THE STATE

v

ARBITRATION TRIBUNAL

ex parte
MAIKALI NAIKAWAKAWAVESI

[HIGH COURT, 1992 (Byrne J), 23 December]

Revisional Jurisdiction

Judicial Review - whether available to contest an award of the Arbitration Tribunal - Trade Disputes Act (Cap 97) Section 6 (1), 6 (8).

The Respondent to an application for leave to move for judicial review of an award of the Arbitration Tribunal objected to leave being granted on the ground that awards of the Tribunal were not reviewable. The High Court rejected the submission and HELD: that the Arbitration Tribunal is a public tribunal and not a private disciplinary committee.

Cases cited:

Air Pacific Limited v Air Pacific Employees Association & Veer Satish Singh F.C.A. Civil Appeal No. 62 of 1987; Judicial Review No. 2 of 1986
C.C.S.U. v Minister for the Civil Service [1984] 3 All E.R. 935
Lee v. Showmen's Guild of Great Britain [1952] 2 QB 329
R v B.B.C. ex parte Lavelle [1983] 1 WLR 23
R v Criminal Injuries Compensation Board ex parte Lain [1967] 2 QB 864
Satish Chandra v The Arbitration Tribunal of Fiji FCA No. 49 of 1986
Suva City Council Staff Association v Suva City Council, Judicial Review No. 3 of 1986

Application for leave to move for judicial review

H.M. Patel for the Applicant
G.P. Lala for the Respondent

Byrne J.:

This is an application for leave to judicially review an Award of the Permanent Arbitrator sitting as the Arbitration Tribunal on the 18th of November 1991. The application for leave is opposed and a preliminary point has been taken by the Respondents that this Court has no jurisdiction to grant judicial review of an Award made by the Arbitration Tribunal.

For the purposes of this ruling I do not intend to go into any detail concerning the facts of the matter. Suffice it to say that on the 29th of January, 1986 the

Second-named Applicant was suspended by his employer, the Second-named Respondent when he was working as a Teller at the Nausori Branch of the
A National Bank of Fiji.

The Applicants disputed the suspension of the Second-named Applicant and consequently, with the agreement of the parties, on the 30th of August, 1991 the Acting Permanent Secretary for Employment and Industrial Relations referred the dispute between the Applicants and the Second-named Respondent
B to the Permanent Arbitration Tribunal.

The terms of reference to the Tribunal were:

> "To decide whether or not the Bank should reinstate Mr Maikali Naikawakawavesi who was suspended by the employer for alleged forgery for which he was charged and subsequently
C discharged by the Magistrate's Court Nausori on an application by the prosecution."

The Respondents argue on the question of jurisdiction of this Court that an application for judicial review is not and should not be extended to a pure employment situation. They rely on a number of English cases of which it will
D be sufficient for me to mention only two, namely R. v. B.B.C. ex-parte: Lavelle [1983] 1 WLR 23 and R. v. Criminal Injuries Compensation Board ex-parte: Lain [1967] 2 QB 864 and particularly in that case some remarks of Lord Parker C.J. at page 882.

In Lain's case the Court of Appeal had before it an application for an order of certiorari to quash a decision of the English Criminal Injuries Compensation
E Board.

The Board contended inter-alia that certiorari did not lie since the Board was not a body of persons amenable to the supervisory jurisdiction of the Court in that it did not have legal authority in the sense of statutory authority, nor did it have authority to determine questions affecting the rights of subjects in that a
F determination by it gave rise to no enforceable rights by a person affected by a decision of the Board.

The Court of Appeal dismissed the motion holding that the Board was amenable to the writ of certiorari in that it was body of persons of a public, as opposed to a purely private or domestic character having power to determine matters
G affecting subjects and a duty to act judicially.

In a passage at p.882 on which the Respondents based their preliminary objections in this case Lord Parker C.J. said this:

> "The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time

> being extended to meet changing conditions. At one time the writ only went to an inferior court. Later its ambit was extended to statutory tribunals determining a *lis inter partes*. Later again it extended to cases where there was no *lis* in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned."

In the second case on which the Respondents rely the Applicant, Lavelle sought judicial review of a decision taken by the B.B.C. dismissing her and time decision to uphold that dismissal made by the Managing Director of B.B.C. Radio.

The B.B.C. denied the jurisdiction of the High Court in England to entertain the Applicant's application for judicial review. It contended that the procedure under which the applicant had been dismissed was purely domestic and if it resulted in a wrongful dismissal, the remedy was the common law remedy of damages.

Woolf J., as he then was, upheld the B.B.C.'s contention and at page 30 of his judgment when discussing the circumstances in which the prerogative remedies of mandamus, prohibition or certiorari are available said this:

> "Those remedies were not previously available to enforce private rights but were, what could be described as public law remedies. They were not appropriate, and in my view remain inappropriate remedies, for enforcing performance of ordinary obligations owed by a master to his servant. An application for Judicial Review has not and should not be extended to a pure employment situation. Nor does it, in my view, make any difference that what is sought to be attacked is a decision of a domestic tribunal such as the series of disciplinary tribunals provided for by the B.B.C."

The Respondents submit that those observations of Woolf J. received the support of Denning L.J. in Lee v. Showmen's Guild of Great Britain [1952] 2 QB 329. at p.346 who said that while remedy by way of declaration and injunction could be available in respect of domestic tribunals, the remedy by certiorari did not lie in respect of domestic tribunals.

In answer to these submissions the Applicants rely on three local cases:

(1) Satish Chandra v. The Arbitration Tribunal of Fiji F.C.A. No. 49 of 1986.

(2) Suva City Council Staff Association v Suva

City Council, Judicial Review No. 3 of 1986 a decision of my own.

A (3) Air Pacific Limited v. Air Pacific Employees Association and Veer Satish Singh F.C.A. Civil Appeal No. 62 of 1987; Judicial Review No. 2 of 1986.

In Satish Chandra's case the Court of Appeal quoted with approval some remarks of Lord Diplock in C.C.S.U. v. Minister for the Civil Service [1984] B 3 All E.R. 935 at p.949. There Lord Diplock stated that in contrast with the decision of arbitrators who derive their authority from private contract between the parties, the decisions of any decision-maker "empowered by public law" or "having legal authority" is susceptible of review.

In this case Section 6(1) of the Trade Disputes Act (Cap. 97) reads as follows: C

> "Where the Permanent Secretary or any person appointed by him or by the Minister is unable to effect a settlement the Permanent Secretary shall report the trade dispute to the Minister who may, subject as hereinafter D provided, if he thinks fit, and if both parties consent, and agree in writing to accept the award of the Tribunal, authorise the Permanent Secretary to refer such trade dispute to a Tribunal for settlement."

E It will thus be seen that the situation in Fiji is different from that with which Woolf J. had to deal in Lavelle's case. In Fiji any matter concerning facts similar to those of the present case may be referred to the Permanent Arbitrator by the Minister for Employment and Industrial Relations if both parties consent and agree in writing to accept the Award of the Tribunal.

In this case it is not in dispute that the parties had agreed to refer the dispute to F the Permanent Arbitrator.

I am unaware of any case in which it has been held that Section 6(8) of the Trade Disputes Act which states that an Award of the Tribunal shall be binding on the parties to the dispute negates the jurisdiction of this Court to judicially review any Award of the Tribunal if cause can be shown.

G In Fiji in contrast to the position in England in the cases mentioned by the Respondents the Arbitration Tribunal is a public Tribunal and not either a disciplinary committee as in the case of Lee v. Showmen's Guild of Great Britain where the tribunal was the Area Committee of a trade union or as in Lavelle's case the Management of the B.B.C. whose decision was confirmed by the Managing Director.

For these reasons I hold that Judicial Review is available in Fiji to contest an Award of the Arbitration Tribunal and that consequently the decision in question here can be the subject of Judicial Review.

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I have received full written submissions and copies of certain decisions not available in the library of this Court from the solicitors for the Respondents to whom I am grateful.

To a large extent the submissions of the Applicants deal only with the preliminary objections and I shall therefore now fix a date for the delivery of submissions by the Applicants in Reply to those of the Respondents on the substantive issue. Costs will be in the cause.

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(Application granted.)

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