

IN THE HIGH COURT OF KIRIBATI 2020

CIVIL REVIEW NO. 15 OF 2020

	[RENGAUA TEKIRATI	APPLICANT
	[
BETWEEN	[AND	
	[
	[CHAIRMAN, PUBLIC SERVICE COMMISSION	RESPONDENT

Before: The Hon Chief Justice Sir John Muria

12 October 2020

Ms Taaira Timeon for Applicant

Ms Teanneki Nemta for Respondent

JUDGMENT

Muria, CJ: The applicant, Rengaua Tekirati, seeks leave to issue *certiorari* proceedings against the decision of the respondent, Public Service Commission, given on 2 October 2019. The respondent's decision was conveyed to the applicant, by letter dated 2 October 2019 and effective as from 3 September 2019, terminating the applicant's employment as a Junior Secondary School Teacher.

Background

2. The applicant was appointed a Junior Secondary School Teacher in 2006 and had been teaching at JSS TUC 1, Bikenibeu, Tarawa. Following a complaint by the Deputy Principal of the School, contained in a letter dated 17 June 2019 to the Permanent Secretary of the Ministry of Education, the applicant was

suspended without pay for 20 working days. The letter of suspension dated 26 August 2019 was issued by the Ministry of Education under the hand of the Senior Assistant Secretary in the Ministry of Education.

3. In the same letter of 26 August 2019, the applicant was advised that she had **“10 working days to consult and appeal to the Ministry”** against her suspension. The applicant was also advised of her right to appeal to the Public Service Commission within 21 days of receiving the letter. The applicant received her letter of suspension on 26 August 2019 and so the 21 days limited for appealing to the Public Service Commission fell on 16 September 2019.

4. It is important that I set out the contents of the letter of 26 August 2019 and I do so here:

“File Ref: 24/08

Date: 26/08/19

Dear: Rengaua Tekirati

Re: Right to appeal against the Ministry’s decision: suspension without pay for 20 working days

The Ministry has been receiving reports of your unsatisfactory attendance to work.

The Principal and Deputy Principal of JSS TUC1 are very frustrated and disappointed with your poor attendance and attitude towards your work hence demands us to take disciplinary measures against you.

Your PF shows that you have been warned several times yet there is no improvement shown on your part. In this regard, the Ministry is left with no choice but to proceed with *suspension without pay for 20 working days*, hence the purpose of this notification.

Note that upon receiving this letter, you are given 10 working days by the Ministry, to consult and appeal to the Ministry regarding the above matter.

You may also note that you have the rights to appeal under the NCS and that all representations are to be submitted to the PUBLIC SERVICE COMMISSION within 21 days of receiving this notification.

I hope the contents of the letter are well defined and very clear.

Thank you

**(Sgd) Bernard Murdoch
Senior Assistant Secretary
For – Secretary, MOE”**

5. It is clear from the affidavit of Andrew Tiikai, Secretary to Public Service Commission, that the Public Service Commission met on 3 September 2019 to consider the cases against the applicant and another Teacher, Ariana. The Commission decided that both Teachers he terminated effective as of 3 September 2019. The Beretitenti approved the termination of appointments of the applicant and Ariana with effect from 3 September 2019 and the letter to that effect was issued by the Commission on 2 October 2019.

6. The letter of Termination of the Appointment of the applicant dated 2 October 2019 is set out hereunder:

“File Ref: CPF: 2006173

Date: 02nd October 2019

Ms Rengaua Tekirati

**u.f.s: Secretary
Ministry of Education**

Dear Madam

TERMINATION OF APPOINTMENT

The Beretitenti, on the advice of the Public Service Commission, has approved the Termination of Appointment in respect of Ms Rengaua Tekirati, JSS Teacher L.12-11/10-9, with effect from 03rd September 2019.

Yours faithfully

**(Sgd) Secretary
Public Service Commission**

**cc: Secretary, PSO
Accountant General, MFED
Auditor General, KAO"**

7. It is perfectly plain by that letter that the Public Service Commission met on 3 September 2019 and made its decision that the applicant be terminated from her employment. The Public Service Commission's decision was transmitted to the Beretitenti who approved the Public Service Commission's decision to terminate the applicant's appointment as JSS Teacher Level 12-11/10-9 "**with effect from 03rd September 2019**". The employment relationship between the respondent and applicant ruptured when the Public Service Commission made its decision to terminate the applicant's appointment as a JSS Teacher. There is nothing left for the Public Service Commission to do to disengage that decision. It is now up to the applicant to deal with the consequences of her termination.

Breach of the Rule of Natural Justice

8. In these judicial review proceedings this Court is not concerned with the substance or the merit of the decision to terminate the applicant. The Court is concerned with procedure or the process adopted by the Public Service Commission to terminate the appointment of the applicant.

9. The evidence before the Court both from the applicant and the respondent shows that the letter of 4 July 2019 from the Senior Assistant Secretary, Ministry of Education advised the applicant of her right of appeal to the Public Service Commission within 21 days of the receipt of the letter. Then on 26 August 2019, the applicant was again advised by the Senior Assistant Secretary, Ministry of Education, of her right to appeal to the Public Service Commission within 21 days of receipt of the letter (dated 26 August 2019). None of those letters can be said to constitute a Notice of Hearing before the Public Service Commission of its hearing on 3 September 2019, rather they only advised the applicant of her right to appeal within 21 days.

10. The evidence is clear that the applicant had not been given notice of hearing before the Public Service Commission for 3 September 2019 disciplinary hearing. This is a breach of the rule of natural justice, depriving the applicant of her right to be heard.

11. To add fuel to the fire, the applicant was expressly given 21 days from the receipt of the letter of 26 August 2019 to exercise her right to appeal to the Public Service Commission. Yet within eight days from the date of the letter of 26 August 2019, the Public Service Commission met and decided that the applicant be terminated. Not only that the applicant was not given notice of hearing of the Public Service Commission's meeting on 3 September 2019, she was deprived of the opportunity to put her appeal to the Commission within the 21 days accorded to her.

12. Then there is the evidence consisting of a letter dated July 3rd, 2020 from the Secretary to the Public Service Commission, advising the applicant of a disciplinary hearing before the Commission on Tuesday July 7th 2020 at 10 am.

That was a notice of hearing given to the applicant. The contents of that letter state as follows:

"File Reference: 1a

Date: July 3rd, 2020

**Ms Rengaua Tekirati
Bonriki Village**

Dear Madam

RE: PSC Disciplinary hearing

The Commission is hereby requesting your presence at the disciplinary hearing which will be held on Tuesday – July 7th, 2020 at 10am.

Your presence is very much appreciated otherwise you are advised to submit a written notice informing the Commission that you will not attend the hearing.

By copy, the SAS-MOE is kindly requested to hand deliver or collect the written notice letter (same delivery date) from the officer if he/she decides not to attend.

Appreciate your prompt action on the above request.

Sincerely yours

**(Sgd) Andrew T Tiikai
Secretary
Public Service Commission**

**cc: Mr Bernard Murdoch
SAS, MOE"**

13. The above letter was written 10 months after the applicant's appointment was terminated. The applicant's employment was already terminated on 3 September 2019 following the Public Service Commission meeting on the same date. The letter of 3 July 2020 served on the applicant

was for “a disciplinary hearing” to be held on 7th July 2020 at 10 am. What then is really the purpose of that letter of 3 July 2020?

14. In the course of argument, the Court asked Counsel as to the purpose of the letter of July 3, 2020 from the Public Service Commission. In Ms Timeon’s submission, Counsel also asked the question as to why the respondent bothered to send a formal invitation letter dated 3 July 2020 to the applicant when the respondent had already terminated her employment on 3rd September 2019. Counsel’s answer is that “**they attempted to cover up the gaps of not inviting her in the first place**” as there is no useful purpose for that letter any more.

15. Ms Nemta of Counsel for the respondent in her subsequent submission stated that the Public Service Commission wanted to recall the applicant’s case and decided to write the letter of 3 July 2020 to the applicant, ten (10) months after it had already dismissed the applicant. Counsel relied on the Indian case of *Vishnu Agarwal –v- State of U.P.* (AIR 2011 SC (Supreme Court) 1232) for the proposition that the Public Service Commission has a recall jurisdiction.

16. The Indian case law authority cited by Counsel has no bearing on this case. That case was a criminal case and was concerned with the powers of the Court to recall its earlier decision because its decision was made *ex parte*. The Supreme Court of India held that the High Court of the State of U.P. had power under section 362 of its *Criminal Procedure Code* to recall its earlier decision. That was what the case of *Vishnu Agarwal –v- State of U.P.* was concerned with. It has no application on a tribunal or body such as the Public Service Commission.

17. In Kiribati this Court has such power also which can be found in O.30 r11 of the *High Court (Civil Procedure) Rules*. This is the power of the Court to correct clerical mistakes or errors in its judgments or orders. The Court therefore has the power to recall its judgments or orders in order to correct the clerical errors.

18. Counsel cited no provision of the law, either the *Constitution* or *The Public Service Commission (Functions) Act 1983* to support the proposition she put forward in this case. In my judgment the Public Service Commission has no power to recall its decision to terminate the applicant's appointment made on 3 September 2019, after it was approved by the Beretitenti, executed and confirmed by the letter of 2 October 2019. The decision of the Public Service Commission was made and executed. The Commission was *functus officio*.

19. Thus the only plausible explanation for the letter of 3 July 2020 is that it was an attempt to cover the mistake the Public Service Commission had made when dealing with the applicant's case by not according her the right to be heard. In any case, had the applicant succumbed to the respondent's attempt, made in the letter of 3 July 2020 to appear before the Commission, she would be appearing before the same body that had already dealt with her case 10 months ago terminating her appointment and making her more susceptible to the respondent's whim. The letter of 3 July 2020 adds nothing to any perception of what is a fair hearing for the applicant. Any hearing by the Commission, following the letter of 3 July 2020, would be meaningless if it was to be heard again by the same body that had already made a decision against her 10 months ago. The submission of Counsel for the respondent is legally unsustainable.

20. In the light of what I have stated, the applicant must succeed in her application. I grant leave to the applicant to issue *writ of certiorari* against the decision of the Public Service Commission dated 3 September 2019.

21. As the evidence clearly supports the conclusion that the Public Service Commission's decision given on 3 September 2019 cannot stand, I order that *certiorari* shall issue for the purpose of quashing the decision of the Public Service Commission dated 3 September 2019.

22. The applicant shall have her costs of this application to be taxed if not agreed.

Dated the 22nd day of December 2020



SIR JOHN MURIA
Chief Justice