

IN THE EMPLOYMENT RELATIONS COURT
AT LAUTOKA

ERCC No. 03 of 2020

BETWEEN : **SHALINI DEVI**

PLAINTIFF

AND : **GUJARAT EDUCATION SOCIETY OF LAUTOKA (INC)**
operators of LAUTOKA CENTRAL PRIMARY SCHOOL

DEFENDANT

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Mr. D. Nair for the plaintiff**

: **Mr. S. Singh and Mr. R Charan for the defendant**

Date of Hearing : **27 January 2022**

Date of Ruling : **30 November 2023**

JUDGMENT

1. The plaintiff filed an originating summons on 25 May 2020 supported by an affidavit seeking a declaration that the termination of her employment is in breach of her contract of employment; that it was unfair, unlawful and unjustified to terminate her employment. She also sought reinstatement and asked for damages.
2. The plaintiff said she joined the Lautoka Central Primary School in 2016 and was dismissed on 14 February 2020. She states that she was not warned or counseled prior to her dismissal, and did not have an opportunity to respond to the allegation of poor performance. She says the defendant acted arbitrarily and in bad faith in failing to engage with her on the issue of poor performance.
3. The plaintiff says that she was not given valid reasons for the dismissal of her employment, and was also not provided a certificate of service. She alleged that she was subject to inhumane and degrading treatment at the time of her dismissal.
4. The defendant filed an affidavit in opposition through the school administrator, Sanjay Narayan, and denied the plaintiff's claims. He said that the plaintiff received counselling from the head teacher. He claimed that the management held meetings with her concerning absenteeism and the failure to keep school accounts in compliance with accounting procedures and guidelines set by the school. He said that although she was warned to improve her performance she did not do so.
5. Mr. Narayan said that the school engaged the services of Price Waterhouse Coopers (PWC) after the plaintiff's dismissal, and the firm had reported discrepancies in the accounts relating to school fees of international students. The plaintiff replied the affidavit in opposition and rejected the defendant's claims.
6. At the hearing of the appeal, the plaintiff reiterated the matters stated in the supporting affidavit. The plaintiff submitted that the defendant had not disclosed the audit and investigation reports to her. The plaintiff submitted that the

defendant is liable to pay damages under section 230 of the Employment Relations Act.

7. The defendant submitted that it was entitled to summarily dismiss the plaintiff's employment for continuous absenteeism and poor performance. The defendant gave instances of the plaintiff's absenteeism and poor performance, and denied causing humiliation, loss of dignity and injury to the plaintiff.
8. An examination of the respective affidavits show that there are material disputes in the positions the parties have taken. Originating summons, therefore, was not the appropriate mode of instituting action in this instance.
9. Mr. Nair submitted that an originating summons was filed in order to expedite the action. This is unhelpful. Civil procedure rules are in place to deal with contentious matters between parties, and these must be followed in order to efficiently adjudicate the issues. Order 28 rule 9 provides for proceedings to be continued as if begun by a writ. The rule will not have to be invoked in this case.
10. The plaintiff's complaint raises an employment grievance, which must necessarily be referred to mediation services in the first instance in terms of section 110 (3) of the Employment Relations Act. Section 194 (5) of the Act requires a mediator who fails to resolve an employment grievance to refer it to the Employment Relations Tribunal. This has not happened in the present case. The plaintiff has not followed the procedure laid down by the legislature in regard to resolving an employment grievance.
11. Mr. Nair submitted that the case was filed in this court as the plaintiff could claim damages in a sum exceeding \$40,000.00, the limit placed on the tribunal. However, this court does not have original jurisdiction concerning an employment grievance except in the limited situations specified by section 220 (1) of the Act. The present case does not fall within those situations. Although the defendant did not raise the issue of jurisdiction, the court cannot proceed where it has no authority to make an adjudication.

12. In these circumstances, the plaintiff's action does not succeed. The defendant does not say that the plaintiff's certificate of service was provided to her. This is a requirement under the law, and the defendant must make the service certificate available to the plaintiff without delay.

ORDER

- A. The action is dismissed.
- B. Parties will bear their costs.

Delivered at **Suva** *via skype* on this 30th day of **November, 2023**.



A handwritten signature in blue ink, appearing to read "m. Javed Mansoor". The signature is fluid and cursive, with a period at the end.

M. Javed Mansoor
Judge