

IN THE EMPLOYMENT RELATIONS COURT
AT SUVA

ERCC 27 of 2018

BETWEEN : **DHIRENDRA PRASAD**

APPLICANT

AND : **MINISTRY OF EDUCATION, HERITAGE AND ARTS**

RESPONDENT

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Mr. D. Nair for the Applicant**

: **Ms. P. Singh for the Respondent**

Date of Hearing : **29 August 2023**

Date of Decision : **29 January 2024**

DECISION

EMPLOYMENT

Application to strike out – Nonrenewal of employment

contract – Employment Relations Act 2007

1. The applicant filed a notice of motion seeking declarations that the respondent's decision dated 16 November 2018 not to renew his employment contract is unlawful, unjustified and unfair, that the failure to give him an opportunity to present his case concerning certain allegations was procedurally unfair, lacked impartiality and was a breach of natural justice and that the panel that made findings against him was biased and lacked impartiality and independence. He also sought an order for the renewal of his contract. The notice of motion was supported by the applicant's affidavit.
2. The applicant stated that he joined the public service in 1990 as a primary teacher and progressed to the position of head teacher. On 31 March 2016, he was suspended without pay after certain allegations were made against him. On 19 July 2016, he was demoted, issued a warning and transferred to another school. He was again suspended by letter dated 4 July 2017 and certain charges were laid against him, but these were later withdrawn. He was appointed head teacher on 13 August 2017 until 31 August 2018. By letter dated 16 November 2018, the respondent informed the applicant that his contract expired on 05 October 2018, and that it would not be renewed. The applicant said he was not allowed to present his case. He stated that he continued in employment after his contract expired on 31 August 2018 and, therefore, his contract should be deemed to have continued under the existing terms.
3. The respondent's permanent secretary, Alison Burchell, deposed an affidavit in response, which was filed on 16 April 2019. She gave details of the allegations against the applicant, and said he was suspended without pay to facilitate investigations. Although the applicant was issued a final warning, demoted and transferred, the penalty imposed on him was revoked and he was reinstated following a review by the civil service reform management unit (CSRMU). She said that the review determined that the penalty was not in accordance with the

permanent secretary's authority. Thereafter, the applicant was advised that the ministry would determine whether disciplinary action should be instituted against him. On 4 July 2017, the applicant was issued with a suspension letter without pay with effect from 10 July 2017 for alleged abuse of office while he was head teacher of Gandhi Bawan Primary School. The matter was referred to the public service disciplinary tribunal (PSDT). The charges related to the unauthorised issue of cheques and misappropriation of funds. Several disciplinary cases instituted before the PSDT were withdrawn in order to examine whether internal processes were properly followed in initiating those proceedings. The applicant's case was among those withdrawn for that reason. Proceedings against him were withdrawn on 26 April 2018.

4. The respondent stated that after reinvestigating the allegations against the applicant, he was issued a letter of the outcome and informed that his contract would not be renewed. The respondent stated that the applicant's contract expired on 5 October 2018 and it was not renewed by the permanent secretary. The applicant reply to the respondent's affidavit in response was filed on 1 May 2019.
5. After the completion of pleadings, the respondent filed a summons on 18 November 2019 to strike out the applicant's notice of motion under Order 18 rule 18 (1) (d) of the High Court Rules 1988 on the following grounds:
 - (i) "It relates to an employment grievance that fails to comply with section 188(4) of the Employment Relations Act 2007 ('Act') and therefore exceeds the jurisdiction of this Court; and
 - (ii) It is otherwise an abuse of court process

And upon the following specific grounds:

- (i) The employment grievance involves Government which is an essential service and industry and, is therefore to be dealt with in accordance with Parts 13 and 20 of the Act, pursuant to section 188(4) of the Act;
- (ii) The employment grievance was not firstly referred for mediation services process in accordance with section 110(3) of the Act; and

(iii) The application has therefore been prematurely brought before this Honourable Court and consequently exceeds the jurisdiction of this Court”.

6. At the outset, counsel for both parties submitted that the decision in this case would depend on the outcome of ERCC 5 of 2019 (*Timaima Vulimailauala v Ministry of Education, Heritage and Arts*). However, after the decision in that case was delivered on 6 March 2023, counsel for the applicant was inclined to continue with this proceeding.
7. The respondent submits that it is an essential service and industry in terms of section 185 of the Employment Relations Act 2007. Section 188 (4) requires an employment grievance in an essential service and industry to be lodged or filed within 21 days from the date on which the employment grievance first arose.
8. Section 211 (1) (a) confers jurisdiction on the Employment Relations Tribunal to adjudicate an employment grievance, which is defined in section 185 of the Act. Section 220 of the Act concerns the jurisdiction of the Employment Relations Court. The section does not confer original jurisdiction on the court to adjudicate an employment grievance, except in specified situations, that are not applicable to this case. The jurisdiction of the court to adjudicate an employment grievance was discussed in *Buksh v Bred Bank*¹. Some of the matters raised by the applicant concern an employment grievance. These must be referred to mediation services under the Employment Relations Act.
9. The respondent’s affidavit in response averred that the applicant filed an employment grievance on 9 December 2018 concerning his demotion and transfer. He is said to have claimed lost entitlements during the period of demotion and compensation for humiliation, loss of dignity and injury to feelings. The permanent secretary says the grievance was heard on 22 March 2019. The respondent states that the ministry has rectified the shortfalls in the applicant’s salary during his suspension and demotion. The applicant did not make reference to the employment grievance in his affidavit in support, but referred to it in his reply to the respondent’s affidavit in response. The

¹ [2021] FJHC 59; ERCC 02.2019 (27 August 2021)

documents of that case are not before court, and the parties have not indicated its outcome.

10. The applicant has sought an order to renew his expired contract of employment. He has not shown any rights arising from his employment contract by which he is entitled to such renewal.

ORDER

- A. The applicant's notice of motion filed on 10 December 2018 is struck out.
- B. The parties will bear their respective costs.

Delivered at **Suva** this **29th** day of **January, 2024**.



M. Javed Mansoor
Judge