

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

JUDICIAL REVIEW ACTION NO.: HBJ 07 OF 2008

BETWEEN:

THE STATE v. THE PERMANENT SECRETARY FOR EDUCATION

FIRST RESPONDENT

THE ATTORNEY GENERAL OF FIJI

SECOND RESPONDENT

EX-PARTE: MOHINI DEVI

APPLICANT

Mr. R. Chaudhry for Applicant

No Appearance of Counsels for Respondents

Date of Hearing: 15th February 2008

Date of Ruling: 19th February 2008

DECISION OF LEAVE

The applicant is a teacher. She joined civil service in 1997 and is Head of Department Languages at Pandit Shreedhar Maharaj College, Nausori. In May 2007 the Manager of the school wrote to the Ministry of Education seeking immediate removal of the applicant from the school. His reason for asking for removal was that he had heard rumour of sexual relationship between the applicant and the principal. He also stated that he had some evidence too, whatever that evidence may be, is not disclosed. The Ministry sought response

to the allegations from the applicant and the principal. Both responded vehemently denying the allegations.

On 31st October 2007, the Ministry of Education wrote to the applicant seeking her views and concerns to her proposed transfer to John Wesley College at Raiwaqa, Suva. She disagreed with the proposed transfer saying that she had joined her current school in 2005 and had adjusted well in the school. She sought a fair chance to defend the allegations labeled against her.

On 7th December 2007, the Ministry wrote to her informing her that she was to report to John Wesley College. On 8th February 2008, she was told by the Ministry that her salary had not been paid as she did not report to John Wesley College.

It is against the Ministry's decision to transfer that she is seeking a judicial review. At the outset I must say that those who try to judicially review a decision to transfer an employee face immense difficulties. The prerogative remedies can only be claimed by way of judicial review. Judicial review is only available against a public body in a public law matter. In essence two requirements must be satisfied :

- (a) the body under challenge must be a public body whose activities can be controlled by judicial review;
- (b) the subject matter of challenge must be a claim based on public law principles not the enforcement of a private right. Not all decisions of a public body are necessarily matters of public law principles.

The issue here is whether the transfer of the applicant is an operational/managerial internal matter. Courts at times classify certain decisions as managerial decisions and then hold such decisions are unreviewable as they consider they are matters appropriate for judicial review: State v. Fiji Islands Revenue & Customs Authority ex-parte: Barbara Malimali – HBJ 2 of 2003.

Malimali was approved and applied by Connors J. in two cases. First in State v. FIRCA ex-parte Vimal Kustina – HBJ 14 of 2003L where he refused leave as the applicant wished to impugn the respondent's decision to transfer him from Lautoka to Suva. Secondly in Usmul Nisha Dean v. Chief Executive Officer for Ministry of Education and Attorney General & Others – HBJ 4 of 2004 the applicant a school teacher was trying to challenge the respondent's decision to transfer her to another school in Lautoka. Again leave was refused.

In each of these cases he reasoned that the transfer of the applicant was an operational or managerial decision and not a decision amenable to judicial review. I agree with the reasoning of these two judges. Transfers are not disciplinary issues but are distinct from them and there is no need for court intervention in such matters.

There is one other reason why I should refuse the application. The applicant had the alternative remedy of appeal to the Public Service Appeals Board under Section 25 of the Public Service Act 1999. It allows for appeal in cases where there is transfer of the appellant from one district to another. The applicant has not invoked that provision. The existence of unused statutory right of appeal can be a strong reason to refuse leave or refuse relief at the end of the hearing: State v. Public Service Commission ex-parte: Damodaran Nair – HBJ 2 of 2007.

The crux of the matter according to the applicant is that she was not guilty of any untoward liaison with the principal. That type of fact finding exercise is more suitable for hearing before the Public Service Appeals Board rather than having it dealt with by judicial review which deals more with process of fair hearing. The applicant therefore should exhaust her alternative remedies.

Accordingly the application for leave is refused on two grounds: first that the decision was an operational decision and therefore not amenable to judicial review and secondly that the applicant failed to exhaust alternative remedies. No order as to costs.

A handwritten signature in black ink, appearing to read 'Jiten Singh', written in a cursive style.

[Jiten Singh]

JUDGE

At Suva

19th February 2008