

**MATILDA NAOMI -V- ATTORNEY GENERAL and EDUCATION
SECRETARY, MALAITA PROVINCE:**

Kirsty Ruddock for applicant.

Anika Kingmele for the Respondents.

Summons

At Honiara

Hearing: 28 April 2004

Judgment: 30 July 2004

Brown J. On the 19th November 2001 the Teaching Service Commission terminated the applicant from her teaching position with the Service. On the 28 February 2003, the applicant appealed against the termination to the Service Commission. The appeal does not seem to have had an outcome.

Because of the lapse of time, she comes to this court seeking to quash the termination order and also seeks an order of mandamus directed to the Commission, to reinstate her.

In 1999 the applicant first posting as a teacher was to Rokera Provincial Secondary school, Malaita Province. She was paid basic salary of \$546.09 per fortnight and believed the post she held was "level 5." In 2000, she was transferred to Maroupaina Community High School. She spent one year there, but in 2001, was not posted to any school so remained at home in South Malaita. She was given no reason for her non-posting and I accept her evidence on this point.

In May 2001, her salary was reduced to ½ pay, again, without explanation. She approached the Education Officer, Mr. Michael Ma'asia, Southern Region, Malaita Province. He gave no reason for her non-posting and no explanation for her salary change.

In April 2002, she received a call from the Primary Inspectorate, Northern region, Mr. Davidson Rara to go to teach at Atomea CHS. This was by wireless from Malu'u. The applicant resumed teaching at Atomea CHS on the 22 April 2002. Yet on the 19 April her salary payments ceased. As a consequence the Arnon Atomea CHS school assisted her to survive. In June she submitted a Personal Occurrence Form. Nothing came of it.

In September 2002, the applicant went to Auki and spoke to Mr. Thomas Pwanikeni, the school inspector. Nothing happened to resolve the issue of non-payment of her salary.

In December 2002, she went home after telling the proper officers and in January 2003, she spoke to Mr. Lency Waneatomea, Senior Education Officer, Malu'u. The applicant wrote again to the Commission. She again went to enquire at the Education Office, Auki on the 28 February 2003 when she was shown a letter dated 19 November 2001 by the Commission terminating her employment. The basis alleged in the letter was described as "sexual misconduct with a male student." It was alleged to have happened in 1999 at Rokera Secondary School. She was given 3 months from the date of the letter to appeal.

This letter shown her on the 28 February 2003 was the first that she had known about the allegation or termination. I accept her on their points. There is no evidence from the Commission to contradict any of their issues.

She had difficulties in Malaita seeking proper advice and even greater difficulties paying for her trip to Guadalcanal to seek the assistance of the Public Solicitor.

Eventually the Public Solicitor filed their proceedings. The respondent Teaching Service has filed no material in answer to these claims. On the 28 April I heard the claim and reserved my decision to enable me to read the material filed by the applicant.

The principles in relation to matters of certiorari and mandamus may shortly be touched on, as they affect this case.

Standing

This applicant clearly is a person aggrieved by the decision maker for she has lost her employment as a teacher and is vitally interested in the Commission's proceedings. She has standing to bring this action.

Is the decision reviewable?

It is, for that the Commission's decision to terminate is based on the Commission's rules and procedure in relation to appointment and removal of teachers. It is consequently a decision which this Court may review on established principles of judicial review.

Grounds of review.

The appellant had no opportunity to know or answer the allegation about her, before she was terminated. That fact is uncontradicted. The procedure leading up to termination

also clearly breached the Regulations and Teaching Service Hand-book. These grounds, if made out are adequate to justify an order for certiorari (see *Kakono v-A.-G(1991) HC-cc 214/91* where Ward CJ granted certiorari to quash a decision of King George VI school).

Discretion

The order is always discretionary.

There is an absolute absence of procedural fairness exhibited in this case. I propose to exercise my discretion to call up and quash the order of the Teaching Commission (conveyed in its letter 19 January 2001) made on the 19 November 2001 by way of certiorari.

Since the Commission has not properly dealt with the disciplinary charge I also grant mandamus directed to the Commission to re-hear the charges according to law. Because of the effusion of time, the absolute breach of procedural fairness expected by this applicant in the first place; the fact of condonation (by virtue of the applicant's teaching duties since, coupled with the silence of those in authority in the Service who may presumed to have know of the alleged offence) and the fact that the Commission has made no attempt to appear and properly instruct the Attorney-General in this case; I see the Commission as obligated to the teacher to reinstate her to a level and salary scale to which she would have attained has these unfortunate charges not been brought and dealt with, in this unlawful fashion.

The Commission's powers to reconsider this teachers position are not unfettered, for in this case, the Commission has been shown to have acted *ultra-vires* so that its actions flowing on from my order of mandamus must follow fair principles, and should be guided by my comments although *obiter*.

Order

1. The decision to terminate the employment of the applicant by the Teaching Service Commission is brought up to this court and quashed for that it absolutely breached procedural fairness and the Commissions Regulations and Handbook guidelines.
2. An order of mandamus is given directed t the Commission to deal according to law, with any disciplinary proceedings against the applicant, Matilda Namoi.
3. Liberty to apply to this court in relation to the claim for salary reimbursement where the applicant remains aggrieved subsequent to the Commissions dealing with the disciplinary proceedings according to law.

4. The 1st respondent shall pay the applicants costs.