

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0027 OF 2002S
(High Court Civil Action No. HBJ 12 of 1999S)

BETWEEN:

DISCIPLINARY SERVICES COMMISSION

Appellant

AND:

BENIAMINO NAIVELI

Respondent

Coram:

Reddy, P
Barker, JA
Davies, JA

Hearing:

Thursday, 6th February 2003, Suva

Counsel:

Messrs. J.J. Udit and E. Tuiloma for the Appellant
Messrs. V.M. Mishra and R. Prakash for the Respondent

Date of Judgment: Friday, 14th February 2003

JUDGMENT OF THE COURT

This is an appeal from a judgment of a Judge of the High Court of Fiji, Fatiaki J. who made the following order; inter alia:

- “(a) *That Order for certiorari do issue to quash the decision made by the Disciplined Services Commission on 22nd July 1998 whereby the Applicant was dismissed from his position as the Assistant Commissioner of Police (Crime) in the Fiji Police Force.*”

There was also before his Lordship a claim for compensation or damages. That claim, which is still proceeding, was directed principally or wholly to the State of Fiji which is not a party to the present appeal. The order made by his Lordship finally determines the rights of the parties insofar as the proceedings concerned the application for prerogative relief. The order made by his Lordship was a final order and the notice of appeal therefrom was filed in time. The Disciplinary Services Commission was as appropriate appellant.

It is not in dispute that the grant of prerogative relief to the present respondent, Beniamino Naiveli, accorded with the answer given by this Court on 1 March 2002 to a question posed by the learned trial Judge in the proceedings before him. The complaint of the appellant is directed to the reasons for judgment of this Court. As no new issue has been raised in the appeal, it is sufficient to say that the Court adheres to the reasons for judgment which it delivered on 1 March 2002. Accordingly, the appeal as to the grant of prerogative relief must be dismissed.

The notice of appeal also challenged an interlocutory order made by the trial Judge with respect to the claim for compensation. It was conceded by Mr. J.J. Udit, with whom Mr E Tuiloma appeared for the appellant that this claim was included in the notice of appeal in error, as the claim for compensation is still proceeding and concerns the State of Fiji, rather than the appellant. The challenge to the compensation order therefore did not proceed.

At the end of hearing of the appeal, the Court heard Mr Udit and Mr V.M. Mishra, with whom Mr R. Prakash appeared for the respondent, on an application by the appellant for leave to appeal to the Supreme Court should the appeal be dismissed.

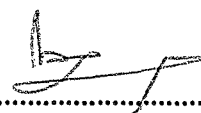
Section 122(2) of the Constitution provides that this Court may grant leave to appeal on a question certified by it to be of significant public importance. The issue determined by the Court was not an issue of public or general importance, but concerned the meaning and effect of the Police Service Commission Regulations. The issue was determined on the words used in the Regulations, not on any principle of general application. Moreover, the issue appeared to have arisen from facts relating to the respondent, Beniamino Naiveli. He was dismissed from the Police Force without being offered the benefit of the disciplinary procedures specified in the Regulations.

In the view of the Court, the case does not involve a question of significant public importance. The application for leave to appeal must therefore be dismissed.


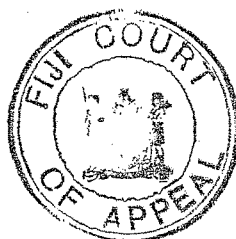
The orders of the Court are therefore:

- (1) That the appeal as to the grant of prerogative relief is dismissed.

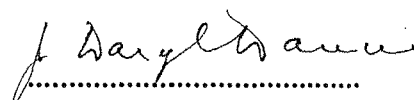
- (2) That the appellant, the Disciplinary Services Commission pay the respondent's costs of the appeal, which are fixed at \$1,000.
- (3) The application for leave to appeal to the Supreme Court is dismissed.



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Reddy, P



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Barker, JA



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Davies, JA

Solicitors:

Office of the Attorney-General, Suva for the Appellant
Messrs. Mishra Prakash and Associates, Suva for the Respondent