

WHEELER v THE ATTORNEY GENERAL and THE CHAIRMAN OF THE PUBLIC SERVICE COMMISSION

High Court of Solomon Islands
(Cooke, C.J. Vanuatu)
Civil Case No. 207 of 1989
Hearing: 14 November 1989
Judgment: 17 November 1989

Points of law:

- whether Public Service Commission can deal with a matter which sub-judice
- natural justice
- duty of Commission to act fairly - WADE ADMINISTRATIVE LAW P. 451, 465, 479, 483, 492, 499, 529.
- Commission replaced temporarily. The Interpretation and General Provisions (Amendment) Act 1980 S.32A.

Cases:

VINE v NATIONAL DOCK LABOUR BOARD [1956] 1 ALL.E. R. p. 13. C.A.

VINE v NATIONAL DOCK LABOUR BOARD H.L. [1956] 3 ALL E.R. p. 944, 945.

FRANCIS v MUNICIPAL COUNCILLORS [1962] 3 ALL.E.R. p. 637

In this case on the 19th September 1989, the Public Service Commission held a meeting to discuss among other matters the termination of the Plaintiff's contract. They were informed by Mr Kama, counsel for the Plaintiff that he had filed a notice of motion in the High Court on the 18th September seeking an order from the Court.

That the various persons named in the Notice of Motion be -

"1. Restrained from -

(a) harassing the applicant

2. preventing or attempting to prevent whether directly or indirectly the applicant from entering his place of work in the mechanical stores and its surrounding area of the Ministry of Transport, Works and Utilities compound in Honiara.
3. preventing or attempting to prevent whether directly the applicant from carrying on or performing his work as a senior store officer in the mechanical stores and its surrounding areas of the Ministry of the Transport, Works and Utilities compound in Honiara.

AND FURTHER the Honourable Court to make an order to declare that:-

The appointment of Sam Sirouou into the post of Senior Stores Officer be null and void since the Applicant was and still is at the material time the Senior Stores Officer.

The Public Service Commission having been informed of the Notice of Motion before the High Court should have taken cognisance of it and allowed the process of Justice to continue, postponed the hearing of the termination of Plaintiff's contract and the re-confirmation of the appointment of Sam Sirouou to Plaintiff's post.

Their action, in ignoring the notice of motion before the High Court was unconstitutional and illegal as the matter was sub-judice.

Counsel for the Defendants contended this motion was not proceeded with nor was it served on them. The simple answer to this is that Plaintiff had to commence his action against the Defendants as a result of the Defendants' action which he did by writ of summons on the 29th day of September 1989 and the notice

of motion before the court has now been heard. It was filed on the 17th October 1989.

I therefore quash the decision of the Public Service Commission on the 19th day of September 1989, terminating the services of the Plaintiff and their re-confirmation of Sam Sirouou to Plaintiff's post.

FURTHER IT IS ORDERED that the instrument of appointment of the Public Service Commission be suspended for one day as permitted under section 32 A of the Interpretation and General Provision (Amendment) Act 1986 and appoint in their place for one day a temporary Public Service Commission to deal with the termination of the services of the Plaintiff, if any. These suspensions and appointments are made by His Excellency the Governor General.

Further that the promotion of Sam Sirouou be deferred to a later date for action by the Public Service Commission on the understanding that should the reconstituted temporary Public Service Commission consider that the Plaintiff's services should still be terminated, which they are entitled so to do, then the promotion of Sam Sirouou to the post of the Plaintiff should be backdated to the 1st August 1989.

IT IS FURTHER ORDERED that as the action of the Public Service Commission on the 19th September 1989 in this matter has heretofore been quashed, the Plaintiff's is again reinstated in his lawful position as Senior Stores Officer. All sums of money due to him by way of salary and supplementation shall be paid to him forthwith.

Further that, as the Plaintiff has been reinstated in his lawful position, he shall be entitled to remain in government accommodation until the decision of the reconstituted temporary Public Service Commission is made known. If in favour of the

Plaintiff he shall continue to reside in the accommodation, if not, he shall forthwith vacate the premises.

I do not wish to cast any adverse reflection on the actions of the Public Service Commission in what they did. They only attempted to carry out their duties as they knew them. It is only human to err.

However, as they have already dealt with this matter twice before it is my opinion only right and proper that they be released temporarily from once again having to make a final decision in this matter. Thus clearly showing that any final decision made by a totally different body of persons is free from any possible bias and according to Natural Justice.

The Plaintiff if his services are again terminated shall be entitled to three months notice or three months salary in lieu of notice together with supplementation for the three months.

DAMAGES

By the action of the Defendants' I hold that damages as claimed in the Writ of Summons be paid to the Plaintiff. This does not include any supplementation.

Costs are awarded to the Plaintiff.

Frederick G. Cooke
Chief Justice
Vanuatu