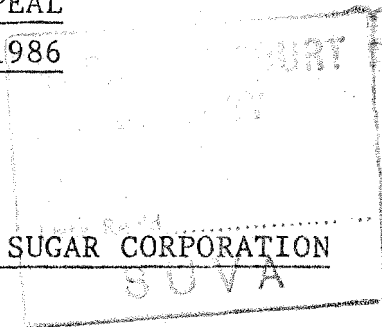


IN THE FIJI COURT OF APPEAL
CIVIL APPEAL NO. 74 OF 1986



Between:

FIJI SUGAR CORPORATION

Appellant

- and -

SUGAR MILLING STAFF OFFICERS ASSOCIATION

Respondent

Mr. B. Sweetman for the Appellant
Mr. H. M. Patel for the Respondent

Date of Hearing: 5th September, 1988

Delivery of Judgment: 19th Septmeber, 1988

JUDGMENT OF THE COURT

This is an appeal by the Fiji Sugar Corporation from the judgment of the Supreme Court dated 20th October, 1986 which set aside the ruling of the Sugar Industry Tribunal dated the 4th of July, 1986 that it had no power to order the reinstatement of a dismissed officer of the Fiji Sugar Corporation.

There is only one ground of appeal namely:-

"The learned Judge erred in law in holding that the Sugar Industry Tribunal had power to order the reinstatement of Nitya Reddy following a finding that his dismissal was wrongful or unlawful or unfair."

This case arose from an Industrial dispute between the Fiji Sugar Corporation and the Sugar Milling Staff Officers Association over the summary dismissal of Mr. Nitya Reddy, a senior accountant of the Corporation.

At the time Mr. Reddy was the President of the Association.

The Tribunal's jurisdiction under the Sugar Industry Act was invoked by the Industrial Commissioner under section 104 of the Sugar Industry Act. The certificate of dispute referred to the Tribunal by the Industrial Commissioner states inter alia that:-

"the dispute revolves around the dismissal of Mr. N. N. Reddy and the respective claims by the parties are:-

The Fiji Sugar Corporation claim that it acted lawfully in dismissing Mr. Reddy.

The Association claim that -

- (a) The F.S.C. did not follow the agreed disciplinary procedures set out in clause B.9 of their collective agreement when they sought to suspend Mr. Reddy.
- (b) The F.S.C. acted unlawfully and unreasonably in dismissing Mr. Reddy.
- (c) Mr. Reddy should accordingly be reinstated."

When the matter came up before the Tribunal on the 17th of June, 1986 a preliminary issue was raised by the parties and the issue was formulated by the Tribunal in these words:-

"If dismissal was found to be unlawful or unfair whether the Tribunal has the power to order reinstatement of Mr. Reddy (the officer) or to award him compensation."

It was common ground that Mr. Reddy the officer concerned was dismissed by the Corporation on 5th June, 1986. The contention of Mr. Sweetman, Counsel for the Corporation, was that under the provisions of the Sugar Industry Act and the collective agreement, the Tribunal was only competent to award compensation if it found that the dismissal of the officer was unlawful or unfair. Mr. J. R. Reddy, counsel for the Association, submitted however that the Tribunal

should on such finding order reinstatement. After hearing counsel on the question the Tribunal held that:-

"it had no power in the circumstances of this dispute to order that the officer be reinstated if it finds his dismissal was unfair."

It must be said that the respective positions taken up by the Corporation on the one hand and the Association on the other were consistent throughout the various stages of this case before the Tribunal, before the Supreme Court and before us.

The appellant maintains that under the Sugar Industry Act, there is no provision which empowers the Tribunal to order reinstatement. Nor is there any power to order reinstatement under the common law. It would appear that the Corporation's position is that if the Tribunal found the dismissal to be unlawful or unfair, the utmost it can do is to award compensation.

The power to award compensation is specifically set out in section 105(1)(d). But that subsection caters to a different situation. Where there has been contraventions of any term of an award or any term of any collective agreement compensation is the answer. In the instant case there are no contraventions of the terms of any award and admittedly the collective agreement does not contain any reference to reinstatement based on unfair dismissal as some other collective agreements in Fiji do. Therefore section 105(1)(d) does not cover the present dispute. Of course the Tribunal can award compensation in any case under its general powers under the Act. One has to read the Act as a whole in order to gather the powers of the Tribunal.

We find on the reading of the provisions of the entire Act and considering the scheme of the Act as a whole that the Act vests in the Tribunal amplitude of power which must be deemed to include the power of reinstatement. Section 117 of the Act under the heading Relief granted not limited to any relief claimed states:-

"In making an award in relation to any proceeding before the Tribunal under this Act the Tribunal shall not be restricted to any specific relief claimed by any party in the course of the proceedings, but may include in the award any matter or thing which the Tribunal thinks necessary or expedient, in particular in the case of proceedings relating to an industrial dispute or to prevent further disputes."

If the Tribunal is empowered to include in the award any matter or thing even if they do not arise from a specific relief or demand made by a party, a fortiori it has power to grant relief on a specific claim or demand made by a party.

This is a section which gives ample powers to the Tribunal to enable it to settle industrial disputes. In this case the relief claimed by one party is reinstatement. The dispute is really twofold.

1. Whether the dismissal of the officer was unlawful or unreasonable; and
2. If the dismissal was unlawful or unreasonable the officer should be reinstated.

The two parts form the whole. According to the Association there is no half-way house. Of course on the evidence it may be that the Tribunal may grant less. But the crux of the matter is that on the Industrial Commissioner's certificate it is competent to the Tribunal to order reinstatement.

If however the dismissal was found to be lawful and reasonable there should naturally be no reinstatement. The Industrial Commissioner therefore obviously did not state the negative in his certificate of dispute. Therefore the issue before the Tribunal specifically

included the question of reinstatement by one party. That question was therefore properly before the Tribunal. In fact it is the certificate of dispute which gives the Tribunal its jurisdiction. Under the Act the Tribunal cannot decline to exercise the jurisdiction conferred on it by the Industrial Commissioner's certificate of dispute. He is obliged under the Act (particularly under section 105) to hear and determine the dispute unless under subsection (1) he remits the matter in dispute to the parties or to the Industrial Commissioner for further consideration with a view to settling or reducing the matters in dispute.

Under section 105(2) the Tribunal shall:-

- (a) carefully and expeditiously hear, inquire and investigate the matters in dispute and all matters affecting the merits of the case and the just settlement of the matters in dispute;" (The underlining is ours).

It will therefore be seen that the Tribunal was obliged in law to resolve the dispute. If it is necessary to order reinstatement in order to enable the just settlement of the matters in dispute, the Tribunal is required to order accordingly. It is a matter entirely for the Tribunal. Nor is there any reason why the Tribunal should feel circumscribed in the discharge of its legal responsibilities when the Act gives it ample powers under section 26(a), section 105(2) and section 117.

The Tribunal's jurisdiction commences only after all the mediation efforts of the Industrial commissioner under section 103 and section 104 have been exhausted. The matter then comes before the Tribunal for it to exercise its amplitude of powers to resolve the dispute.

It seems to us that the legislature had in view the appointment of a high-powered Tribunal. Section 18(2) stipulates that the appointee shall be a person qualified to be appointed a Judge of the Supreme Court or be a

person with extensive experience in economics or industrial relations. One also finds various other sections of the Sugar Industry Act by which powers are conferred on the Tribunal to intervene in crucial situations in other spheres when a crisis or impasse is reached. It should therefore be no surprise that the Tribunal was also vested with the power to reinstate a dismissed officer.

Section 26 expressly states:-

"The Tribunal shall have power -

- (a) to hear and determine industrial disputes which have been certified by the Industrial Commissioner to be industrial disputes under this Act."

There is no reservation whatever of any kind.

Section 105(1)(b) empowers the Tribunal, to:-

"make an award (including a provisional or interim award) relating to any or all of the matters in dispute or give a direction in pursuance of the hearing or determination".

If the Tribunal's determination is that the officer's dismissal was wrongful it is empowered to give a direction to reinstate the officer. There is no limitation imposed by the Act on the Tribunal as to its powers of settling disputes in the interests of the Sugar Industry.

It seems to us that the Tribunal went wrong because in deciding the question whether it had power to reinstate a dismissed officer it thought it fit at that stage to consider whether reinstatement of an officer might be objectionable because of the law relating to contract of personal service. In any event it might have been better if that question had been postponed for consideration to the end of the whole inquiry. It may well be that the Tribunal was influenced by the weight of the authorities cited by counsel for the Corporation most of which relate

to common law situations. The appropriate and proper question for consideration by the Tribunal at that preliminary stage was simply whether it had the power to order reinstatement or not in the context of the Act. The question at that stage was whether it could do so under the powers vested upon it by the Act; not whether it would do so.

It is hardly possible in our view that in enacting the Sugar Industry Act as late as 1984, the legislature would not have had in mind the wide-ranging labour legislation that had been enacted all over the world at that time. Authorities were cited both before the Tribunal and the Supreme Court about cases which had been decided under modern labour legislation particularly in Australia. But Mr. Sweetman for the Corporation argued before the Tribunal, the Supreme Court and before us that these cases were based on modern labour legislation in the countries concerned. He argued that such labour legislation had still not made inroads into the common law applicable in Fiji. Even in GUNTAN V. LONDON BOROUGH RICHMOND UPON THAMES [1980] 3 All E.R. 577 (a case cited by him). Buckley L.J. cites the judgment of the Judicial Committee of the privy Court in Francis v. Municipal Councillors of Kuala Lumpur [1962] 3 All E.R. 633 at 637 as saying:-

"This is a consequence of the general principle of law that the courts will not grant specific performance of contracts of service. Special circumstances will be required before such a declaration is made and its making will normally be in the discretion of the court. In their Lordships' view there are no circumstances in the present case which would make it either just or proper to make such a declaration".

It will therefore be seen that even in such jurisdictions there can be special circumstances which would justify an order for specific performance. The other authorities cited by Mr. Sweetman too do not seem to be helpful. They seem to be out of tune with the modern view of industrial relations.

We find that in some jurisdictions the statutes concerned do not use the word "reinstatement" at all. For instance as illustrated by the case of Australian Consolidated Press Ltd v. Federated Miscellaneous Workers Union (No. 1) (1973) A.R. (N.S.W.) 181 the Industrial Arbitration Act 1940 does not even mention the word "reinstatement". But nevertheless the Conciliation Commissions and Industrial Commissions have ordered reinstatement. In that case Sir Alexander Beattie J., Cahill J. and Watson J. (Industrial Commission in Court Session) made the following observations:-

"These provisions have been regarded as giving authority to conciliation committees and also to the Industrial Commission (see section 30) to make an order against an employer to reinstate in employment an employee whose services have been terminated notwithstanding that in terminating them the employer has not committed any breach of contract or of any relevant award or other law. It may be observed that there is no express provision for the making of an order that an employee be reinstated. But the power to make an order or an award "determining any industrial matter" has been regarded as extending to the making of such an order".

We are of the view that the Tribunal has the power not only to order reinstatement but also to do so if the force of the evidence before it compels it to take that course for "the just settlement of the matters in dispute". The Tribunal has ample power to:-

"include in the award any matter or thing which the Tribunal thinks necessary or expedient, in particular in the case of proceedings relating to an industrial dispute for the purpose of preventing or settling the matter in dispute or of preventing further disputes." (The underlining is ours).

9.

We are of the view that the learned Judge did not err in law in holding that the Sugar Industry Tribunal had power to order reinstatement.

We therefore dismiss the appeal with costs to the respondent to be taxed if not agreed.

T. Tivaga

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President, Fiji Court of Appeal

M. L. ...

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Justice of Appeal

[Signature]

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Justice of Appeal