

In the High Court of Fiji
at Suva
Civil Jurisdiction

In the matter of an application by Mohammed Faiyaz for Judicial Review
under Order 53

AND

In the matter of the decision of the Public Service Disciplinary Tribunal
dated 31 July 2018.

BETWEEN: STATE

AND: PUBLIC SERVICE DISCIPLINARY TRIBUNAL

RESPONDENT

EXPARTE: MOHAMMED FAIYAZ

APPLICANT

Counsel: Mr N. Sharma with Mr D. Nair for the applicant
Ms S. Taukei with Ms P.Lata for the proposed party
sought to be joined

Date of hearing: 26th February, 2019

Date of Ruling: 28th February, 2019

Ruling

1. The applicant, formerly a System Analyst Programmer at the Ministry for Economy seeks leave to apply for judicial review of the decision of the respondent of 31st July,2018. The decision found him guilty of five disciplinary charges of misconduct for storing illicit (phonographic pictures/videos) on his desktop computer, in breach of section 6 of the Public Service Act,1999.
2. By summons of 5th February,2019, filed subsequently, the Permanent Secretary for Economy seeks to be joined as an interested party in this application for judicial review. Randhir Charan, Head of Administration of the Ministry of Economy has filed an affidavit in support.

3. At the hearing, Ms Taukei, counsel for the interested party submitted that the Ministry of Economy suspended the applicant for committing disciplinary offences under the Civil Service Act. The respondent found him guilty of the charges and recommended that his employment be terminated. The applicant seeks to challenge the respondent's decision. The Permanent Secretary for Economy moves to be joined as a party, as the orders sought in this application would affect the disciplinary action taken by the Ministry against the applicant.
4. Mr Nair, counsel for the applicant opposed the application on the following grounds. Firstly, he submitted that an application for leave must be made ex parte. Secondly, the proposed party sought to be joined must seek leave of Court. The summons under Or 15, r 6 is defective. Finally, he submitted that an application for joinder can only be made after leave is granted.
5. The amendment to Or 53,r3(2) in 1993 has done away with the rule that required an application for leave to be made ex parte.
6. On the procedure to be adopted, Or 53,r.5 states that where leave has been granted, the notice of motion or summons must be served on all persons directly affected.
7. Or 53,r 9 provides that the Court on "*the hearing of any motion or summons, any person who desires to be heard in opposition, and appears to the Court to be a proper person to be heard shall be heard*"(emphasis mine).
8. In my view, it is clear that a party may make an application to be heard, only after leave has first been obtained for the issue of judicial review, as quite correctly contended by Mr Nair.
9. In my view, the application for joinder is premature.

10. *Order*

- (a) The application for joinder by the Permanent Secretary for Economy is declined.
- (b) I make no order as to costs.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam

Judge

28th February, 2019