IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Miscellaneous Proceedings No. 120
of 2012

IN THE MATTER of the Legal Practitioners Decree 2009

AND IN THE MATTER of the Barristers and Solicitors (Admission) Rules

AND IN THE MATTER of an application for admission as a Barrister and Solicitor by
BRIAN BRIJAN SINGH

PETITIONER

Date of Hearing	**:**	25th October 2012
Date of Judgment	**:**	28th August 2013
Counsel for the Petitioner	:	Mr H. Nagin
Counsel for the Chief Registrar	:	Ms Vateitei

JUDGMENT

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[1] The Petitioner seeks admission to the Bar. An issue of suitability arose as a result of the disclosure made by the Petitioner in his supporting affidavit of a criminal conviction. Accordingly the matter was marked down for a hearing so that both sides might be heard.

[2] Strictly speaking any objection, including that of the Legal Practitioners Unit of the Chief Registrar's office, should be written down, filed in court, and served on the Petitioner in question [section 37 Legal Practitioners Decree 2009]. This is to allow the Petitioner proper notice of, and to understand the nature of, the complaint against him or her.

[3] In this case the issue was plain. It concerned his suitability, whether he was a fit and proper person, a qualification required for admission [section 35 of the Decree]. The particulars were the conviction he had disclosed in his affidavit. He had been convicted on 5th October 2010

on 3 counts of obtaining money by false pretences contrary to section 309 of the Penal Code and sentenced to 2 years imprisonment with a non-parole period of 16 months. He served his term.

[4] This is a show cause proceedings in which it is for the objector to establish on a balance of probabilities that the objection is made out and that the application for admission should not be granted [section 37(1)]. Without the grant of admission, a would-be practitioner is not entitled to practice [section 38]. He or she must first be admitted and have his name enrolled in the Roll of Legal Practitioners [formerly Barristers and Solicitors]. On the other hand it is for the Petitioner to establish that he is a fit and proper person and duly qualified to be admitted. The body to decide these issues is the Chief Justice as persona designata [section 34(1)].

[5] Section 35 of the LP Decree sets out the necessary qualifications for admission. I set out the section:

> " 35. A person shall be qualified for admission as a practitioner if that person is a fit and proper person to be admitted to practice as a practitioner in the Fiji Islands, and—
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> *(a)* has satisfactorily completed a course in the study of law approved by the Board and a programme or course of practical legal instruction and training approved by the Board; or
> *(b)* that person has obtained from the Board a certificate that his or her educational qualifications are sufficient to qualify him or her for admission as a practitioner; and
> *(c)* in addition to the requirements specified under paragraph (a) or (b), before making his or her application for admission as a practitioner in the Fiji Islands that person has resided in the Fiji Islands for a period of at least three months immediately prior to making his or her application for admission unless the Chief Justice for good reasons shall dispense with such residential requirements."

[6] Putting aside the consideration of "fit and proper" for the moment, the Petitioner has satisfied (a), (b) and (c) of section 35.

Petitioner's history and background

[7] The Petitioner was born on 29th July 1952. He is now aged 61. In 1975 he completed the degree of BA in Economics. He joined Fiji's public service as an Economic Planning Officer in the Central Planning Office within the Prime Minister's office. In 1988 he was promoted to Director of Economic Planning.

[8] But in 1978 the Petitioner had proceeded on an UNDP fellowship to read for a Master of Science degree by research at the University of Manchester Institute of Science and Technology, which degree was awarded in 1981. Afterwards the Petitioner returned to Fiji and continued his work in the Central Planning Office.

[9] In 1990 he was posted to the Fiji Mission to the United Nations in New York as Counsellor [Economic Affairs]. He returned in 1993 to be Deputy Secretary [Administration] in the Ministry of Finance. Later in the year he was appointed Permanent Secretary for Commerce, Industry, Trade, Co-operatives and Public Enterprises. Subsequently he has served as Permanent Secretary in other ministries.

[10] In that period too he served on several Government Company Boards and Committees, and represented Fiji at the highest level at international conferences, seminars and annual sessions of international bodies such as the ILO and UNESCAP.

[11] In 2001 he was awarded the Fiji Civil Service Medal [CSM] for distinguished devotion to duty and for outstanding service.

[12] Then in 2004 he was terminated from his position as Chief Executive Officer in the Ministry of Labour, Industrial Relations and Productivity in relation to alleged abuse of funds connected to his official trips overseas during 2002 and 2003.

[13] Subsequently, after his criminal prosecution and conviction he obtained an LLB from the University of the South Pacific [2011]. In 2012 he was awarded the Graduate Diploma in Legal Practice.

[14] In his affidavit the Petitioner also seeks exemption from the provisions of section 44(1)(b) of the Decree. This section deals with practising certificates which come within the province of the Chief Registrar. I, as Chief Justice, am only empowered to deal with the question of admissions of Legal Practitioners. Section 44(1)(b) provides that the Registrar may refuse to issue a practising certificate, if the applicant for such certificate:

> (b) has been convicted in the Fiji Islands or elsewhere of an offence which involves moral turpitude or fraud on his or her part.

[15] He states in his affidavit that he has "used up a very large proportion of my pension funds to pay for my law degree ($50,000), legal costs for defending myself in parallel civil and criminal action against me by the State ($120,000) and medical bills ($60,000) for my heart bypass surgery."

[16] I turn now to consider the conviction. The Petitioner as Permanent Secretary was required to travel overseas from time to time. For a person of his rank he was entitled to travel Business Class. The monies were provided by Government for such air tickets. However he chose to travel economy class and used the balance monies for himself and in one case monies were returned to him by the travel agent. The actual loss to Government was said to be $2,265.70.

[17] The defence was run on the basis that Business Class was an entitlement of his office, so the decision by the Petitioner to travel in the cheaper class did not represent an actual or real loss to Government. There was a monetary gain to the Petitioner. What the Petitioner did was not permitted by any PSC Circular.

[18] The trial judge took a severe line on sentence. The sentences imposed by the High Court were eventually reduced on appeal. There had been two trials. In the first, the Petitioner had been acquitted. In the second, he was convicted. The judge convicted him, though 2 assessors tendered opinions of not guilty. This could have been because it might have been thought the Government would not have lost money whether or not the entitlements had been correctly used.

[19] The learned trial judge reviewed various sentences for offences under section 309, an offence which carried a maximum penalty of 5 years imprisonment. The tariff has been held to

range between 18 months to 3 years: *Rukhmani v The State* (2008) FJHC 134, HAA056.08S per Shameem J.

[20] Of the aggravating factors, Thurairaja J referred to several. Some were more significant than others. He said the length of service for the Government worked both in his favour and against the Petitioner. His conduct had been "disgraceful and extremely sad". Whilst being the Chief Accounting Officer he had taken money from his own Ministry which conduct was unacceptable. The integrity of the system had in effect been undermined by the chief custodian of the Ministry.

[21] In mitigation the judge inter alia referred to

(a) the repayment of all of the money;
(b) his impeccable service for Government over 33 years;
(c) his study for a degree in Law;
(d) his period on remand;
(e) his previous good character and that he was a 1st offender;
(f) his then medical condition;
(g) the delay in the trial.

[22] The matter was taken up on appeal to the Court of Appeal. The appeal against conviction was refused but the appeal against sentence was allowed. Instead of an overall head sentence of 3 years imprisonment, 2 years on each count was substituted, concurrent, and with a non-parole period of 1 year 6 months to be served.

[23] The Court of Appeal observed:

> "It has been Brian Singh's misfortune to have been engaged in a multiplicity of proceedings civil and criminal over these three allegations. First there was a trial before Justice Gerard Winter and assessors ending with dismissal of the three charges at the end of the prosecution case on 23rd November 2005. After a prosecutor's appeal, the Court of Appeal set aside the acquittals and ordered a new trial. In the interim, there were disciplinary proceedings under civil service regulations. The disciplinary charges were established. An appeal was successful but that result was judicially reviewed by the Attorney-General. In the Supreme

> Court the judicial review succeeded and so Brian Singh was restored to the position that the charges were once more established. He had reimbursed the Treasury on 12th August 2004 the amount requested being $12,860.30 which was the total of the cheques he had received from Hunts travel agency."

[24] In removing the fine from the sentence, Madigan JA, referred at para. 54 to "the comparatively small amount defrauded in what must be seen as a very petty fraud…."

[25] In *Ziems v The Prothonotary of the Supreme Court of New South Wales* [1957] HCA46; 1957 97 CLR 279 the appellant had been found guilty of manslaughter. Whilst drunk he had driven his car at night which veered onto the wrong side of the road and killed a cyclist.

[26] Dixon CJ said "If counsel is adequately to perform his functions and serve the interests of his clients, he should be able to command the confidence and respect of the court, of his fellow counsel and of his professional and lay clients". See too *In re Davis* (1947) 75 CLR at p.420. His lordship went on to refer to members of the Bar to whom are entrusted the privileges, duties, and responsibilities of an advocate [para. 4].

[27] Dixon CJ reflected:

> "5. The history of the Bar, both in Australia and in England, may disclose instances of men who have fallen very low indeed and yet, having escaped disbarment, have afterwards attained recognition if not eminence. In no such case, however, was a court called upon to pronounce upon the disqualifying effect of the conduct that had been pursued by the man who afterward succeeded, and it is equally true that, on the other hand, for a like reason men have escaped disbarment who have never ceased to be a source of anxiety and worse to other members of the Bar. (at p286)"

[28] It is of course the future especially that is the relevant concern in this application. True it is that the Petitioner in his very senior position made an error of judgment which brought disaster upon his head. He has suffered greatly from the decisions and actions he took in 2002 and 2003. He has certainly paid a heavy penalty for what he did.

[29] The question is can he be trusted <u>now</u> in the capacity of legal practitioner. This is not a straightforward matter and has given me pause for reflection. The offences from one angle,

perhaps one which could be regarded as as old fashioned approach, could be considered at the lower end of the scale of dishonesty. From that angle he misused his entitlement to Business Class but did not intend to take more than the Government was willing and committed to pay for. His attitude was of course a deception upon Government, but characteristic of a loose mindset which was of that time. Now the professions have regular lectures on ethics. There are codes of conduct. There is much discussion on conflicts of interest. These are alas fairly recent initiatives in this jurisdiction.

[30] His counsel Mr Nagin percipiently observed in his submissions:

> "Had these mechanisms been in place in Fiji earlier there would not have been over 300 complaints against lawyers in this country today."

There is much information to be divulged and scrutinized as part of the process involved in the issue or renewal of practising certificates. For lawyers there is ultimately the Independent Legal Services Commission whose decisions provide guidance as well as discipline of the profession.

[31] Quite apart from any objections raised the process of admission is not a process of information and scrutiny. A fulsome check of suitability realistically occurs at the consideration of practising certificate stage, whether on first issue or renewal. This process is handled by the Legal Practitioners Unit of the Chief Registrar's office.

Conclusion

[32] I have considered several cases in this application, some where the court had considered there had been continuing deception of the court: *Jackson v Legal Practitioners Board* [2006] NSWSC 1338, 5th December 2006. Here the Petitioner has been straightforward and frank with the court.

[33] I note the enormous losses that the Petitioner has suffered from these lapses. They have been financial, as well as those affecting his employment, his health, and his reputation. The penalties he has paid, besides serving time in prison, would have been devastating to a person in his position.

[34] Much time has now passed since the commission of the offences. There were no lapses before in his long career, and there have been none since. The report on his work whilst in prison and from the Yellow Ribbon Programme is highly commendable. He helped to counsel and mentor young offenders at the Nasinu Reformation Centre. He has assisted the administrative arrangements in the Prisons and Corrections Service greatly.

[35] The Prisons Report referred to his "untiring efforts, outstanding behaviour and exemplary leadership of inmates". I find there has been rehabilitation in the Petitioner's life.

[36] Fiji is a society with much religious belief. Redemption is an accepted part of that belief. I find that it is unlikely that as a man of 61 years, with everything that has transpired in his life, that he will re-offend, or that he will give cause for practitioners or the public to doubt his integrity.

[37] Taking all of the history together, I am prepared now to admit the Petitioner to the rank of Legal Practitioner and to call him to take his oaths for enrolment.

A.H.C.T. Gates
Chief Justice

Solicitors for the Petitioner : Messrs Sherani & Co., Suva
Solicitors for the Chief Registrar : Legal Practitioners Unit, Suva

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