

IN THE COURT OF APPEAL

Civ. App. 57 of 2005

IN THE MATTER OF AN APPLICATION BY
MALCOLM JOHNATTY FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW

AND

~~IN THE MATTER OF~~
SECRETARY OF THE MINISTRY OF EDUCATION TO STOP
THE SALARY OF THE APPLICANT

AND

~~IN THE MATTER OF~~ THE FAIL

BETWEEN

MALCOLM JOHNATTY

Applicant/Appellant

AND

Judgment

Delivered by W.N. Kangaloo, J.A.

1. Notwithstanding the voluminous nature of the plethora of affidavits in these appeals, the issue to be decided is by contrast exceedingly narrow. It is

At the time, the appellant was the subject of disciplinary proceedings against him by the Teaching Service Commission which proceedings were ongoing and had been adjourned on the 29th June 2004 to the 28th October 2004. The appellant enquired of a clerk at the Paysheets Section of the Ministry of Education why his salary had not been processed and he was given a note which was exhibited which read:²

but he was unable to find any evidence that his application had reached that Ministry.

7. On these facts the appellant sought and obtained leave to apply for judicial review to challenge the decision of the Permanent Secretary, Ministry of Education to stop his salary and an order of mandamus compelling the same Permanent Secretary to forward to the relevant authority his application for employment at the Ministry of Planning and Development. The ground for the latter relief was that the appellant was deprived of his legitimate expectation that his application for a transfer to a position as an Attorney-at-Law in another Ministry would be forwarded by the Respondent. The grounds of challenge to the decision to stop his salary are that it is illegal, it being in breach of section 129(4) of the Constitution of Trinidad and Tobago, in breach also of Regulation 90 of the Public Service Commission Regulations and also because it is in breach of the rules of natural justice in that the appellant ought to have been given the opportunity to answer any allegation upon which the decision to stop the salary was based.

8. It will be readily recognised that for the appellant to succeed, he must be able to demonstrate on the evidence a decision taken to stop his salary. Prima facie, he did so upon the filing of his affidavit but the Respondent's slew of affidavits were filed many months later beginning on the 10th November 2004 and continuing on the 17th December 2004, 20th December 2004, 23rd December 2004 and 7th January 2005. Of these affidavits of the respondent, Angela Jack says in her affidavit of the 20th December 2004 that she took no decision to stop the appellant's salary and Glenroy Joseph who is the director, human resource management in the Ministry of Education says in his affidavit that he also gave no directive or order to stop the appellant's salary in July 2004 or at all. The directive that

be paid only on the basis of returns of attendance submitted by the principal of his school, the directive was given in a letter dated the 22nd June 2004.

9. It becomes clear therefore that the substratum of the appellant's challenge to the decision to stop his salary became entirely eroded with the affidavit evidence which was on these

not there was a decision taken to stop the appellant's salary. I say this to indicate that if the appellant were seriously interested in challenging Glenroy Joseph's decision to pay him in accordance with his attendance, th cannot simply isolate the consequences of such a decision without the cause of the decision being addressed. It is my view that the instant appeal is not the proper forum for addressing th ons given before, but the appellant must surely be aware that if the matter had proceeded in the manner that he now belatedly advocates, it was very possible that a court could have found him in breach of the Education Act¹² and the Public Service Regulations¹³ which require him to devote all his time to teaching and not to be gainfully employed in another profession. It follows that if a court so found, it is very unlikely that the appellant would have been granted any relief in the judicial review or constitutional proceedings notwithstanding that Glenroy Joseph's decision may have resulted in the late paym his salary, in breach of the Regulations as the appellant now contends.

13. Strictly therefore, because the appellant has been6 Tsuccessful in proving that there was any decision to stop his salary, his motion for judicial review dealing with th009 T9(aspect is d)5e7(o)0.7(om)8.5(ed to f)3.7(a)-0.5(il. This was9 T9

advantage. To my mind the appellant has been unable to show a clear and unambiguous representation to him or to the class of persons to which he

17. The record of appeal however shows that before the trial judge the attorneys agreed that if the court ruled that there was no decision to stop the salary, no deprivation of property arose.¹⁵ This still however left open the question of the infringement of the other rights, viz. protection of the law, right to a fair hearing and the right to such procedural provisions for the purpose of protecting those rights.

18. If the constitutional motion were permissible therefore, the two rights left to be protected were the protection of the law and the right to a fair hearing. The first, as consistently determined since *McCleod v. AG*,¹⁶ is really access to the courts to seek relief, which has been afforded by the very

20. I agree with Mrs. Peake that the judicial review proceedings were a parallel remedy available to the appellant and those proceedings were already in train and the hearing about to commence. The appellant has been unable to point to any feature which could arguably make relief in the judicial review motion inadequate. I therefore conclude that the constitutional motion quite apart from having no merit in itself was a misuse of the process of the court.

21. In all the circumstances

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