IN THE SUPREME COURT OF SEYCHELLES

LE MERIDIEN BARBARONS PLAINTIFF

VS

EMPLOYMENT TRIBUNAL DEFENDANT

Civil side no: 51 of 2009

Mr. Shah for the Plaintiff

Defendant unrepresented

JUDGMENT

Burhan, J

This is an application before the Supreme Court, based on the exercise of its Supervisory Jurisdiction as conferred by Article 125 (1) (c) of the Constitution, seeking a writ of certiorari to quash the decision of the Employment Tribunal dated 4th February 2009. Leave to proceed with the said application was granted on the 16th day of March 2009 on an ex-parte application being made to court by the petitioner.

The facts of this case are that on the 23rd of January 2009 the Employment tribunal made order reinstating the applicant

Florette Boniface with the consent of the respondents Le Meridien Barbarons, the petitioners in this application. However the applicant subsequently complained to the tribunal that the petitioner in this case had failed to comply with the said order and the Employment Tribunal thereafter issued on the petitioner, ‘ summons to show cause’ for failing to comply with the order of the Employment Tribunal. On the 4th of February 2009, according to the ruling delivered on that date itself, the petitioner responded to the summons and was represented by counsel and the Human Resources Manager and moved for time to file their evidence. However, in its ruling dated 4th February 2009, the said application was refused by the Employment Tribunal which further ruled that the petitioner had maliciously failed to comply with the order of the Tribunal and proceeded to impose a fine of SR 10,000.00 on the petitioner in terms of section 9 (1) (a) of the Employment (Amendment) Act No 21 of 2008.

The petitioner seeks a writ of certiorari quashing the said decision, the main grounds urged for seeking such relief being;

a) The Petitioner was unfairly treated before the Employment Tribunal in being denied his right to adduce evidence. The Tribunal sought to rely on some correspondence without the benefit of hearing the petitioner and went to the extent of stating that the petitioner was malicious a statement which is

biased, irrational, unreasonable and ultra vires to the powers of the said tribunal.

b) The fine of SR 10,000.00 imposed is fraught with procedural irregularities. No complaint had been filed under oath and no charge had been drawn reciting the statement of offence, the particulars of offence and specifying the sections of law allegedly infringed and punishable under and thus there was total non compliance with the provisions of the Criminal Procedure Code.

c) The representatives of the petitioner had a right to be heard under oath and as there was a flagrant disregard of the right to a fair hearing there was a denial of the petitioners constitutional rights and a breach of the rules of natural justice.

Section 9 (1) (a) of the Employment (Amendment) Act No 21 of 2008 reads as follows;

Any person-

(a) disobeys without reasonable cause any order of the Tribunal;

is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine of

not more than SR 40,000.

It is therefore apparent that section 9 (1) (a) creates a statutory offence. It is pertinent at this stage to note that in terms of section 3 (1) of the Employment (Amendment) Act the Employment Tribunal is given exclusive jurisdiction to hear and determine employment and labour related matters. Further section 3 (4) of the said Act states;

"For the purposes of this Act a reference to the Magistrates' court in any written law in connection with matters under subsection (1) and (2) shall be deemed to be a reference to the Tribunal."

It follows that Employment Tribunal is therefore vested with the necessary jurisdiction to hear and determine offences under section 9 of the said Act and to fine and commit persons to imprisonment.

On perusal of the record it is apparent that the petitioner was served with summons to show cause for failing to comply with an order of the Employment Tribunal and had appeared in court with his lawyer on the 4th of February 2009 a fact not denied by the petitioner. It is clear on perusal of the ruling delivered on the 4th of February 2009 that the Employment Tribunal had on the first day itself, asked the Petitioner's

representative,

"to show cause as to why he should not be put to task for non- compliance of the Order of the Tribunal dated 23rd January 2009."

The ruling quoted below further reads;

"Mr Shah and the Human Resources Manager were examined and only stated needed time to file their evidence, but we failed to give them time for they failed to tell us what type of evidence they have apart from folio letters 15,14 and 13 present in our files."

It is to be noted that other than the ruling made, no proceedings have been maintained in respect of what happened in the open forum of the Tribunal on that day. It could be gathered from the ruling itself that the Employment Tribunal had come to its decision, on the first day the petitioner came to court without hearing the petitioners in this case or giving them time to prepare their evidence or to show cause as to why they should not be found guilty of the said offence. It is apparent on the face of the record that this is a clear instance, where 'justice hurried" has resulted in justice been denied to a party as the basic principle of "audi alteram partem" has not been observed by the Tribunal. It is also further noted that the ruling does not indicate a finding of guilt

or conviction of the accused as required by section 9 (1) of the Employment (Amendment) Act.

In the case of ***Ahkon v Republic 1977 SLR 43*** Sauzier J held that if the magistrate makes neither a conclusion of guilt or conviction such a defect is fatal and cannot be cured.

Further in ***Council of Civil Service Unions and others v Minister for the Civil Service [1984] 3 All ER 935*** the three grounds on which a decision may be subject to judicial review were classified as illegallity, irrationality and procedural impropriety. This approach was followed in this jurisdiction by Egonda-Ntende CJ in the recent case of ***Lawrence Wells v Macsuzy Mondon Minister of Employment and anr civil side 257 of 2009***. Procedural impropriety concerns not only the failure of an administrative body to follow procedural rules laid down in the legislative instruments by which jurisdiction is conferred, it includes the failure to observe the rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.

The facts of this case as illustrated above clearly indicate that the decision arrived at by the Employment Tribunal is fraught with procedural impropriety, as the Employment Tribunal had failed to give an opportunity to the petitioner to present his

case and failed to come to a finding of guilt and enter a conviction against the petitioner.

For the aforementioned reasons, this court is inclined to grant a writ of certiorari quashing the ruling of the Employment Tribunal dated 4th February 2009 without costs.

M. BURHAN

JUDGE

Dated this 19th day of March 2010