IN THE SEYCHELLES COURT OF APPEAL

DOREEN BRESSON — APPELLANT

VERSUS

MINISTRY OF ADMINISTRATION AND MANPOWER — RESPONDENT

Civil Appeal No. 36 of 1996

[Before Goburdhun, P., Silungwe JA., Ayoola JA.]

.....

Mr. S. Rouillon for the appellant
Mrs A. Antao for the respondent

REASONS FOR DECISION
(Delivered by Ayoola J.A.)

On March 31, 1997 we dismissed this appeal. We now give reasons for our decision.

Mrs. Bresson ("the Appellant") had appealed from the dismissal by the Supreme Court of her petition for judicial review of general decisions allegedly made by the Respondent, the Principal Secretary of the Ministry of Administration and Manpower over a period of time. The appellant had, admittedly, been continuously employed in the Public Service since 1973 in various posts and in various Government and Parastatal bodies. Her petition before the Supreme Court showed that during her period of service she had been promoted on several occasions and transferred on some others and had received increments in her salary. All these were, no doubt, normal occurrences in the Public Service. The reasons why she had invoked the supervisory jurisdiction of the Supreme Court were that in the course of her employment in the Public Service her salary was reduced; monies were deducted from her salary; and, finally she was declared redundant. Her petition contained several disjointed complaints giving her petition a lack of focus. It was only by combing through the petition that it was possible to deduce what her apparent grievances were. Trying the best we could, it appeared to us that the heads of her complaint were:

1. As contained in paragraph 12 of the petition: that "her transfer from" a company to Which she had earlier been transferred "did not go through the proper procedures under the Employment Act 1990".

2. As contained in paragraph 13 of the petition: "that the Ministry had not followed the proper Government procedures before putting" to her the ultimatum to accept a post offered her or face redundancy.

3. As contained in paragraph 14 of the petition: that "the proper Government procedures" were not followed by the Ministry in making the decision that she should refund an over payment of salary.

4. As contained in paragraph 18 of the petition: that the Ministry approved a ruling of the Public Service Appeal Board ("the Board") which they knew was not justified and was illegal and contrary to law.

5. As contained in paragraph 19 of the petition: that the Ministry approved the transfer of a third party to take up the post which the appellant had held out of favouritism.

It was on these complaints that the appellant had invoked the supervisory jurisdiction of the Supreme Court for orders of certiorari to quash the several alleged decisions of the Ministry to which these complaints had related.

In a clear and straightforward ruling the Learned Chief Justice held that the Principal Secretary of the Ministry of Administration and Manpower was not an "adjudicating authority". Hence, according to him, the Supreme Court could not exercise the supervisory powers conferred by Article 125 (1)(c) of the Constitution in regards to decisions by the Principal Secretary of the Ministry. He held further, that the appellant had wrongly sought relief for an alleged breach, of what may be termed "private law rights" under procedures designed for infringement of "public law rights". For these two reasons he dismissed the petition.

Mr. Rouillon Learned Counsel for the appellant had argued before us that within the definition of "Adjudicating authority" contained Article 125 (7) of the Constitution the Minister of the Ministry of Administration and Manpower was an adjudicating authority. He referred to Public Service Orders (PSO) and argued that PSO have the authority of law comparable to the Employment Act 1990 ("the 1990 Act"). In his submission, the decisions taken by the Respondent were an admixture of administrative and quasi-judicial decisions "since he should have followed the rules of the PSO's before making the decisions he did". Finally, it

was argued that the appellant's grievance had a "clear public element" consisting of "misuse of power and breach of the rules of natural justice".

Article 125 (1)(c) of the Constitution of the Republic of Seychelles ("the Constitution") vests in the Supreme Court, inter alia:

> "Supervisory jurisdiction over subordinate courts tribunals and adjudicating authority".

Article 125 (7) defines "adjudicating authority" as including"

> "A body or authority established by law which performs a judicial or quasi-judicial function."

The Supreme Court (Supervisory Jurisdiction over subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995 provide, in Rule 2 (2) that:

> "The petitioner shall annex to the petition a certified copy of the order or decision sought to be canvassed and originals of documents material to the petition or certified copies thereof in form of exhibits".

Rule 3 (G) of the Rules provides that the petition shall contain a statement of:

"The relief sought and the grounds upon which it is sought".

It is expedient to note that failure to comply with the Rules may not necessarily be fatal to the application. (Rule 15)

The main question on the appeal was whether the Learned Chief Justice was right when he held that the respondent was not an "adjudicating authority." Whether a body was performing a quasi-judicial function or not must essentially depend on the nature of the decision being made at the material time.

It is noteworthy and the observation must be made, that Article 125(7) of the Constitution had retained the phrase "quasi-judicial function" notwithstanding that since the decision of the House of Lords in Ridge v Baldwin [1964] AC 40 the distinction between authorities exercising judicial and those exercising administrative powers have been discarded for the purpose of the exercise of the supervisory jurisdiction of the courts. Before then, it was generally accepted as the law that the then prerogative orders of certiorari, prohibition and mandamus

would lay only against persons, bodies or authority with judicial and quasi-judicial functions, leaving out bodies persons or authorities exercising administrative powers. That a distinction between a quasi-judicial function and an administrative function exists is undoubted. An attempt at description of these functions is contained in the report of the Donoughmore Committee on Minister's Powers in Britain as follows:-

> "A quasi-judicial decision..... Presupposes an existing dispute between two or more parties and involves ((1) the presentation of their case by the parties to the dispute and (2) if the dispute between them is a question of fact the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence).....
>
> "In the case of the administrative decision, there is no legal obligation upon the person charged with the duty of reaching the decision to consider and weigh submissions and arguments, or to collate any evidence or to solve any issue. The grounds upon which he acts and the means which he takes to inform himself before acting, are left entirely to his discretion". (See Donoughmore Report. Cmd 4060 pp 73-4 Quoted from Constitutional and Administrative Law of Sri Lanka by Dr J.A.L. Cooray).

With the accepted and established distinction between quasi-judicial and administrative functions it cannot be presumed that when the Constitution defined "adjudicating authority" in terms of exercise of judicial and quasi-judicial functions, it was intended that the definition should be extended to include body or authority performing only administrative function. A rough and ready test is to ask what function was the body or authority performing at the time the impugned decision was taken.

In the present case, it was evident that the decisions that the appellant complained about were substantially purely administrative decisions and could not be regarded at all as quasi-judicial decisions. They were purely executive decisions which any body or authority charged with the responsibility of running the affairs of a Government Department would be expected to take from time to time. Where in making executive decisions of a managerial nature, which are not quasi-judicial, the body or authority had disregarded Government procedure the remedy does not lie in invoking the jurisdiction of the Supreme Court, prescribed

by Article 125 (1)(c) of the Constitution, for supervision of the actions of a body or authority performing a judicial and quasi-judicial function. The respondent was performing a purely administrative function, involving no resolution of disputes but largely exercise of managerial discretion, when the decisions were taken.

We felt no difficulty in agreeing with the Chief Justice in effect, that when the `decisions' complained of by the appellant were taken by the Ministry of Administration and Manpower, or its Principal Secretary, neither of them was an "adjudicating authority" and that in the result the Supreme Court could not exercise the supervisory powers conferred by Article 125 (1)(c) of the Constitution. Having come to the conclusion as above, which is sufficient to dispose of the appeal, we did not consider it necessary to pronounce on the question whether the `rights', which the appellant had sought to protect, were "private law rights" or "public law rights".

It was for the reasons stated above that the appeal was dismissed.

Dated at Victoria, Mahe, this 9th day of ***April*** 1998.

H. GOBURDHUN	A. SILUNGWE	E.O AYOOLA
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**