

IN THE HIGH COURT OF FIJI

At Suva

Civil Jurisdiction

JUDICIAL REVIEW NO. 0038 OF 2007

IN THE MATTER of an application by SUNIL KUMAR for leave to apply for Judicial Review under Order 53 Rule 3(2) of the High Court Rules of Fiji

And

IN THE MATTER of the decision of the Judicial Service Commission dated the 10th day of October 2007 relating to the non renewal of contract as Resident Magistrate

Between : THE STATE v. JUDICIAL SERVICE COMMISSION and THE ATTORNEY GENERAL OF FIJI Respondents

Ex-parte : SUNIL KUMAR (s/o Baiju) Applicant

Counsel : Applicant in Person
Mr. A.K. Narayan and Mr. S. Sharma
for the Respondents

Date of Hearing : 18th December 2007
Date of Ruling : 21st December 2007

RULING

- [1] In the first part of 2003 the applicant, Mr. Sunil Kumar was a Principal Legal Officer in the Attorney General's Chambers. By an application of 12th of February 2003 he applied to become a Resident Magistrate. By a letter dated 1st July 2003 he was informed that the Judicial Services Commission had approved his appointment for a term of four years with effect from 7th July 2003. That appointment expired in July 2007 and, after a short extension, no further contract was offered to him.
- [2] He brings Judicial Review proceedings of this decision. In his application for leave he cites a number of grounds, the principal ones of which can be summarised as follows,
1. That he was not terminated from the Public Service upon his appointment as a Magistrate but transferred. Therefore, he should be in a position to take up his appointment with the Public Service again.
 2. That when he took up the appointment as Resident Magistrate there was a legitimate expectation, given the practice with others before him, that at the expiry of the four year period he would be offered a permanent position as a Magistrate, as long as there was nothing to his detriment. It is not suggested there was anything to his detriment.
 3. Mr. Kumar alleges that the Judicial Services Commission's process contained a number of defects which are reviewable.
- [3] The respondents oppose the application for leave for judicial review. They state that this is in effect a private law and not a public law matter.

Mr. Kumar could not expect to remain a member of the Executive when taking up a judicial appointment. Further, whatever was the position with others, Mr. Kumar took up a four year contract and that expired. It was of no consequence whether or not the Solicitor General had mistakenly thought he could be transferred. The respondents say that there is simply insufficient evidence to maintain the third ground upon which leave is sought.

- [4] I have before me the affidavit of Mr. Kumar filed on 16th November 2007 together with the application for leave for Judicial Review including the relief sought and grounds and the statement. I also have a Notice of Opposition and the affidavit of Emosi Koroï filed on the 12th December 2007. Both parties have placed written submissions before me.
- [5] The single and most important fact advanced by the respondents in opposition is that at the time of taking up the position of Resident Magistrate the applicant was a Principal Legal Officer and therefore well versed in the law. It would have been obvious to him what the legal position was and the consequences of his accepting a contract with a four year limitation period.
- [6] I accept this argument. One is not dealing with someone in the Public Service who might have little or no knowledge of the law but an applicant who is well versed in the law.
- [7] In making this judgment I pass no comment as to whether in principle it is a good practice to appoint judicial officers on fixed term contracts. That is not a matter for me to comment upon here.
- [8] I can see no argument on the face of the papers before me to say that Mr. Kumar did other than sign a contract for four years. At the conclusion of that contract obligations thereunder would cease, there

were no remaining obligations as far as the Public Service were concerned (in any event the Public Service Commission is not a party to these proceedings) and any further employment would be a matter for both parties to agree a new contract, if they wished.

[9] I do not need to make any express finding as to whether the contract which Mr. Kumar had fell into the private or public domain. Further, I also express no comment whichever it was, whether it would be incapable of justiciability for Judicial Review purposes.

[10] In the circumstances before me and on the face of the documents, it is difficult to see how it could be argued that a legitimate expectation could have arisen at any time that Mr. Kumar would be granted permanent status as a Resident Magistrate at the expiry of the four year contract. The fact that others, at the expiry of contract, had been offered permanent appointments does not in itself mean that such an expectation could be raised. There is only evidence of one possible such example, namely Mr. Nakora, and that happened a year before the commencement of Mr. Kumar's contract. I find the fact that Mr. Nakora had a detailed contract whereas Mr. Kumar only had a letter of appointment in itself makes no difference. Further, had the four years or a lesser period been described as some kind of probationary period after which, on successful completion, a permanent appointment would be offered than there might be some argument here. There was no such description of the time in that guise.

[11] I turn to the third ground of application. There is simply insufficient evidence on the face of the papers to sustain this argument.

- [12] In these circumstances I must refuse leave to apply for judicial review. The respondents are entitled to their costs. I summarily fix those at \$250.00.

R.J. Coventry

(R.J. Coventry)

JUDGE