

**IN THE EMPLOYMENT RELATIONS COURT**  
**AT SUVA**

**ERCC No. 24 of 2020**

**BETWEEN** : **RANU VINDHYA SEWAK**

**PLAINTIFF**

**AND** : **FIJI NATIONAL UNIVERISTY**

**DEFENDANT**

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

**COUNSEL** : **Mr. D. Nair for the Plaintiff**  
**Mr. B. Singh for the Defendant**

**Date of Hearing** : **13 April 2022**

**Date of Judgment** : **11 January 2024**

# JUDGMENT

EMPLOYMENT

*Originating summons – Dismissal – Misconduct –*

*Breach of contract – Jurisdiction of court*

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1. By originating summons filed on 30 October 2020, the plaintiff sought a declaration that the termination of the plaintiff's employment on 13 October 2020 was in breach of the contract of employment, and that it contravened section 77 (1) (c) of the Employment Relations Act 2007 and principles of natural justice, procedural fairness and fair labour practices. The plaintiff sought an order for reinstatement and damages.
2. In her affidavit in support, the plaintiff stated that she joined the defendant on 22 February 2011 as a tutor in the department of computer science and information systems. She was issued several employment contracts, and her previous contract expired on 22 February 2020. She received a new contract on 12 May 2020. This was to be in force until 12 May 2023. The contract designated her as assistant lecturer, computer science & information system, with a salary of \$30,694.00. The contract duration was for three years. The plaintiff says that from 22 February 2020 until 12 May 2020, she continued to perform her duties under the former contract. On 30 March 2020, the plaintiff received a warning letter said to be on unsubstantiated allegations. She states that the warning is related to a grievance she raised against the head of the department concerning harassment, discrimination and bullying. She states that the warning letter is void as it was issued when there was no employment contract. On 11 May 2020, she received a letter containing allegations relating to the period 12 May to 11 August 2020. At a meeting held on 23 September 2020 with senior officials of the university, she was subject to incriminating questions pertaining to her performance during the period there was no contract. The meeting was held although she requested it to be deferred as her representative was unable to attend. The head of department and head of school against whom she complained were present at the meeting. By letter dated 7 October 2020, which the plaintiff received on 13 October 2020, her employment was terminated. The

plaintiff stated that the termination letter did not state the alleged date of misconduct and it referred to particulars when there was no valid contract. She states the defendant was in breach of its human resources policy and was required to have referred the allegations to the staff disciplinary committee after serving her with the charges. The plaintiff states that she is well known within the university, and that she has suffered anguish and been subject to public ridicule by her non employment.

3. The defendant, filed an affidavit in opposition through its manager people performance & development, Pritika Aarishma Ram, and denied the plaintiff's material allegations. The defendant said that the plaintiff's position was changed from tutor to assistant lecturer with effect from 1 January 2018. By memo dated 20 February 2020, the plaintiff's contract was extended until 10 April 2020, and again by memo dated 6 April 2020, her contract was extended until 9 May 2020. The plaintiff was issued a new contract from 10 May 2020 to 9 May 2023, which she signed on 12 May. The dates in the contract were amended to reflect the starting date as 12 May 2020 and ending date as 11 May 2023. Prior to being given a new contract, the plaintiff was issued a warning letter on 30 March 2020 after the defendant carried out an investigation. The plaintiff's performance was reviewed during the probationary period under the new contract of employment. The defendant says that the review disclosed that the plaintiff continued to behave unethically, compromised professional integrity and falsified official documents. She was given time until 17 September 2020 to respond to the findings of the performance review team. The defendant tendered a new policy in substitute of the old human resources policy.
4. At the hearing, the plaintiff submitted that only the vice chancellor has the power to terminate her employment under section 30 (3) of the Fiji National University Act, and that she was dismissed by the director human resources purporting to act on behalf of the acting vice chancellor. The also plaintiff submitted that the defendant acted in breach of clause 15 of the employment contract, which required written notice of three months to terminate the contract. Neither contention was raised in the plaintiff's affidavit in support.

5. The defendant submitted that after the plaintiff was asked to respond to certain issues relating to her probationary terms, a meeting was arranged with the plaintiff on 23 September 2020 and though she was allowed to be accompanied by a representative, she attended the meeting alone. The defendant submitted that the plaintiff failed to provide evidence of having signed the attendance register, that she had the approval of the dean of the college to take photos of the attendance register and staff movement board and of having attended the school exam board meeting classes on time. The defendant denied that the plaintiff's case was unduly influenced by the grievance she raised against the head of department and head of school, both of whom attended the meeting on 23 September 2020. The defendant submitted that the director of human resources heard the allegations and made recommendations to the vice chancellor. The defendant submitted that the plaintiff's employment was terminated in terms of clause 3.3 of the FNU HR Policy No.34, which concerns termination on grounds of irreconcilable breakdown in relationship.
6. Upon an examination of the respective affidavits, a breach of the employment contract by the defendant is not evident. The affidavits show a significant disparity in the facts asserted by the parties. The plaintiff's complaint concerns the termination of her employment. The matters urged by the plaintiff refer to an employment grievance defined in section 4 of the Employment Relations Act 2007. The Employment Relations Tribunal is expressly vested with the jurisdiction to adjudicate employment grievances by section 211 (1) (a) of the Act. This court is not expressly conferred with the jurisdiction to adjudicate an employment grievance.
7. In submissions, the plaintiff questioned the defendant's authority to terminate the plaintiff's employment. The plaintiff's contention is that section 30 (3) of the FNU Act empowered the vice chancellor and not anyone else to terminate her employment. This was not raised in the plaintiff's affidavit so that the defendant could have responded. Nevertheless, it must be said that the plaintiff's argument is of little weight. The termination letter was signed by the director human resources, acting on behalf of the acting vice chancellor, who is vested with general responsibility for managing the university. That should suffice. The point

may also be made that an act done by an agent on behalf of a principal may be subsequently ratified.

8. For the aforesaid reasons, the plaintiff's action is dismissed.

**ORDER**

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

Delivered at **Suva** on this 11<sup>th</sup> day of **January, 2024**.



M. Javed Mansoor  
Judge