

OSWALD RAMO -V-. ATTORNEY-GENERAL (representing the Public Service Commission)

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Civil Case No. 099 of 2003

Date of Hearing: 7th August 2003
Date of Judgment: 15th August 2003

Mr I. Kako for the Applicant

Mr F. Walemisia for the Respondent

JUDGMENT

Kabui, J. By an Originating Summons filed on 8th May 2003, the Applicant seeks the determination of the following questions-

1. Whether the termination of the Applicant's employment on the 2nd of March 1999 by way of redundancy when the Applicant was on study leave was contrary to paragraphs 42 and 43 of the Public Service Commission Regulations 1998.
2. Whether the termination of the Applicant's employment by the Respondent on the 2nd of March 1999 when the Applicant never received any of the notices pursuant to his redundancy was contrary to paragraphs 71(b)(i), 72 and 74 of the Public Service Commission Regulations 1998.
3. If the answers to paragraphs 1 and 2 above are in the affirmative the Applicant seeks the following declarations-
 - (a) That the redundancy that was done on him was unfair and was done without any notice or payment in lieu of notice.
 - (b) That the Respondent pays the Applicant his salary for the period from 2nd March 1999 when the Applicant's salary was ceased without notice to 11 of February 2000 when the Applicant received his redundancy payment.
 - (c) That the Respondent reimburses the Applicant for the amount deducted from the redundancy payment in the sum of \$5,411.70.
4. An order that the Respondent pay for the costs of this application.
5. Such other relief that the Court deem fit to make.

The Facts.

The Applicant first entered the Public Service on 10th February 1987 at Level 5 as an Assistant Administration Officer. He was posted to the Ministry of Works in those days. He was later posted to the Gizo Hospital as the Hospital Secretary from 1989 to 1991. He was further posted to the Kilu'ufi Hospital in the same capacity from 1992 to 1993. From there, he was posted as Senior Administrative Officer, (Personnel) to the Malaita Provincial Government from 1994 to 1995. On

February 13 1996, he was appointed acting Deputy Provincial Secretary for the Malaita Provincial Government. He held that office until 1997. On being approved by the Public Service Commission for study leave, he went to Fiji in 1998 to take up a degree course in Management/Administration for a period of 2 years on full pay. On 20th April 1999, he was informed by the Chief Administrative Officer in the Ministry of Provincial Government that he had been made redundant and that his salary had stopped being paid. He later received from the same Chief Administrative Officer the documents about the notice of termination, the recommendation for redundancy and termination of employment. He later received his redundancy payment on 11th February 2000.

Regulations 42 and 43 of the PSC Regulations, 1998.

These regulations do empower the PSC to award scholarships on merit to serving officers in the Public Service. That is all these regulations are about in terms of relevance. There is nothing more to be said about them in this regard. As a matter of law, these two regulations are ultra vires section 116 (1) of the Constitution. Whilst the PSC Regulations were made under section 137 of the Constitution, they must be within the powers of the PSC conferred by section 116 (1) of the Constitution. This section states-

“(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...”

Clearly, the PSC powers are limited to making appointments, confirming them, terminating them, and exercising disciplinary control over public officers holding or acting in public offices. Further training for serving officers in the Public Service is not a matter for the PSC to decide. It is not one of its functions under section 116 (1) of the Constitution. Regulations 42 and 43 are therefore irrelevant. For this reason, it is irrelevant for me to answer question 1 posed in the Originating Summons.

Regulations 71(b)(i), 72 and 74 of the PSC Regulations.

These regulations are about the circumstances in which public officers may be terminated from holding office other than on the ground of misconduct and the procedure to be followed in making such decisions on disciplinary matters. One of the grounds for termination is redundancy exercise undertaken by the Government. This ground is set out in regulation 71(b) (i) of the PSC Regulations. The order in which termination on the ground of redundancy exercise is to be carried out is set out in regulation 72 of the PSC Regulations. The first call will be for volunteers. The next call is for officers who are over 55 years of age. The next are junior officers starting off with the most junior officers for that purpose. Regulation 74 of the PSC Regulations sets out the procedure for informing the officers being affected by the decision to terminate them on the ground of redundancy. Once a recommendation is made to terminate on that ground, the Secretary to the Public Service informs the officers affected of that fact and the reasons for that recommendation being made in the Public Service. The officers affected are given 30 days to respond after which their cases are submitted to the PSC together with the representations received, if any, for its decision.

In terms of termination of appointment on contract of public officers, the PSC has got the absolute power to do that under section 116(1) of the Constitution. Section 135 read with section 137(4) of the Constitution further does confirm this point. (Also see *Wheeler v. The Attorney- General* [1988/89] S.I.LR.54). The reason is that the Government is the employer and not the PSC. The

reason for the existence of the PSC is that it provides a buffer between political influence in the Public Service and the interest of public officers as employees of the Government when it comes to termination of appointment in the Public Service. When an officer is made redundant in the Public Service, it means the office he or she used to hold has been abolished and gone. The same is true where mass redundancy exercise is being carried out. A lot of posts are to be abolished. There is clearly no need to call for volunteers, or to find out whether any of them is over the age of 55 years or to call on the most junior officers to vacate their offices. I think regulation 72 is not required at all to be in the PSC Regulations. Regulation 74 is necessary in so far as informing the officers affected by the redundancy exercise is concerned but not so if the intention is to afford them the opportunity to be heard. If the Government as an employer has made them redundant, what else can they say to the PSC? The posts previously held by the redundant officers have been abolished so that there are no more posts to discuss with anyone. Is it worth being heard at all by the PSC? I do not think so. In the case of redundancy exercise, the termination of appointment on that ground by the PSC is really a legal formality than anything else. The redundancy payments to those made redundant becomes the only issue of importance to those affected after termination by the PSC. In this case, the post previously held by the Applicant was one of the posts abolished in the Government redundancy exercise in 1999 as shown in the affidavit filed by Nancy Legua on 30th May 2003. The Applicant in this case admitted that he did receive his redundancy payment on 11th February 2000 though late it was indeed. I do not think I can answer question 2 in the Originating Summons in the affirmative. I say that it is unnecessary to answer question 2 on the ground that regulations 71(b)(i), 72 and 74 of the PSC Regulations 1998 are irrelevant to the termination of the Applicant on the ground of being made redundant by the Public Service and thus to be terminated by the PSC. I do not therefore need to consider the declarations sought by the Applicant as they are conditional on questions 1 and 2 in the Originating Summons being answered in the affirmative. They have become a non issue in view of the conclusion I have reached on questions 1 and 2 as set out in the Originating Summons. I do sympathize with the plight of the Applicant in the manner he and his family were affected by the Government redundancy exercise. The unfortunate fact however was that on being made redundant, the Applicant's post became non existent and so there was nothing there. The post would no longer appear in the Establishment Register and being so no funds would be made available to it in the Government budget. This is why the Applicant's salary ceased immediately upon his post being removed from the Establishment Register. The question of payment of salary in lieu of notice did not also arise in this case for the same reason. The redundancy exercise was aimed at removing both the posts and bodies that held those posts. Payment of salary in lieu of notice would only apply in the case where the body is being removed from the post but the post remains vacant to be filled at a later date, if necessary. The fact that the Applicant had only received the balance of \$4,447.15 redundancy payment on 11th February 2000 is of no significance in this case. In the result, the Applicant's application is refused. It is dismissed. The parties will meet their own costs.

F. O. Kabui
Judge