

**Ailee Development Corporation Limited v  
Minister of Employment and Social Affairs  
(1998) SLR 121**

Frank ALLY for the Respondent

**Judgment delivered on 29 October 1998, by:**

**AMERASINGHE J:** The petitioner sought to invoke the supervisory jurisdiction of the Court under Article 125(1) of the Constitution of the Republic of Seychelles for the issue of a writ of certiorari quashing the decision of the respondent dated 7 June 1996 on appeal.

The manager of the Plantation Club Hotel initiated a grievance procedure when relieved of his services by the petitioner, and the resulting decision of the Competent Officer was subject to appeals by both parties.

Both the Minister on the said appeals and the Competent Officer concluded that the termination of the services of the employees was not justified. The respondent's ruling on 7 June 1996 directed the petitioner to make the following payments to its former manager Van Frank:

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| i) 3 months notice                              | R 47,250.00                              |
| ii) Salary from 17 November<br>1995 to May 1996 | R 94,500.00                              |
| iii) Accrued leave from 8<br>January 1995       | R 20,712.33                              |
| iv) 32 days compensation                        | <u>R 19,384.62</u><br><u>R181,846.95</u> |

At the hearing counsel for the petitioner restricted its challenge of the respondents' decision to the award under paragraph (ii) above, for the payment of salary from 17 November 1995 to 17 May 1996: a sum of R94,500.00. Although the written submissions of counsel for the petitioner included in the challenge the accrued leave and compensation calculated after the dismissal of the employee, the pleadings and the exhibits do not permit this Court to separate such awards into different categories. Hence the petitioner will be bound by the aforesaid restrictions indicated to the Court and recorded on the 15 June 1998.

The first ground on which the respondent's decision of 7 June 1996 was challenged, which state counsel seems to have lost sight of, is founded on the fact that although the appeal was heard by the members of the Employment Advisory Board, the respondent's

decision was not made in accordance with such advice. It is contended that rules of natural justice dictate that the respondent was bound to follow the advice of the Board. The award of salary in a sum of R94,500.00 was undisputedly outside such advice.

Dr (Justice) Durga Das Basu in his book *Administrative Law* (3rd edition, 1993) commenting on the judgment in *Local Government Board v Arlidge* [1915] AC 120, at 225 states thus:

This does not however mean that an administrative tribunal or quasi-judicial authority must hear every case personally. In the absence of any statutory requirement, the authority is free to determine its own procedure and, provided the decision is his, he can act upon evidence heard or materials collected by his subordinates and that strict judicial principle that a decision can be given only by the judge who heard the case, does not apply to administrative tribunals.”

...“Whether the quasi-judicial officer agrees with or differs from the report of the inquiry officer, he is bound to form his independent view and give his decision accordingly.”

By his affidavit on 11 July 1997 the respondent has sworn to the facts, that the decision of 7 June 1996 is his and that he has drawn his own conclusions. I therefore rule that the respondent was not bound to follow the advice of the Board in the instant matter to satisfy rules of natural justice.

The making an award of salary to the petitioner's former employee for a period after the termination of his services on 17 November 1995 appears to be, as commented by counsel, 'based on nothing.' The thrust of the petitioner's challenge is apparently founded on the argument that the respondent has exceeded his jurisdiction vested in him by statute.

As rightly pointed out by counsel for the petitioner, the respondent opted not to reinstate the employee, although he found the termination of services of the petitioner's employee to be unjustified, . Hence he has acted under section 61(2)(a)(iii) of the Employment Act 1995 (hereinafter referred to as the 'Act').

Section 62 of the Act provides for the payment of wages when a contract of employment is terminated by an employer, while 62(b)(iii) conditions such payments for, other than for a serious disciplinary offence under section 57(4) of the Act.

The interpretation section of the Act (section 2) defines 'wages' to mean, "the remuneration or earnings, however calculated, expressed in terms of money payable to a worker in respect to work done under the contract of employment of the worker but does not include payment for overtime work or other incidental purposes." The definition doesn't include the term a 'salary' and the respondent's award was in fact of wages as prescribed by section 62 of the Act. There can be no doubt such as

entitlement ends with the termination of services of an employee, and therefore the contract is thereby determined. State counsel, conscious of such implications on the award of the respondent, argues that the unjust termination of services is unlawful, hence the lawful termination of the employee's services became effective only with the determination of the respondent on 7 June 1996.

The legislature, by passing into law the Employment Act, has prescribed the relief available to an employee dismissed unjustly, and the terms of his contract except where the Act provides for its application to have ceased to have any effect in law on relief available to the employee. Ayoola JA in the case of *Antoine Rosette v Union Lighterage Company* (unreported) CA 16/1994 decided on 18 May 1995 was for the said reason prompted to pronounce that, "The remedy and relief which attend an unjustified termination of a contract of employment have been fully set out by the legislature in the Act." Hence any alternative interpretations or circumstances cannot be taken into consideration unless the statute provides so.

On the aforesaid definition of 'wages' in the Act, for an award of salary to arise the employee should have been entitled to remuneration or earnings. Such entitlement without doubt ends with the effective termination of his services. The respondent acted under section 61(2)(iii) of the Act when he decided that although the termination of services of the employee was not justified he did not order the reinstatement of the employee in his position. Hence he was bound to give effect to the rest of the provisions of the said section.

Section 61(2)(iii) further provides that it is possible to "allow the termination subject" to certain payments. There can be no doubt the words "allow the termination" refer to the termination of the employee's services by his employer that is in issue, hence it cannot admit any other form of termination. The legality or the illegality of the termination of the employee's services will make no difference when the respondent acts under the provisions of section 61(2)(iii) of the Act. I conclude that the statutory provisions as referred to above prescribe that the termination of the employee's services on 17 November 1995, however unjust it was, should be allowed, and that this took away the respondent's jurisdiction to award a 'salary' for any period after the termination of the employee's services, found by the respondent to be unjust.

Therefore the respondent's award of salary for the period 17-11-95 to 17-05-96 in a sum of R94,500.00 is ultra vires the statute and has to be interfered with by this Court.

A writ of certiorari is hereby issued quashing the award of salary from 17 November 95 to 17 May 1996 in a sum of R94,500.00 by the respondent on 7 June 1996.

**Record: Civil Side No 245 of 1996**