

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO.: HBJ 19 OF 2006

BETWEEN:

THE STATE v. COMMISSIONER OF POLICE
ATTORNEY GENERAL & MINISTER FOR JUSTICE
RESPONDENTS

EX-PARTE: BHAWANI PRASAD

APPLICANT

Mr. D. Prasad for Applicant

Ms D. Buresova for Respondents

Date of Hearing: 4th August 2006

Date of Ruling: 11th August 2006

DECISION

The applicant Bhawani Prasad has been a police officer for 36 years and has worked as a police prosecutor for 18 years. In 2005, a National Prosecution Service under the supervision of the DPP was set up. Some police prosecutors were deployed to this service under an arrangement between the Fiji Police Force and the DPP. The terms of deployment were set out in a deployment agreement. The applicant was one of the officers who was deployed to the National Prosecution Service under such an arrangement. The terms he signed is annexure A to his affidavit sworn on 10th June 2006. The term of deployment

was for a period of two years commencing on 1st January 2006. On 25th May 2006 a memorandum was given to the applicant advising him that he was transferred to the Central Police Station from 12th June 2006. No reasons for transfer were given.

The applicant is challenging the decision to transfer him. The grounds for challenge are abuse of powers, breach of contractual agreement, decision is unreasonable and irrational, failure to give him an audience before transfer. However not all grounds were advanced during the hearing.

The parties agreed that the application for leave should be treated as the hearing of the substantive matter as all affidavits had been filed and such an approach would save time.

The first issue raised is whether the facts raise public law issues or a purely private matter. The respondent submits that the applicant's transfer was a managerial function exercised by the Commissioner of Police pursuant to his powers under the Police Act and not a public law matter.

Courts at times classify certain decisions as managerial and then hold that such decisions are unreviewable as courts consider that judicial review is inappropriate in such situations. Courts in Fiji had occasion to deal with managerial decisions. In State v. Fiji Islands Revenue & Customs Authority and Silipa Tagicaki ex-parte: Barbara Malimali – Justice Jitoko had before him an application to impugn FIRCAS decision to appoint a certain person as acting Manager Legal. He concluded that such decisions were not amenable to judicial review. In the course of his judgment he referred to Regina (Tucker) v. Director General of the National Crime Squad (unreported) January 2003 (Court of Appeal) where a police officer's secondment to the National Crime Squad was terminated and he was returned to his home force, Derbyshire Constabulary, The Court of Appeal stated :

“the court must look further and focus on what the Director General of the Squad was doing when he made the decision. For example, the impugned decision did not affect the applicant’s status as he retained his rank. And whilst it was true that the crime squad performed an important public function, it did not necessarily mean that every decision, personal to the applicant involved public law remedies. It concluded that there was a line over which the courts should not or could not go. The court ruled that the police were entitled to run their affairs concerning operational or management decisions without the interventions of the courts and therefore those matters, as distinct from disciplinary issues, were not amenable to judicial review. In respect of the decision to terminate the appellant’s secondment, the matter was essentially an operational or management decision not subject to judicial review.”

Barbara Malimali was applied by Justice Connors in Usmul Nisha Dean v. CEO for Ministry of Education & Doctor Deo Narayan & Others – HBJ 4 of 2004L where a teacher was transferred from one school to another. Justice Connors ruled that such a transfer from one school to another was an operational or a management decision and not amenable to judicial review. This is the first basis on which the application fails.

The applicant relies on the terms and conditions of deployment to submit that he could only be removed from National Prosecution Service under condition 2 in four circumstances –

- (a) where he applied for and gained promotion with the Fiji Police Force.
- (b) where he volunteered to return to Fiji Police Force on expiry of two years.

- (c) where the DPP decides he should return to the Fiji Police Force.
- (d) where he may wish to leave the National Prosecution Service and by agreement between Commissioner of Police and the DPP.

He says that none of these conditions apply so he cannot be asked to be transferred. That is so but one must not lose sight of condition one which says despite his secondment, he remained an employee of the Fiji Police Force. As such the Commissioner of Police is his superior officer. He is subject to directions given by the Commissioner and a measure of control by the Commissioner. Despite the terms and conditions of deployment the overarching provisions of the Police Act still applied to the applicant. He was subject to them and not beyond them. He still remained a gazetted officer but assigned a special task in the National Prosecution Service. As a police officer he was duty bound to obey directions given by his superiors – Section 17 of the Police Act Cap 85. The terms and conditions when looked in toto had the clear intent that the applicant would remain a police officer and therefore subject to directions given by his superiors.

The agreement says he will remain an employee of the Fiji Police Force (Clause 1), he will continue to enjoy all benefits available to police officers (Clause 4), he will be eligible for promotion to substantive vacant positions within the FMP (Clause 6), time spent with National Prosecution Service will be treated as time spent with Fiji Police Force for purposes of promotion, seniority, leave and other benefits (Clause 7) he is eligible for and entitled to police quarters (Clause 14).

One therefore sees he retains all the benefits which accrued to other police officers.

The respondents' submission that the transfer is for purposes of discipline appears on affidavits to have no basis. There are no such allegations in the

affidavits. It is not proper for the respondent to raise the issue of discipline when affidavits do not allude to it.

Accordingly I refuse to grant leave as the decision to transfer is non reviewable because it is a management decision. Despite the fact that the applicant was assigned work with National Prosecution Service, he remained a police officer and therefore subject to directions by the Commissioner. It is inappropriate for courts to interfere with internal police matters like transfers.

Leave refused. Applicant to pay costs to the respondent summarily fixed in the sum of \$400.00 to be paid in fourteen (14) days.



[Jiten Singh]
JUDGE

At Suva
11th August 2006