> January 2005 he was acquitted by the Lautoka High Court.
- 4.0 On 3<sup>rd</sup> July 2006 the appellant was charged by the Ministry of Justice with failing to act with care and diligence in the course of his employment resulting in a deficit of maintenance payments of \$8,582.76. His conduct was described as being contrary to the Public Service Code of Conduct and Section 6 (2) of the Public Service Act 1999. That Act requires an employee in the Public Service to act with care and diligence in the performance of his duties.
- 5.0 The letter outlined the charges against him, requested a reply and information or explanation regarding the allegations against him. It warned him that the charge together with his explanation would be sent to the second respondent, the Public Service Appeals Board for disciplinary action.

- 6.0 A disciplinary hearing was held on 27<sup>th</sup> January 2007. At the disciplinary hearing the facts were outlined. The Public Service Commission was told of the shortfall and that the appellant was responsible as the maintenance payment clerk. The Commission was told of the appellant's acquittal by the High Court. The applicant was represented by his Solicitor Mr. Iqbal Khan who made submissions on his behalf. He questioned why it took the Public Service Appeals Board so long to charge the appellant. He also argued that since the appellant had been acquitted by the Court, he should not be charged with any disciplinary offences as that constituted double jeopardy. He said there was no evidence.
- 7.0 The Public Service Commission after hearing the parties found the appellant guilty and after hearing his mitigation, terminated him.

#### **THE PUBLIC SERVICE APPEALS BOARD HEARING**

- 8.0 The appellant appealed to the first respondent which again heard the parties and upheld the decision of the Disciplinary Committee. It was against these decisions that the appellant brought proceedings for judicial review in the High Court. Originally nine grounds for review were filed in what Mr. Justice Singh called "a scatter gun approach". The application was amended and a supplementary affidavit was filed. On the leave hearing leave was sought only on one ground namely breach of natural justice. The learned judge granted leave on this one ground only.

#### **THE LAW**

- 9.0 It can now be said to be trite law that any person whose interest or livelihood is affected by a decision of an administrative body must be given an opportunity to put forward any relevant information in support of his case which he may have. This was held by this Court in *The Permanent Secretary for Public Service Commission v. Lepani Matea ABU 0016 of 1998*. At page 10 of its judgment the Court said:

“The requirement that a person be given a fair opportunity to be heard before a body determines a matter that affects him adversely is so fundamental to any civilized legal system that it is to be presumed that the legislative body intended that a failure to observe it would render the decision null and void. Finally we add that what is a fair hearing will depend upon the circumstances of each case; it does not mean that in every case a right of personal appearance must be given”.

- 10.0 In this case the appellant was represented by legal counsel throughout the process and proceedings before the Disciplinary Committee of the Public Service Commission and the Public Service Appeals Board. In these circumstances, this court cannot accept that the appellant was denied a fair hearing by the First and Second Respondents.
- 11.0 The appellant is clearly labouring under a misapprehension or misunderstanding of the law when he argues that because the Learned Trial Judge had granted leave to apply for judicial review he erred in law in dismissing the appellant's claim for substantive relief. This is the first time we have heard such a submission, no doubt because it is wrong in law. The application for leave acts only as a filter to determine whether an applicant has an arguable case. The granting of leave does not finally dispose of the matter. There is no substance in this ground of appeal and we reject it.
- 12.0 It also seems to be a misapprehension by the appellant and his legal advisers that a court hearing an application for judicial review can consider the merits of the application. Its only function is to be satisfied that an applicant was given procedural fairness by the administrative body or Tribunal. We are surprised at this submission also and suggest that the applicant's advisers might well consult any of the books on Administrative Law which are readily available in Fiji. There are also numerous decisions both of this Court and the High Court on this subject of which the appellant's advisers should have been aware and obviously were not. We also reject this ground.

- 13.0 The appellant in written submissions argued that he was denied natural justice by the respondents because the documents on which the Appeals Committee relied were not made available to the appellant or his Counsel during the hearing. No particulars or the nature of these documents were ever provided by the Appellant and when this Court asked his Counsel about the nature of them, Mr. Maraiwai said that he did not know about the documents. This is a remarkable statement by any Counsel appearing in any Court let alone the second highest Court of Appeal in the country. Mr. Maraiwai could only tell us that he did not know because his principal was having an eye operation overseas and left the previous day. Once again this Court is obliged to deplore the obvious cavalier attitude shown by both Mr. Khan and Mr. Maraiwai. It is unprofessional and an insult to the Court.
- 14.0 In any event Mr. Tuberi for the respondents said that no complaint was ever made about this before Mr. Justice Singh and that in any event all relevant documents had been disclosed before the hearing in the High Court.

#### **DOUBLE JEOPARDY**

- 15.0 This was not an issue in the High Court although the Learned Judge referred to it in paragraphs 11, 12 and 13 of his judgment and held that an acquittal in a criminal court is no bar to an administrative tribunal laying disciplinary charges against a Public servant. He relied among other cases on the decision of the High Court of Australia in The Queen against White and Others ex-parte Byrnes (1963) 109 C.L.R 665 and that of Mr. Justice Andrew in the Papua New Guinea case of Sudi Yakis v. Commissioner of Police ex-parte the State (1980) PNG LR 27. Although it is unnecessary for us to refer to these cases in detail, nevertheless we agree with the Learned Trial Judge.

16.0 For the reasons we have stated we dismiss this appeal and order the appellant to pay the respondents' costs which we fix at \$4,000.00.

Dated at Suva this 16<sup>th</sup> day of July 2010.



*John E. Byrne*  
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**JOHN E. BYRNE, AP**

*S. Inoke*  
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**S. INOKE, JA**