

**IN THE SUPREME COURT OF SEYCHELLES**

Civil Suit No. 236 of 2004

[2013]SCSC

**FLORY MORIN**

**Petitioner**

Versus

**MINISTRY OF SOCIAL AFFAIRS AND EMPLOYMENT**

**Respondent**

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Filed: 18 September 2004

Heard: 11 February 2013

Counsel: William Hermine for the Petitioner  
Chinnasamy, Principal State Counsel, for the Respondent

Delivered: 11 March 2013

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**RULING**

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**Egonda-Ntende CJ**

[ 1] The Petitioner is seeking for an order of certiorari to quash the decision of the Ministry of Social Affairs and Employment communicated to the applicant in a letter dated 21<sup>st</sup> June 2004 and signed by V Bresson for the Principal Secretary which purported to set aside a decision of the Competent Officer of 13<sup>th</sup> April 2004 in which the competent officer had ordered the reinstatement of the petitioner in her employment with Air Seychelles. The petitioner further seeks an order of mandamus to compel the Ministry of Social Affairs to implement the decision of the competent officer and compel Air Seychelles to reinstate the petitioner in her employment.

[ 2] The petitioner contends that the impugned decision of the Respondent was taken contrary to the law in force at the time and is therefore null and void. The respondent responds that the original decision of the competent officer had not been taken in accordance with the law as the hearing was ex parte prior to the decision being made. It is for that reason that it had ordered a re hearing of the matter.

- [ 3] The decision made by the competent officer is short and I can set it out in full. It is in the form of a letter addressed to the Executive Chairman, Air Seychelles dated 13<sup>th</sup> April 2004.

‘Following the hearing of the above case, heard ex parte of the Respondent the Competent Officer has determined that no disciplinary offence has been proved against the Applicant. Therefore in accordance with Section 61(2) (a) (ii) of Employment Act, 1995 the termination of the Applicant’s contract of employment was not justified.

The applicant is therefore to be reinstated in her post with immediate effect without any loss of earnings from the date of termination to the date of actual engagement. Kindly effect payment by cheque made out to Seychelles Government through this office Room 309, Unity House within 14 days from the date hereof.

If you are aggrieved by the above determination you may lodge an appeal to the Minister within 14 days from the date hereof, in accordance with Section 65 of the said Act. An appeal fee of SR200/- is payable as per S.I. 6 of 2000.

Yours faithfully,

[signed]

R.Plows

For Principal Secretary.’

- [ 4] The Ministry of Social Affairs and Employment in a letter dated 21<sup>st</sup> June 2004, now referred to as the impugned decision, addressed to the Petitioner, purported to set aside the decision of the Competent officer. It states,

‘We refer to our letter dated 18<sup>th</sup> April 2004. This is to inform you that the Competent Officer’s determination of 13<sup>th</sup> April 2004 is being set aside in view of certain procedural irregularities that have occurred in dealing with this case. The matter is being referred back to the Competent Officer to be heard afresh. The parties will be informed of the review date in due course.

Yours faithfully,

[signed]

V Bresson (Ms)

For: Principal Secretary.’

- [ 5] Prior to the repeal of the Provisions of Section 61(A) of the Employment Act by Act No. 2 of 2008 the said section mandated a competent officer to hear a dispute between an employee and an employer and to provide a determination thereof in accordance

with the law. An appeal was provided from such a decision to the Minister under Section 65 of the said Act. Where a Competent Officer made a determination in a respect of a matter within his jurisdiction only an appeal to the Minister or an order of the Supreme Court on Judicial review could over turn such a decision.

[ 6] The law relating to judicial review was set out in Council of Civil Service Unions and others v Minister for the Civil Service [1984]3 All ER 935. Lord Diplock categorised the three grounds upon which a decision may be liable to judicial review as illegality, irrationality and procedural impropriety. He went on to say at 950,

'By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'..... It applies to a decision which is outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.'

[ 7] At page 951 Lord Diplock discussed procedural impropriety in the following words,

'I have described the third head as 'procedural impropriety' rather than failure to observe the basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of justice.'

[ 8] The respondents have been unable to advance any authority upon which the impugned decision was taken. The decision maker in that case was not authorised to take the decision he took. It was clearly illegal even if it may have been well intentioned.

[ 9] Neither were the rules of natural justice followed. No notice was provided to the parties or party that was to be affected by the decision it was taking. The petitioner was not heard before the impugned decision was taken. The impugned decision ran foul of the rules of natural justice.

[ 10] For those reasons I have no hesitation in quashing the same. The Respondent, by its Principal Secretary, is hereby directed to implement the decision of the Competent Officer.

[ 11] This petition is allowed with costs.

[ 12] Before I take leave of this matter I must express my shock that such a matter as this has remained in the court system for 8 & 1/2 years without resolution at first instance. This was a simple matter of judicial review in exercise of this court's supervisory jurisdiction which ought not have taken more than 6 months from date of filing to resolution. Under the delay reduction measures and time standards [September 2010] established by this court judicial review matters should, on average, take no more than 4 months from date of filing to resolution. The delay in this case has been egregious and everyone involved must surely share in the blame for this state of affairs.

Dated, signed and delivered at Victoria this 11<sup>th</sup> day of March 2013

FMS Egonda-Ntende

**Chief Justice**