

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

CASE NUMBER: ERCC 11 of 2016

BETWEEN: TEVITA ULUILAKEBA

PLAINTIFF

AND: THE COMMISSIONER OF POLICE

1st DEFENDANT

AND: ATTORNEY - GENERAL

2nd DEFENDANT

Appearances:

Mr. Niko Nawaikila for the Plaintiff.

Mr. A. Prakash for the Defendants.

Date/Place of Judgment:

Wednesday 31 May 2023 at Suva.

Coram:

Hon. Madam Justice A. Wati.

JUDGMENT

Catchwords:

Employment Law - worker terminated from Fiji Police Force under the State Services Act 2009 - he brings a claim for unlawful dismissal on the grounds that he was not accorded natural justice and a disciplinary process - the worker was terminated under the now repealed State Services Act 2009 - the pivotal question therefore before the Court is whether the worker can challenge the decision made by the Commissioner of Police under the State Services Act 2009 and there being no provision in that law to be able to challenge any decision - s. 173(4) (d) of the Constitution of Fiji prohibits challenge of any decision taken under the laws made between 5

December 2006 and the first sitting of Parliament unless there is a provision in that law that allows for the challenge - proceedings to be terminated.

Legislation:

1. *Constitution of Fiji: s. 173 (4) (d).*
 2. *State Services Act 2009: s. 21.*
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1. The plaintiff brings this action against his former employer for unlawful and unfair dismissal from his employment. He was employed as a Police Officer since 19 September 1986 to 25 October 2011. He was promoted to the rank of a Superintendent in 2010.
2. On 10 January 2011, he was interdicted from his duty pending investigations with effect from 12 January 2011 on half salary. He was summarily dismissed from his employment on 20 October 2011.
3. The plaintiff claims that his dismissal was unlawful for want of natural justice. He states that he should have been accorded the disciplinary process and in absence of a hearing being accorded to him, his dismissal is unlawful.
4. He claims that when people made enquiries about him, they were told about the reason for the dismissal, and this tarnished his reputation and brought disrepute to his character and integrity.
5. The plaintiff states that the denial of natural justice through the disciplinary process caused him depression, mental anguish, trauma, feeling of despair and lack of self-worthiness. He therefore claims a total sum of \$341,600 as

compensation for lost wages and benefits including contributions to his Fiji National Provident Fund and his annual leave pay.

6. The defendant states that the plaintiff was summarily dismissed pursuant to s. 21 (8) (b) of the State Services Act 2009 after the allegations of abuse of office was established.
7. Counsel for both the parties had proceeded to convene a pre-trial conference. They outlined 3 issues to be determined by the Court. The issues surround his dismissal and the lawfulness of the same. However what both counsel have failed to address me on is the very question of jurisdiction to entertain the claim.
8. The plaintiff was terminated by the Commissioner of Police in 2011. After the abrogation of the 1997 Constitution, the office of the Commissioner of Police was re-established by s. 21 (1) of the State Services Act 2009.
9. The Commissioner of Police derived its powers to remove the plaintiff pursuant to s. 21 (8) (b) of the State Services Act 2009 which states that:

“ Notwithstanding anything to the contrary in any written law, the Commissioner of Police has the following powers in relation to the Fiji Police Force for all ranks and members of the Fiji Police Force:

- (a) To make appointments in the Fiji Police Force***
- (b) To remove officers in the Fiji Police Force***
- (c) To take disciplinary action in the Fiji Police Force.***

and all written law governing the Fiji Police shall be construed accordingly”.

10. It is very clear that the Commissioner of Police acquired its powers under s. 21 (8) (b) of the State Services Act 2009 to remove the plaintiff from the Fiji Police Force. The decision was made under that provision of the law. That decision now cannot be challenged under s. 173 (4) (d) of the Constitution of Fiji which states:

“173(4) Notwithstanding anything contained in this Constitution, no court or tribunal (including any court or tribunal established or continued in existence by the Constitution) shall have the jurisdiction to accept, hear, determine, or in any other way entertain, or to grant any order, relief or remedy, in any proceeding of any nature whatsoever which seeks or purports to challenge in question...

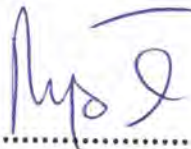
(d) any decision made or authorized, or any action taken, or any decision which may be made or authorized, or any action which may be taken, under any Promulgation, Decree or Declaration, and any subordinate laws made under any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution, except as may be provided in or authorized by any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution”.

11. The State Services Act 2009 was made between 5 December 2006 and the first sitting of the Parliament. Since the decision to terminate was made under the State Services Act, that decision cannot be challenged in this Court.

12. If there was any provision in the State Services Act 2009 allowing the plaintiff to challenge the decision made under that law then he could have brought an

action challenging his dismissal. There is no provision in the State Services Act 2009 which allows for the Commissioner's decision to be challenged. This Court therefore does not even have jurisdiction to hear the claim under s. 173 (4) (d) of the Constitution of Fiji.

13. The State Services Act 2009 has now been repealed by the Constitution of Fiji but the decision taken under the repealed laws, as clearly outlined by s. 173 (4) (d) of the Constitution, cannot be challenged.
14. I will be acting in contravention of the Constitution of Fiji if I go any further than this and deal with the substantive claim.
15. In the final analysis, I find that I do not have jurisdiction to entertain the plaintiff's claim under s. 173(4) (d) of the Constitution of Fiji. I strike out the claim on the grounds of jurisdiction.



Hon. Madam Justice Anjala Wati

Judge

31. 05. 2023

To:

1. *Plaintiff,*
2. *Attorney - General's Chambers for the Defendants.*
3. *File: Suva ERCC 11 of 2016.*