IN THE FIJI COURT OF APPEAL
Civil Appeal No. 9 of 1987.

Between: INIASI TUBERI Appellant

- and -

THE ATTORNEY-GENERAL AND APPEALS BOARD
Respondents

K. Bulewa for the Appellant.
N. Nand for the Respondents.

Date of Hearing : 11th March, 1987 (In Chambers)

Delivery of Judgment: 13th March, 1987

R U L I N G

Roper, J.A.

On the 16th January 1987 Rooney J. made an order on an ex parte application granting the Attorney-General (representing the Public Service Commission) leave to apply for judicial review of a decision given by the Public Service Appeals Board.

The background to this matter is that one Iniasi Vodo Tuberi, then a school teacher, was dismissed from his employment by the Public Service Commission. He appealed against that decision to the Public Service Appeals Board. He was successful, and has been re-employed in the Ministry of Education. The Public Service Commission seeks a review of the Appeals Board's decision with a view to having it quashed.

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This is an appeal by Mr. Tuberi against Rooney J's grant of leave. Mr. Bulewa for the Appellant raised three grounds of appeal, the first of which reads:-

> "THAT the Learned Trial Judge erred in law in granting leave for Application for Judicial Review to the Respondents when no review was permissible in law according to the provisions of Section 14(11) of the Public Service Act, Cap. 74."

Section 14(11) reads:-

> " Proceedings before the Appeal Board shall not be held bad for want of form. No appeal shall lie from any decision of the Appeal Board, and, except on the ground of lack of jurisdiction other than for want of form, no proceedings or decision of the Appeal Board shall be liable to be challenged, reviewed, quashed, or called in question in any Court."

It is clear from the affidavit and the statement filed in support of the application for leave that the question of "jurisdiction", in the wide sense in which it is used in this field of the law, is very much in issue. For example, it is alleged that the Appeals Board exceeded its jurisdiction when it enquired into the propriety and findings of an earlier Inquiry set up by the Commission; that it otherwise took into account irrelevant and immaterial matters of fact; and exceeded its jurisdiction by enquiring into and adjudicating upon the reasons for Mr. Tuberi's dismissal, when by law it was restricted to a consideration of whether the punishment was excessive. All of these matters go to jurisdiction, so that prima facie the grant of leave was justified.

The second ground of appeal reads:-

"THAT the Learned Trial Judge erred in law and in fact in accepting the substance and contents of the affidavits of Mr. J.K.L. Maharaj, Solicitor and Mr. Rupan Shiu Rattan, Public Service Commission Representative, as a basis for granting leave to apply for Judicial Review when such affidavits contained factual errors."

In fact Mr. J.K.L. Maharaj did not file an affidavit but was the signatory to the Statement filed pursuant to Order 53 Rules 1 and 4.

The only "factual error" Mr. Bulewa could point to in Mr. Rattan's affidavit was what might be regarded as an overstatement of the effect of an earlier judgment of Sheehan J. when Mr. Tuberi himself had sought judicial review. It is a matter which appears to have little, if any bearing, on the Commission's present application for review, and we see no merit in this ground of appeal.

The third ground reads:-

"THAT the Public Service Commission does not have sufficient interest in the matter to which the application for Judicial Review relates as is required under Order 53 Rule 3(5) of the Supreme Court Rules 1967."

The procedure under Order 53 involves two stages, an application for leave to apply for judicial review and, if leave is granted, the hearing of the application itself. Rule 3(5) specifically requires the Court to consider at the first stage whether "it considers that the applicant has a sufficient interest in the matter to which the application relates".

As might be expected on an ex parte application Rooney J. gave no reasons for granting leave but simply noted the file that leave had been granted. Mr. Bulewa's

complaint, which he accepted was based solely on "a hunch", was that in fact Rooney J. did not, or may not have, turned his mind to the question of the Commission's standing. He based this contention on the decision of Rooney J. in another case in which he had said on an application for leave "that the question of sufficient interest need not be considered at this stage". We have looked at that decision and we do not agree that Rooney J. was saying that the question of "sufficient interest" could be wholly ignored at the application for leave stage. The decision was R. v. Public Service Appeals Board (Judicial Review 26/1986; judgment 9th February 1987). The position was that he had expressed some doubts concerning "sufficient interest" for reasons which could well be the subject of detailed legal submission. He then cited Inland Revenue Commissioners v. National Federation of Self Employed and Small Businesses Ltd [1982] A.C. 617 and then said the words on which Mr. Bulewa relied:-

> "that the question of sufficient interest need not be considered at this stage."

It is manifest that he was there referring to the question of "sufficient interest" in that particular case and was correctly following the authority of the Small Businesses case, the headnote to which reads:-

> "(1) The question whether for the purposes of RSC Ord. 53, r. 3(5) an applicant for judicial review had a 'sufficient interest in the matter to which the application relates' was not, except in simple cases where it was obvious that the applicant had no sufficient interest, a matter to be determined as a jurisdictional or preliminary issue in isolation on the applicant's ex parte application for leave to apply. Instead it was properly to be treated as a possible reason for the exercise of the court's discretion to refuse the application when the application itself had been heard and the evidence of both parties presented, since it was necessary to identify 'the matter' to which application related before it was possible to decide whether the applicant had a sufficient interest in it."

That ground too, we reject.

In our opinion there is no basis for challenging the grant of leave. In saying that we stress that we have not held that jurisdictional matters are in issue, or that the Commission has standing, but only that a prima facie case has been established.

The appeal is dismissed with costs to be costs in the cause.

Vice-President

Judge of Appeal

Judge of Appeal