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v

THE PERMANENT ARBITRATOR,
THE ATTORNEY - GENERAL &
THE FIJI BROADCASTING COMMISSION

[HIGH COURT, 1990 (Palmer J) 18 May]

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Civil Jurisdiction

Crown (State) proceedings- whether the Permanent Arbitrator is an officer of the Crown (State) - Crown (State) Proceedings Act (Cap 24) Section 3.

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The High Court being called upon to make a preliminary ruling on the issue HELD: that the Permanent Arbitrator (appointed under Section 21 of the Trades Disputes Act - Cap 97) is a servant of the Crown (State).

Per Curiam: The Permanent Arbitrator is not a public servant.

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No case was cited.

V. Parmanandam for the Plaintiff

Mrs C. Manuel for the First and Second Defendants

J.G. Singh for the Third Defendant

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Determination of preliminary issue by the High Court

Palmer J:

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The Plaintiff in this action has issued a Writ claiming damages for defamation. The Statement of Claim alleges that the First Defendant issued a news statement to the Third Defendant which was broadcast by the Third Defendant and which it is said is defamatory of the Plaintiff. The Second Defendant is being sued as the legal representative of the government of the Republic of Fiji.

Pursuant to an Order made on the Defendant's application under Order 33 Rule 3. I am asked to rule upon a preliminary point which is encompassed in the following question:

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“Is the Permanent Arbitrator a Servant, Agent or Officer of the Crown within the meaning of 3 of the Crown Proceedings Act (Cap 24)?”

In fact the Second Defendant has not pleaded in his defence that he is not liable on the grounds that the First Defendant is not a Servant, Agent, or Officer of the Crown. However it is in the interests of justice that the question be determined and I propose to deal with the application as it stands.

The parties agree that no question of agency arises.

The Trade Disputes Act (Cap.97) makes provision in Section 21 for the appointment of a Permanent Arbitrator by the Governor General and provides that this office shall not be a public office. That Condition is repeated in the agreement of service of the First Defendant as Permanent Arbitrator.

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The Crown Proceedings Act (Cap.24) provides in Section 3 as follows:

“ 3(1) Subject to the provisions of this Act the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject (a) in respect of torts committed by its servants or agents.”

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Sub-section 6 provides as follows:

“(6) No proceedings shall lie against the Crown by virtue of this Section in respect of any act, neglect or default of any officer of the Crown unless that officer has been directly or indirectly appointed by the Crown and was at the material time paid in respect of his duties as an officer of the Crown wholly out of the Consolidated Fund or was at material time holding an office in respect of which the Chief Accountant certifies that the holder thereof normally be so paid.”

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It is clear from the 1st Defendant's Agreement of Service that he has been appointed by the Crown and that he is being paid in respect of his duties as an officer of the Crown out of the Consolidated Fund. So much is conceded by the 2nd Defendant.

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Section 32 of the Crown Proceedings Act provides as follows:

“ ‘Officer’ in relation to the Crown includes any Servant of Her Majesty in right of its Government of Fiji and accordingly (but without prejudice to the generality of the foregoing provisions) includes the Governor General.”

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Counsel for the Second Defendant has sought to pray in aid the interpretation given to the term ‘officer’ or ‘public officer’ in other legislation such as the Constitution and the Interpretation Act. However, reference to other legislation is in my view inappropriate when the Crown Proceedings Act itself contains its own interpretation section in Section 32. No doubt the relevant terms are interpreted differently in other legislation for other purposes, but in my view interpretations which restrict those terms to application to public servants are not appropriate in the present circumstances. Quite obviously the Trade Disputes Act did not intend the Permanent Arbitrator to be a public servant and his contract or service does not constitute him one. His duties involve the performance of Judicial functions. Therefore it would be quite inappropriate for him to be a

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A public servant. However in my view Section 32 of the Crown Proceedings Act when read in the light of Section 3 (6) is cast in a much wider ambit and is amply sufficient to include the Permanent Arbitrator. Plainly it does not confine itself to public servants proper but includes appointee of various kinds as is exemplified by the reference to the Governor General who is not a public servant but holds office at the pleasure of the Crown.

B For those reasons I answer the question asked in the affirmative except by deletion of reference to 'agent' I rule that the Permanent Arbitrator is a servant or officer of the Crown within the meaning of Section 3 of the Crown Proceedings Act.

C To remove any possible doubt I should say that my above ruling does not touch upon the questions raised in the pleadings which may arise under Section 3 (3) and (5) of the Crown Proceedings Act as to whether the 1st Defendant in doing the act of which the Plaintiff is complaining was performing his official functions. That is not within the question I have been asked to determine and in any case would require evidence for its determination.

(Ruling in the affirmative)

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