

IN THE HIGH COURT OF FIJI
AT SUVA

CIVIL JURISDICTION

JUDICIAL REVIEW NO. HBJ 18D OF 2008S

IN THE MATTER of an application by MOHINI DEVI for Judicial Review under Order 53, Rule 3(2) of the High Court Rules, 1988.

AND

IN THE MATTER of the decision of the Permanent Secretary for Education made on the 28th of February 2008 to transfer Mohini Devi from Shreedhar College to Tailevu North College.

BETWEEN : MOHINI DEVI of Wainibokasi Road,
Nausori, School Teacher

APPLICANT

AND : THE PERMANENT SECRETARY FOR
EDUCATION of 16 Thurston Street, Suva

1ST RESPONDENT

AND : THE ATTORNEY-GENERAL OF THE
REPUBLIC OF THE FIJI ISLANDS of
Level 7, Suvavou House, Victoria Parade
Suva

2ND RESPONDENT

Counsel for the Applicant : J Raikadroka : Raikadroka Law
Counsel for 1st & 2nd Respondent : K Singh : Attorney-General's
Chambers
Date of Decision : 20 June, 2008
Time of Decision : 9.30a.m.

DECISION

This is the third time the Applicant is seeking the Court's leave to judicial review the decision by her employer, the Ministry of Education to transfer her from Pt Shreedhar Maharaj College in Tailevu. In the first case, she was being transferred to John Wesley College at Raiwaqa. The application came before Singh J. His Lordship refused the application on the ground that the transfer was a managerial decision, and secondly that the Applicant had not exhausted alternative remedies, including possibility of an appeal to the Public Service Appeals Board.

The Applicant did not report to John Wesley College when required, at the start of the new school year 2008, presumably still waiting for her case to be heard, leave to proceed of which was denied by Singh J on 19 February, 2008. As her post had subsequently been filled at John Wesley College, the Applicant, on 28 February, 2008 was again transferred to Tailevu North College. She was directed to begin on 11 March, 2008. Again she did not report for duties and has remained at Pt Shreedhar Maharaj College since.

It must be noted that the Applicant had earlier discontinued the second judicial review application on the first transfer, after her Counsel became aware of the earlier application before Singh J.

In this present application, the Applicant is seeking leave to review the second transfer.

It is a general proposition of law on judicial review that operational or management decisions of public or statutory bodies are not susceptible to the Court's intervention by way of judicial review. There are sufficient well-known case law to support this proposition. I need not refer to or deal with them. They are discussed fully in both Counsel's submissions.

Counsel for the Applicant argues that the transfer in this case, falls outside the normal or proper transfer as required and made under the Regulations and therefore important public policy issues and principles that are properly the subject to Court examination.

The Applicant appears to rely on firstly that the transfer was motivated by other than purely managerial decision to whit the allegations of the Applicant's sexual liaison with the Principal of Pt Shreedhar Maharaj College, and that she was not afforded the opportunity to response to the allegation and/or to appear before the Investigating Officer. The Applicant also relies on the PSC Regulations, as to the procedures that had not been adhered to or followed by the Respondent, and on section 41 of the Constitution on the discretion of the Court to grant leave notwithstanding the alternative remedy that may be available.

In this Court's considered view, this application is no different from that filed earlier before Singh J. This is a simple issue of transfer of employee in the course of her employment with the Respondent. Affidavits filed by the Respondents, especially that of Kaliti Mate attaching the report of the investigation into the allegation of liaison between the Applicant and the Principal of the School by one P Turaga, make very clear, contrary to Counsel's assertion, that "no one has a proof that they were having an affair". The decision to transfer the Applicant either to John Wesley College or later to Tailevu North College were in the Court's view, not coloured by the allegations. They were made independent of them.

As to the opportunity to be heard, the Applicant could only expect it if the decision to transfer directly resulted from the Respondent's finding against her of the allegations. There being no such finding, there can be no expectation. On the other hand

opportunity to be heard on the transfer itself is given to the Applicant in her letter of notice of transfer ("The Notification to Transfer"). The Applicant is given 28 days to respond but the final decision remains with the Respondent. In the circumstances of a managerial decision – transfer, which the Court concludes is the case in this instance, the Respondent need not explain the reason for its decision.

In the Court's view, the procedure is in accordance with the requirements of the PSC Regulations.

Lastly the Applicant argues that although she has not exhausted alternative remedies, the Court in its discretion could still allow the judicial review to proceed as it is more advantageous to the Applicant allowing immediate restraint on the Respondent, while the substantive matter is argued. While the Court would have given serious consideration to the argument, it is of secondary importance for the purpose of this application, given the finding that there is no arguable case to go forward.

In the final, the Court finds that the decision to transfer the Applicant to Tailevu North College falls under the category of managerial or operational decision of the Ministry and is not susceptible to judicial review.

The Application is dismissed.

Costs of \$350 to the Respondents.



F Jitoko
JUDGE

At Suva

20 June, 2008