JIM WAROKA -v- MOSTIN HABU AND THE ATTORNEY GENERAL

High Court of Solomon Islands
(Muria ACJ)
Civil Case No. 41 of 1992
Hearing: 21 May 1992
Judgment: 11 June 1992

A. H. Nori for the Plaintiff
P. Afeau for the First and Second Defendants

MURIA ACJ: The Plaintiff, **Jim WAROKA,** was until 4 March 1992, the Principal of KG VI Secondary School. He comes to this Court seeking a number of declarations. Those declarations are:

1. **That the suspension of the Plaintiff by the First Defendant on 20/11/91 was ultra vires and therefore void;**

2. **That the termination of the Plaintiff by the First Defendant on 4/3/92 was unlawful and void;**

3. **That the Plaintiff is a teacher and cannot be disciplined by the First and Second Defendants under disciplinary procedures provided for in the General orders of the Public Service and Public Service Regulations 1979.**

4. **That in alternative to 2 herein the First Defendant acted unlawfully in suspending and terminating the Plaintiff outside procedures provided for in the Government General Orders and Public Service Regulations 1979.**

5. **That the Plaintiff may only be disciplined in accordance with the disciplinary procedures laid down in the National Teaching Service Handbook; and**

6. **That Chapter 13.1 (a) of the Teaching Service Handbook is unconstitutional.**

The facts in this case are not in dispute. Following the Vacancy Notice No. 50/88, dated 3/10/88 for the post of Principal of King George VI School, the Plaintiff applied and was accepted for the post. That acceptance was communicated to the Plaintiff in a standard letter dated 22/12/88 and he commenced duty in January 1989 as Principal of King George VI School. In addition to his duties as Principal, the Plaintiff also taught in a number of subjects at the School. Before his termination from employment, he was teaching at least three hours per week.

On 6 February 1991 the Under Secretary of the Ministry of Education and Human Resources Development wrote to the Plaintiff, raising matters of great concern involving the Plaintiff's alleged conduct and how he managed the School.

On 22 August 1991 the Chief Administration Officer wrote a warning letter to the Plaintiff concerning the Plaintiff's alleged conduct in encouraging the Form 6 students at King George VI to visit the Ministry's Headquarter with a petition regarding housing problem at the School.

On 19 September 1991, the kitchen staff of the School issued a petition for the removal of the Plaintiff because of his alleged abusive and humiliating behaviour toward the kitchen staff.

On 18 November 1991 a news item was broadcasted by SIBC in which the Plaintiff proposed at the People's Alliance Party Convention that PAP Members of Parliament who were Ministers in the present Mamaloni Government pulled out.

On 20 November 1991, the Permanent Secretary of Ministry of Education and Human Resources Development by a letter of the same date suspended the Plaintiff from his post as Principal of King George VI School. A committee was formed and investigation was made into the allegations of misconduct of the Plaintiff. The committee reported its findings to the Permanent Secretary which subsequently led to charges for misconduct in office laid against the Plaintiff in a letter dated 4 February 1992.

On 5 February 1992 the Plaintiff's solicitor wrote to the Permanent Secretary of Ministry of Education and Human Resources Development and informed the Permanent Secretary that the Plaintiff would respond to the charges in an interview and that he (the Plaintiff's solicitor) would represent the Plaintiff at that interview. The Plaintiff's solicitor informed the Permanent Secretary that application had been filed in the High Court on behalf of the Plaintiff and court papers were being served on the Permanent Secretary. The Plaintiff's solicitor then requested to delay the interview until the Plaintiff's application is heard by the High Court.

There was no response from the Permanent Secretary to the Plaintiff's solicitor's request. Instead on 4 March 1992 the Permanent Secretary terminated the Plaintiff's appointment as Principal of King George VI School with immediate effect. The Plaintiff was advised in the same letter that should he wished to appeal, he must do so with 14 days to the Public Service Commission.

Two days later, on 6 March 1992, the Plaintiff put in his Conditional Appeal to Public Service Commission because of his pending application before the High Court.

Counsel suggested that the first question which must be decided is that whether the Plaintiff was a teacher or not at the time of termination of his employment. For reasons which I shall come to later in this judgment the question is not simply whether the Plaintiff was a teacher then, but also whether he was employed to teach. In order to ascertain this, it is necessary to see how the Plaintiff was appointed to the post.

The Vacancy Notice No. 50/88 dated 3 October 1988 for the position of Principal - King George VI School issued by the Public Service is in the following form:

"VACANCY NOTICE NO: 50/88

ONE VACANCY: PRINCIPAL - KING GEORGE VI SCHOOL LEVEL 9
MINISTRY OF EDUCATION AND TRAINING

Applications are invited from suitably qualified persons for the above post, which is currently vacant in the Ministry of Education & Training.

The Principal King George VI School is answerable to the Under-Secretary in the Ministry of Education and Training.

DUTIES:

1. *Overall responsibility for the general policy of the institution and for its proper implementation.*

2. *Responsibility for the general administration of the day-to-day affairs of the institution.*

3. *Responsibility for the preparation of the annual recurrent estimates for the institution.*

4. *Responsibility for the division and allocation of such monies as may be made available to the institution for its proper running.*

5. *Overall responsibility for the discipline and control of the staff and students.*

6. *Responsibility for the general upkeep of the buildings and equipment.*

7. *Liaison with overseas Governments and professional bodies as appropriate.*

QUALIFICATIONS:
A relevant Masters degree in either the science or Arts subjects with teaching qualifications, or in possession of a Bachelors degree with teaching qualifications plus ten (10) years teaching experience in secondary education, or experience as a Head of Department or Deputy Principal in a secondary school or similar institution."

The Plaintiff applied and the Public Service Commission met and considered the Plaintiff's application. The Minute of the Public Service Commission meeting and its decision on 16 December 1988 is as follows:

"Principal King George VI School Level 9

The Commission considered the candidates who responded to Vacancy Notice No. 50/88 for the above post. It also studied the Panel's report on the suitability of each candidate. There were five persons who applied, however, only four turned up for interview. The Panel recommended Mr J Waroka to be the suitable candidate because he is more mature and experienced as Principal. He has leadership qualities which can hold people together.

*Therefore, the Commission thoroughly looked through the markings and having satisfied that all is in order, **DECIDED** that Mr J Waroka be appointed for the Principal's post at KG VI School on probation for two years wef the date he assumed duties of the post."*

On 22 December 1988, the following letter of appointment was sent to the Plaintiff by the Ministry of Public Service:

"Dear Jim

I am pleased to inform you that the Public Service Commission has appointed you on probation as Principal KG VI School on the terms and conditions set out in this letter.

2. Your appointment is on probationary terms and you are required to complete a medical examination questionnaire for the Medical Officer's scrutiny.

3. The post of Principal KG VI School is graded Level 9 and on appointment your salary will be $604.32 per fortnight in the salary scale - ($604.32 - $699.01) fortnightly. Subject to efficient service you will be eligible for normal increments in the above scale.

4. During your period of probation your appointment will be subject to one month's notice of termination of appointment or payment of one month's salary in lieu of notice by either yourself or by the Government.

5. Should you resign your appointment or should it be terminated on grounds of misconduct before completing six months service you may be required to repay the whole or part of any passage costs incurred in respect of yourself or your family on first appointment.

6. Your duties will be those normally attached to your appointment but you may be required to carry out other duties which may be allocated to you.

7. This appointment is subject to Solomon Islands Constitution, General Orders, Financial Instructions and appropriate Public Service Commission Regulations as from time to time in force.

8. For leave passage purposes, your home island is deemed to be Malaita.

9. You have been posted to KG VI School with effect from date of assumption of duties.

10. Should you at any time during your service with the Solomon Islands Government be selected to undergo a course of training on full salary you will be required, before commencing the course, to sign an agreement to re-enter full time employment in the Public Service on completion thereof, for a continuous period equal to that spent on the course. Failure to comply with the agreement will result in a financial penalty being imposed on you.

11. If you are willing to accept the appointment on the terms and conditions set above, please sign one copy of this letter in the place provided below and return it to me as soon as possible.

Yours sincerely,

E.T. Tanirongo
CAO (Personnel)
for: Permanent Secretary
Ministry of Public Service"

There can be no doubt that the Plaintiff's appointment to the post of Principal KG VI School was made by the Public Service Commission. The duties required of the post are those specified in Vacancy Notice No. 50/88 and those were the duties which the Plaintiff was required to perform. When one looks at each of the duties specified in the Vacancy Notice, one comes to the inevitable conclusion that they are administrative duties. Mr Nori urged that in determining whether the Plaintiff was a teacher or not, the Court should consider his qualification for the post and what was expected of him while holding the post. I agree with counsel that to ascertain whether the Plaintiff was a teacher or not, his qualification is a necessary consideration.

A teacher occupies a professional status and he attains that status through certain qualifications one of which is a Bachelor of Education Degree. The Plaintiff in this case attained such a status, a status that qualifies him to belong to a particular class of people, namely, teachers who are qualified to teach. Of course, not all people who teach are qualified to teach. Some people teach because they are made to teach and are under obligation to teach. Whether they do so properly or not is another matter. On the other hand all those persons who are qualified to teach are capable of teaching because they possess the qualifications to do so. But that is not to say that they are obliged to teach.

The Plaintiff, by his academic attainment, possesses the qualification to teach and he is capable of teaching. However the fact that he is qualified to teach and so

capable of teaching creates no obligation on the Plaintiff to teach. The duty to teach is only imposed when he is obliged to do so.

Thus while I accept that the Plaintiff's qualification is a necessary consideration to determining whether the Plaintiff is a teacher or not, and I have found him undoubtedly professionally qualified to teach, it does not necessarily follow that he is obliged to teach. In this case one of the criteria to become selected for the post of Principal of KG VI School is a Bachelors Degree with teaching qualifications. The duties or the functions of the post are, however, separately specified. The qualifications stated in the Vacancy Notice are a means of selecting the suitable person for the post of Principal of KG VI School and the duties which the successful candidate is to perform are those duties assigned to the post.

I have already found that the duties of the post of Principal of KG VI as specified in the Vacancy Notice are administrative. I have also found that the Plaintiff possesses the professional qualification to teach but he is not obliged to teach. I now consider the question as to who has the power to discipline the Plaintiff.

Counsel for the Plaintiff argued that it is the Teaching Service Commission who has the power to discipline the Plaintiff and not the Public Service Commission. Counsel for the Defendants conceded that the power to discipline teachers is vested in the Teaching Service Commission. Counsel, however, submitted that the Plaintiff was not employed to teach but rather as an administrator of KG VI School. Counsel further argued that the post of Principal of KG VI is not a teaching post but an administrative one. He further argued that KG VI School comes under the Ministry of Education and Human Resources Development and as such the established staff including the Plaintiff are public servants who are appointed and disciplined by the Public Service Commission.

The powers of the two Commissions are provided for under the Constitution. The powers of the Public Service Commission are provided for under section 116 of the Constitution and in subsection (1) it provides:

> *"(1) Subject to the provisions of this Constitution, power to make appointments to public offices (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices is vested in the Public Service Commission".*

The powers of the Teaching Service Commission are provided for under section 116 B of the Constitution and subsection (1) provides:

"(1) Power to make appointments to the offices to which this section applies (including power to confirm appointments) and to remove and to exercise control over persons holding or acting in such offices is vested in the Teaching Service Commission".

Subsection (4) provides for the offices to which section 116 B applies:

"(4) This section applies to teachers in primary schools and secondary schools."

It will be observed that the powers of Public Service Commission under section 116(1) applies to "***public offices***" except those offices referred to in subsection (3). "***Public Office***" is also defined in section 144(1) of the Constitution as:

"an office of emolument in the public service."

The powers under section 116 B(1), however applies to "***teachers***" in primary and secondary schools. The word "***teacher***" is not defined in the Constitution but it is defined in the Teaching Service Commission Regulations 1987, LN 4 of 1988 which states that "***Teacher***" means:

"a person holding an office to which section 116 B of the Constitution applies, that is to say teachers in primary schools, secondary schools and institutes of tertiary education."

By the Constitutional Amendment No. 1 of 1989 the words "***and institutes of tertiary education***" in subsection (4) of section 116 B were deleted although those words still appear in the definition of "***Teachers***" in the Teaching Service Commission Regulations. However by virtue of section 2 of the Constitution, the supreme law of Solomon Islands is the Constitution and if any other law is inconsistent with the Constitution, that other law shall, to the extent of the inconsistency, be void. The provisions of the Teaching Service Commission Regulations must therefore be read subject to the Constitution. Thus to the extent that the definition of "***Teacher***" includes the words "***and institutes of tertiary education***" in Regulation 2 of the Teaching Service Commission Regulations, it is void. The definition of "***Teacher***" in Regulation 2 should therefore be read without the words mentioned.

I venture to observe further that the powers conferred on the two Commissions under sections 116(1) and 116 B(1) of the Constitution respectively are to be exercised over persons **holding** or **acting in** the offices to which those sections relate. In other words the powers under section 116(1) can only be exercised over persons who are actually holding or acting in public offices and the powers under section 116 B(1) likewise are only exercisable over persons who are actually holding or acting in the positions or offices as teachers. In so far as the Teaching Service Commission is

concerned, subsection (4) of section 116 B puts it clearly that the Commission's powers under subsection (1) of the section applies to **teachers** in primary schools and secondary schools and further to put the matter beyond doubt, Regulation 2 of the Teaching Service Commission Regulations defines "***Teacher***" as a person **holding** an office to which section 116 B of the Constitution applies, that is to say teachers in primary and secondary schools.

In the present case, a question may be asked as: What was the office which the Plaintiff was then holding immediately prior to his termination? The undisputed fact is that the Plaintiff was then holding the post of Principal of KG VI School. That was the office which the Plaintiff was then holding and the duties of that office were those listed in the Vacancy Notice No. 50/88. The Plaintiff was not holding the office of a teacher.

Mr Nori argued that the post of Principal of KG VI School entails that the post carries with it the responsibility to teach also. This case concerns only with the position of the Principal of KG VI School. The position of Principals of other schools does not fall for consideration here. But as regard the position of the Principal of KG VI School as **advertised** in Vacancy Notice no. 50/88, I cannot accept that it carries with it any teaching responsibility. The duties and functions of the holder of the office of Principal of KG VI School are those assigned to him by virtue of his office. Those duties and functions are those specified in the Vacancy Notice.

The inevitable conclusion is that the office of Principal of KG VI School is, as advertised, a public office to which section 116(1) of the Constitution applies and not an office to which section 116 B(1) applies.

The First Defendant argued that as the Plaintiff was a public officer on Level 9, he (First Defendant) has the power to terminate the Plaintiff pursuant to his delegated powers given on 19 February 1991 and published in Legal Notice No. 70 of 1991. Although under Column 1 of the Schedule of the delegated powers, there is no mention of Public Service Commission Regulations 1979, it is clear that the Regulations referred to under Column 1 (powers delegated) are those of the Public Service Commission Regulations 1979. The power to discipline including terminating the employment of a public officer is vested in the Public Service Commission and by virtue of the delegated powers referred to, the Permanent Secretary has been empowered to exercise those powers in respect of public officers of Level 7 to Level 11. The Plaintiff falls within that category and the First Defendant does possess the legal power to discipline the Plaintiff including terminating the Plaintiff's employment.

Thus I cannot make the declarations as sought in paragraphs 1 and 3. Instead I declare that the Plaintiff, although possesses a teaching qualification, was employed as Principal of KG VI School which is a public office and as such the First Defendant and Public Service Commission represented in this action by the Attorney General as Second Defendant have powers to discipline, including suspending and terminating the Plaintiff's employment for misconduct.

The declaration sought in paragraph 5 therefore no longer arise. I also feel I do not need to rule on the declaration sought in paragraph 6. I shall leave the constitutional challenge as sought in paragraph 6 to an appropriate occasion when it arises.

Counsel for the Plaintiff, however, further argued that even if the Public Service Commission or the First Defendant had the powers to discipline the Plaintiff, the proper procedure had not been followed and that the Plaintiff was denied of the rules of natural justice. That being so, counsel argued, the suspension and termination of the Plaintiff's employment were done unlawfully and must therefore be null and void.

The Plaintiff raised no challenge in this action to the actual charges of misconduct brought against him. Perhaps the Plaintiff felt that the merits of the charges are matters for the Commission to consider when they are placed before it. The Plaintiff's challenges are to the powers to discipline him and the procedure followed when disciplining him. The Plaintiff was suspended by the First Defendant as from 25 November 1991. The decision to suspend the Plaintiff was conveyed to him by the letter dated 20 November 1991.

Suspension and dismissal are two different forms of disciplinary measures taken against public officers. But the rule of natural justice applies to suspension as well as to dismissal of a public officer. The opportunity to meet the allegations brought against an officer who has been accused of committing acts of misconduct must be afforded to the officer. An officer cannot be suspended or dismissed until he has had an opportunity to reply to the allegations against him before he was suspended and both the allegations and the officer's reply have been properly considered by the appropriate authority.

In the present case, the Plaintiff had been notified through a number of correspondences of the various allegations brought against him. First, there was the memorandum from the Under Secretary, Ministry of Education and Human Resources Development of 6 February 1991 containing seven (7) allegations. Second, there was a letter of 22 August 1991 containing an allegation of using Form 6 students to stage a

protest by presenting a petition to the Ministry. Third, following an allegation of mistreatment of kitchen staff of the School, the Plaintiff was notified in a letter from the Chief Administrative Officer dated 31 October 1991 that the allegation had been under investigation to verify the allegations. Fourth, there was a discussion on the morning of 20 November 1991 between the Permanent Secretary and Plaintiff about those allegations mentioned earlier and further there was a discussion on the allegation of participation in political activities whereby the Plaintiff was alleged to have made a proposal during the PAP General Convention calling on the Ministers in the Mamaloni Government to resign. The Plaintiff's proposal was broadcasted by SIBC on 18 November 1991. Following the discussion on the morning of 20 November 1991 between the Permanent Secretary and the Plaintiff, a letter of suspension was sent to the Plaintiff by the Permanent Secretary dated the same date but effective as from 25 November 1991.

It would appear from the evidence disclosed in the Affidavits that the Plaintiff had been given the opportunity to respond to the various allegations made against him before he was suspended. The Plaintiff having been given the opportunity to respond to the allegations the Permanent Secretary suspended the Plaintiff with effect from 25 November 1991 in accordance with his powers under Regulation 65 of Public Service Commission Regulations 1979 which provides that:

> *"65 Any officer may be suspended from all or part of his duties pending the conclusion of disciplinary proceedings, if this is in the interests of the public service. The authority to suspend an officer is vested in the Secretary for the Public Service, or any officer to whom he may delegate that authority".*

But that is not the end of the matter.

Following investigations into the allegations made against the Plaintiff, he was charged with five (5) counts of misconduct. Those charges were contained in a letter of 4 February 1992. The Plaintiff was given until 11 February 1992 (7 days) to respond to the charges as required by Regulation 50 which provides that:

> *"50 The officer shall be given not less than seven days to respond to the charge, and if he so requests he may do so at an interview at which he may be accompanied by a friend or an official representative of his trade union. A report of any such interview shall be placed on record, and a copy sent to the officer accused of misconduct."*

After receiving the charges of misconduct the Plaintiff's solicitor wrote to the Permanent Secretary, Ministry of Education and Human Resources Development on 5 February 1992 in the following terms:

"Dear Sir,

Re: Jim Waroka - Charge for Misconduct

I act for Jim Waroka in relation to the charges which you laid against him contained in your letter of 4/2/92.

You are hereby informed that my client will only respond to your charges in an interview at which he will be represented by me. I request that such an interview be delayed until the hearing of my client's application to the High Court. Court documents have now been served on your Permanent Secretary.

Yours faithfully,

A. H. Nori
Barrister & Solicitor"

The Originating Summons challenging the Plaintiff's suspension and the First Defendant's power to discipline him filed on the same day was served on the Permanent Secretary also on the same day. Despite that letter the First Defendant terminated the Plaintiff's employment on 4 March 1992 by a letter of the same date. That letter is important and for the purpose of these proceedings I shall set it out in full:

"Mr Jim Waroka
King George VI School
P O Box G2
Honiara.

Dear Mr Waroka,

Re: Decision on the Disciplinary Case against you

I am writing to inform you that I have been advised by the Chairman of the Public Service Commission through the Secretary to the Prime Minister that since the Public Service Commission has delegated its powers to discipline staff up to Level 11 to Permanent Secretaries that the proper authority to make a decision on your case is the Permanent Secretary, Ministry of Education and Human Resources Development.

As you are aware you are a Public Officer. You were offered appointment by the Public Service Commission in late 1988 and early in 1989 you agreed to the terms and conditions of the offer by signing and returning a copy of the letter offering you an appointment. You were appointed on probationary terms and under your letter of appointment subject to the Solomon Islands Constitution, General Orders, Financial Instructions and appropriate Public Service Commission regulations as from time to time in force. Furthermore your job descriptions as Principal of King George VI School includes no teaching duties.

On the basis of your status as a Public Officer, the authority delegated to me by the Public Service Commission, the findings and the recommendations of the investigation committee and other evidence received by me from parents and students it is my unpleasant duty to have to discipline you.

On the basis of the evidence before me and nothing to the contrary I am convinced in my own mind that you are guilty of the five (5) Charges of Misconduct as laid down in the letter CPF/130 of 4/2/92 to you from the Chief Administrative Officer of this Ministry. The Investigation report on the allegations against you has also highlighted your habit of helping yourself to school rations. Strictly speaking this is a criminal offence and is not included in the Charges of Misconduct. However, I have taken serious consideration of this in my decision on your case. I have also before me written allegations from noteworthy members of the public regarding irregularities in the manner in which you select and accept students into the school. I also consider these as misconduct by you in the conduct of your responsibilities.

From the above conclusions, I have no alternative but to terminate your appointment as Principal of King George VI School effective from the date of this letter. You are however entitled for payment of any leave which S.I.G. may owe you.

If you wish you may appeal to the Public Service Commission within fourteen (14) days regarding this decision. However, your pay will be terminated from the date of this letter.

Yours sincerely

M. B. HABU
PERMANENT SECRETARY
MINISTRY OF EDUCATION AND HUMAN RESOURCES DEVELOPMENT"

It is clear that although serious allegations were made against the Plaintiff which led to his suspension there was no formal charge laid against him until the 4 February 1992 when five (5) charges of misconduct were laid against him. The Plaintiff requested an opportunity to be heard at an interview pursuant to Regulation 50 of the Public Service Commission Regulations 1979 but as he had issued proceedings in the High Court challenging his suspension and the Defendants' powers to discipline him the Plaintiff requested that the interview be delayed until the Court determined his application. As we have seen the Plaintiff's request was not heeded and instead he was given a "**boot**" on 4 March 1992.

The Plaintiff by his Amended Originating Summons now challenged also his termination and procedures taken to terminate him from his post as Principal of KG VI School.

There is no dispute that following the laying of the charges of misconduct against the Plaintiff on 4 February 1992 and the request made by the Plaintiff through his solicitor on 5 February 1992, there had been no hearing of the charges at all. Instead on 4 March 1992 the First Defendant decided to terminate the Plaintiff and did terminate him for the reasons set out in the First Defendant's letter.

It is too elementary to repeat here the rules of natural justice requiring a person not to be punished unheard, particularly when a right to be heard has been conferred by law such as that provided under Regulation 50 of Public Service Commission Regulations. In such a case a person must be told what evidence has been given and what statements made against him and he must be afforded the opportunity to respond to such evidence and statements. It has been succinctly put in ***Kanda -v- Government of Malay*** *[1962] 2 WLR 1153, at 1161* that:

> *"If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgement of Lord Loreburn L.C. in* ***Board of Education -v- Rice*** *[1911] A.C. 179, 182 down to the decision of their Lordships' Board in* ***Ceylon University -v- Fernando*** *[1960] 1 WLR 223; [1960] 1 All E.R. 631 P.C. It follows, of course that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the judge without his knowing."*

There is no dispute that the Plaintiff had been given notice of the charges of misconduct in this case. What the Plaintiff says is that he had been denied his right to be heard before he was dismissed. The Plaintiff was given a termination letter instead of affording him his right to be heard which the law plainly gives him.

Our Constitution does not provide specific instances at which the principles of natural justice should apply. However the joint operation of section 76 and schedule 3.2(1) and (2) of the Constitution shows that the common law principles of natural justice do apply in Solomon Islands except in the circumstances mentioned in subparagraph (1) which are:

> *"(a) they are inconsistent with this Constitution or any Act of Parliament;*
>
> *(b) they are inapplicable to or inappropriate in the circumstances of Solomon Islands from time to time; or*
>
> *(c) in their application to any particular matter, they are inconsistent with customary law applying in respect of that matter."*

Whether the principles of natural justice are part of the fundamental rights entrenched by the Constitution is yet to be decided in Solomon Islands. For my part, I venture to suggest that the Constitution has recognised and required observance of the principles of natural justice under the common law as adopted under Schedule 3.2. I

prefer the observations of Wilson J. in ***Premdas -v- The Independent State of PNG*** *[1979] PNGLR 329 at p. 376* where he said:

> *"The only question relating to the interpretation or application of the Constitution which calls for the use of materials as aids to interpretation arises after observing that the Constitution guarantees to the people the right to be accorded natural justice in proceedings whether judicial or administrative as applied under the common law in England immediately before Independence Day."*

and of Miles J. in ***Iambakey Okuk -v- Fallscheer*** *[1980] PNGLR 274 at p. 291* where he said:

> *"The rules of natural justice so called or more precisely the obligation to observe the rules of natural justice are part of the underlying law of Papua New Guinea. So much flows from the Constitution, insofar as it makes express provision for the application of the rules of natural justice to certain bodies (namely tribunals established under the Leadership Code (s.28(5) and village courts (s. 37(22)) and in so far as Sch. 2.2(1) adopts as part of the underlying law the principles of common law and equity in England immediately before Independence. The reception into the underlying law of the English principles is of course limited to the extent, inter alia, that they are inapplicable or inappropriate to the circumstances of the country from time to time, or inconsistent with custom."*

It must therefore be only too consonant with good sense and moreso in keeping with the spirit of the Constitution that provisions are made in the Public Service Commission Regulations 1979 which are made pursuant to the powers under section 137(1) of the Constitution requiring the Commission or the Officer exercising delegated powers to observe the rules of natural justice.

I cannot find anything in Part VII of the Public Service Commission Regulations 1979 that exclude, either expressly or impliedly, the principles of natural justice. That being so, a public officer charged with a disciplinary offence is entitled to the protection of the principles of natural justice.

In the present case, apart from not affording the Plaintiff the opportunity to respond to the formal charges laid against him on 4 February 1992, the First Defendant terminated the Plaintiff's employment based on ***"the findings and the recommendations of the investigation committee"***. Those findings and recommendations were not responded to by the Plaintiff as he was not informed of them and was deprived of the opportunity, though requested, to do so.

The First Defendant also based his decision to terminate the Plaintiff on what he said ***"other evidence received by me from parents and students ..... "***. Those **other** evidence were received by the First Defendant but were not put to the Plaintiff. The

First Defendant simply acted on those **other** evidence as well and terminated the Plaintiff's employment.

It is startling to find that the First Defendant further gave the basis for terminating the Plaintiff for the following reasons as stated in his letter:

> *"On the basis of the evidence before me and nothing to the contrary I am convinced in my own mind that you are guilty of the five (5) Charges of Misconduct as laid down in the letter CPF/130 of 4/2/92 to you from the Chief Administrative Officer of this Ministry. The Investigation report on the allegations against you has also highlighted your habit of helping yourself to school rations. Strictly speaking this is a criminal offence and is not included in the Charges of Misconduct. However, I have taken serious consideration of this in my decision on your case. I have also before me written allegations from noteworthy members of the public regarding irregularities in the manner in which you select and accept students into the school. I also consider these as misconduct by you in the conduct of your responsibilities."*

That clearly shows that the only evidence the First Defendant had were those from the investigation committee and those from parents, students and from "***noteworthy***" members of the public. As there was nothing to the contrary, the First Defendant was convinced that the Plaintiff was guilty of the 5 charges, which charges the Plaintiff was deprived of the opportunity to be heard on. It follows that as the Plaintiff was not afforded the opportunity to be heard on the 5 charges, naturally there would be nothing to the contrary. A further allegation that the Plaintiff had the habit of helping himself with school rations was also one of the basis of terminating the Plaintiff but the allegation was never part of the charges laid against the Plaintiff. The "***written allegations from noteworthy members of the public***" contained extraneous matters which were detrimental to the Plaintiff and yet they were never put to the Plaintiff as part of the charges brought against him. Allegations should never be the basis of terminating a person's employment unless they are substantiated. The process by which allegations are substantiated is by hearing the accuser and the accused, an elementary principle of natural justice as accepted and followed in a free and democratic society.

I make it plain here that the question of termination of a public officer from employment is not a matter to be considered lightly. It affects the officer's right, his status and the livelihood of himself and those whom he supports. This is all the more reason why it is absolutely fundamental in law that the First Defendant is required to observe the principles of natural justice before making his decision to terminate the Plaintiff.

In the present case it is patently obvious on the evidence that the decision by the First Defendant terminating the Plaintiff was made in a blatant disregard of the

Plaintiff's right to be heard as accorded to him by law and as such it is a complete violation of the rules of natural justice.

Applying the principles stated in ***Kanda*** and the other cases mentioned above, I find that the Plaintiff in this case was not given the opportunity to be heard in his defence to the five (5) charges of misconduct laid against him on 4 February 1992 and other allegations made against him in the letter of termination dated 4 March 1992. It behoves me therefore to grant the declaration sought by the Plaintiff in paragraph 2, declaring that the termination of the Plaintiff by the First Defendant on 4 March 1992 was made contrary to the rule of natural justice and therefore void.

The declaration sought in paragraph 4 is an alternative and I do not need to rule on it.

Before I leave this matter I feel I must comment on two matters raised by counsel in their argument.

Mr Nori suggested that registration of teachers is only for record purposes. It is clear that registration of teachers is not only for record purposes but it is a requirement of the law. Section 29 of the Education Act requires teachers to be registered. Section 29 provides:

> *"(1) No person shall be employed as a teacher in a school unless he has been registered as a teacher by the Permanent Secretary under the provisions of this Part.*
>
> *(2) The provisions of this section shall not apply to any person engaged to teach cultural or traditional subjects for less than five hours in any one week".*

Registration of a teacher is a mandatory requirement under the Education Act and no person **shall** be employed as a teacher in any school whatsoever unless he has been registered as a teacher.

Section 30 provides that the person wishing to teach must apply in the prescribed form to the Permanent Secretary providing evidence of fitness to teach. Then if the Permanent Secretary is satisfied that the applicant is a fit person to teach, the Permanent Secretary **shall** register the teacher and **shall** issue him a certificate to that effect as required by section 31 of the Act.

It is beyond argument that the requirements of section 29, 30 and 31 of the Act are mandatory. They are important to the administration and implementation of the Education Act and not merely matters of machinery for carrying out the purpose of the

Act. The requirement of registration of a person as a teacher once fulfilled confers on that person certain rights and duties. He has a right to be remunerated and a duty to teach. This is why the requirements of the provisions of the Education Act mentioned above must be complied with - not merely for record but as required by law. Failure to comply with a mandatory requirement of a statute may well result in grave consequences.

It has been suggested that all the teachers at KG VI School have not been registered as required by law and as such they have been teaching illegally. I express no views on the suggestion since it is not part of the present proceedings. However it must be observed that the Education Act applies to all schools, primary and secondary schools alike.

In the course of argument counsel for the Plaintiff also argued that his client's right under section 12 of the Constitution has been deprived in that he was prohibited from expressing his views about the Government. Mr Afeau on the other hand argued that as public officer, the Plaintiff's right under section 12 of the Constitution is restricted. Section 12 protects the freedom of expression of the individual and cannot be hindered in the enjoyment of it except with his own consent. No doubt the Plaintiff may pursue his argument in this matter when he comes to argue his case in relation to the first of the charges of misconduct brought against him. I shall therefore express no views on this aspect in this application.

As I have declared that the decision to terminate the Plaintiff was made contrary to the rule of natural justice and therefore void, the Plaintiff is still effectively a public officer holding the post of Principal of KG VI School.

(G.J.B. Muria)
ACTING CHIEF JUSTICE