

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

ACTION NO. 604 OF 1981

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IN THE MATTER of an Application by Anaseini Matairavula by her next friend Apisai Matairavula for leave to apply for Judicial Review in the form of an Order for Certiorari.

AND IN THE MATTER of the decision dated 9th July, 1981 of the Permanent Secretary for Education, Mr. Epeli Vale Kacimawai terminating the Studentship of Anaseini Matairavula at Nasinu Teachers' College

AND IN THE MATTER of Disciplinary Rules and Procedure of Nasinu Teachers' College.

BETWEEN: ANASEINI MATAIRAVULA by her next friend  
APISAI MATAIRAVULA of Galoa, Serua.

APPLICANT

AND THE PERMANENT SECRETARY FOR EDUCATION,  
EPELI VALE KACIMAWAI of Suva.

RESPONDENT

Mr. B.C. Patel for the Applicant.

Mr. G. Grimmett for the Respondent.

D E C I S I O N

This matter came before me in Chambers on the 16th September, 1981.

Mr. B.C. Patel appeared for the applicant and Mr. G. Grimmett for the respondent.

No affidavit in reply to the applicant's affidavit filed in support of her application was filed by the Respondent. Mr. Grimmett explained that the papers had only reached him a short while before the hearing but that in any event his investigations had disclosed that there had been breaches of natural justice in that the applicant had not been notified of the disciplinary charge against her nor was she given any opportunity of appearing before the Disciplinary Committee which met on the 23rd March, 1981, to consider the charge against her. Mr. Grimmett stressed that it was not admitted that other facts stated by the applicant in her affidavit were correct.

The Permanent Secretary for Education's letter to the applicant dated the 9th July, 1981, refers to the applicant having admitted an offence when interviewed by the Committee on the basis of which he purported to terminate her studentship.

It is now apparent that the Permanent Secretary for Education had been misinformed. Had the facts been as the Permanent Secretary was led to believe then there is no doubt that, but for the breach of natural justice by the Disciplinary Committee, the Permanent Secretary's decision to expel the applicant was proper one.

In this application I have not been called on to determine whether the allegation of alleged immoral conduct by the applicant is true.

The applicant in her affidavit stated that the Principal of the College in July 1981 for the second time asked her if she had had sexual relations with another student on the 14th March, 1981, and she stated that for the second time she denied that she had.

According to her affidavit the Principal then asked her if she would undergo a medical examination and she indicated that she would.

I am surprised that the Principal should have made such a suggestion to her. Either he had evidence that

supported the charge or the evidence he had was insufficient to support a charge. A medical examination four months after the alleged offence could establish that no misconduct had taken place as the applicant contended but it could not establish the contrary. Her willingness to be medically examined, which examination apparently was not made, is a point which tells in her favour.

I have mentioned these facts to make it clear that it has not been established before me that she acted improperly on the 20th March, 1981. I have not had to consider either the evidence for or against her. The Disciplinary Committee gave her no opportunity to tell her story in support of her denials of improper conduct and that is fatal to the Permanent Secretary's decision to expel her.

An unsatisfactory feature of this case is that the alleged misconduct was said to have occurred on the 14th March, 1981, but it was not until almost 4 months later that she was expelled. Disposal of a charge against a student should not have taken nearly four months to consider. 14/11/81

Despite the mental worry and anguish that this young girl must have experienced while the case was investigated and which must have affected her work, her Result Card dated 25.6.81 only a fortnight before she was expelled indicates very good results achieved by her.

Of particular significance are the remarks signed by the Principal and her Tutor both of whom must have been aware of the allegations made against the applicant.

They stated :

"You have done very well and it is good to see that you have kept up your good work from last year".

It appears to me reading the applicant's affidavit and the annexed letters that while the Principal and the Tutor may well have been prepared in late June 1981 to let the matter drop, the Principal in early July 1981 was carrying out further enquiries at the direction of the Permanent

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Secretary for Education.

The Permanent Secretary had the duty of implementing his Minister's declared policy to see that the students in the Teachers Training College conducted themselves in a fitting manner which the public is entitled to demand from those who later are to teach children. While there is generally a laxity in morals which right thinking people must deplore, students who opt for a profession teaching children must lead a moral life. I do not know if the applicant did act immorally on the 14th March, 1981. She is however old enough to have realised that being under the College arts room at 2.30 a.m. with a young man, which she admits, is not the type of conduct to be expected of a student teacher even if nothing happened as she alleges.

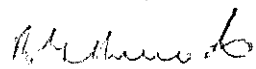
Failure to follow the rules of natural justice makes void any recommendation made by the Disciplinary Committee through channels to the Permanent Secretary. It follows that a decision based on such a recommendation cannot be allowed to stand and must be quashed.

Accordingly on the 16th September, 1981, I advised counsel for the parties that the decision was quashed and that I would give my reasons in writing later.

The foregoing are my reasons.

I confirm the decision dated the 9th July, 1981, of the Permanent Secretary for Education terminating the studentship of the applicant was duly quashed on the 16th September, 1981.

The applicant is to have the costs of this application.

  
(R.G. KERMODE)

J U D G E

SUVA,

22 September, 1981.