

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MC 54/2016**

**[2018] SCSC 697**

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**1. ROBERT MARIE  
2. MERVIN LESPERANCE**

Petitioner

versus

**THE MINISTER FOR EMPLOYMENT**

Respondent

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Heard:

Counsel: Mrs Amesbury for petitioner

Mrs Rongmei for respondent

Delivered: 20<sup>th</sup> July 2018

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**JUDGMENT**

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Nunkoo J

[1] This is an application for the judicial review of a decision taken by the Respondent in the exercise of his powers conferred upon him under section 65 of the Employment Act which reads as follows;

***Appeal and review.***

*(1) Subject to subsection (2), wherever an employer or worker is aggrieved by an authority, approval, decision or determination of a competent officer, the employer or the employers' organisation on behalf of the employer, the worker or the Union on behalf of the worker, may appeal against it to the Minister.*

*(2) An appeal under subsection (1), other than an appeal against a determination of the competent officer consequent upon initiation of the negotiation or grievance procedure shall be lodged with the Chief Executive within 14 days or such other period as may be prescribed after the date on which the authority, approval, decision or determination was given.*

- [2] The petitioners were employed by the Air Seychelles as Captain and the second petitioner was a First officer. Air Seychelles decided to terminate the employment of a number of its employees on the grounds of non-profitability. Meetings were held at the ministry of employment on 13 and 25 January 2012 with regard to the redundancy application. The Petitioners are averring that at those meetings where the vast number of workers were present, they were neither present nor represented; they are claiming that they were not informed of these meetings nor were they advised that they should be there.
- [3] The Competent Officer made its determination on 27 January 2012 and concluded that the termination of the contract of employment of the employees was approved.
- [4] On 1<sup>st</sup> February 2012 the petitioners lodged their grievances with the Ministry of Employment and seeking their reinstatement and also claiming that their terminal dues were wrongly computed.
- [5] The Petitioners were invited for mediation fixed for 21<sup>st</sup> February initially but which took place on 7<sup>th</sup> March 2012; mediation failed.
- [6] In the meantime the Petitioners were informed by letter dated 27<sup>th</sup> January 2012 that the termination of their contract was approved with payment of legal benefit up to 31<sup>st</sup> January 2012.

- [7] The petitioners have averred that they also appealed to the Employment Appeal Board on the 6<sup>th</sup> of February 2012 on the grounds of unlawful termination, and failure to take into account their performance and failure to give reason for their termination.
- [8] The petitioners also appealed to the Minister of Employment against their redundancy on the grounds that the Competent Officer had not taken into account their performance and had also failed to give reasons for their termination; his decision was not based on any criterion and that the petitioners were not granted opportunity to defend themselves.
- [9] It is averred by the Petitioners that the Respondent took into consideration irrelevant matters and or failed to take into consideration such matters as existed in documents before her and based her consideration entirely on the submissions made by the Air Seychelles Counsel instead of facts and documents before her and her decision therefore was made in bad faith, is an abuse of power which power was exercised for an improper purpose.
- [10] It is being averred by the petitioners that they were not given an opportunity to be heard and therefore there has been a failure of the principles of natural justice.
- [11] The Petitioners are praying this Honourable Court for the following orders:
- a. For a writ of Certiorai to quash the decision of the Respondent mentioned hereinabove for being ultra vires null and avoid and declaring the same unlawful, illegal, irrational, unreasonable, null and void and;
  - b. For a writ of Mandamus to compel the Respondent to order the re-instatement of the Petitioners in their jobs as their termination was grounded on an illegality.
  - c. For compensation order equivalent to the salary of the Petitioners have lost as a result of the illegal termination of their employment.

The grounds on which the relied is sought:

- i) There is sufficient evidence to establish that the Petitioners termination of employment was ultra vires as it violates rules of natural justice and is therefore illegal, null and void and that it is in bad faith and is an abuse of power, which power was exercised for an improper purpose.
- ii) In dismissing the appeal, the Respondent failed to independently and impartially review the evidence before her and chose rather to base her dismissal of the appeal on the submissions made by the Air Seychelles Counsel.

[12] It has been submitted by the Learned Counsel for the Respondent that the petitioners have failed to annex a certified copy of the decision being challenged and referred the Court to Rule 2 of the Supreme Court Supervisory Jurisdiction Rules, which provides as follows:

Rule 2 reads:

*“(1) An application to the Supreme Court for the purposes of Rule 1 (2) shall be made by petition accompanied by an affidavit in support of the averments set out in the petition.*

*(2 ) 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 the form of exhibits.”*

[13] I also note that Counsel for the Petitioners have referred to a delay of 14 days to file their appeal and presumably she is relying on section 65 of the Employment Act. But this section must be read along with Schedule I , Part C Rule 3 of the same Act which is as follows and governs redundancy:

*The worker, the union or the employer may appeal within seven days against the determination of the competent officer to the Minister who shall give his decision within 30 days.*

The prescribed delay is for 7 days and not 14 days as counsel has submitted.

The argument of Learned Counsel therefore that the appeal was made in time does not hold good.

Further it must also be noted that the Application for judicial review was made outside the period of three months which is against the Rule 4. No reason was advanced for the breach of this rule nor was any application made for me to extend the delay prior to the hearing of this case.

*A petition under rule 2 shall be made promptly **and in any event within three months from the date of the order or decision** sought to be canvassed in the petition unless the Supreme Court considers that there is good reason for extending the period within which the petition shall be made. See **Labrosse V Minister for Social Affairs and Employment No 97 of 2007.***

[14] The decision of the Minister was made on 8 February 2016 and the same was communicated on 22 January 2016. The application for judicial review was made on 16<sup>th</sup> May 2016. The Petitioners had ample time between 22 January to 8 May to file their application for leave but they chose to sit on their rights. There has been laches on their part.

[15] The petition is therefore dismissed for the above reasons. I do not make any order as to costs.

Signed, dated and delivered at Ile du Port on 20<sup>th</sup> July 2018.

S Nunkoo  
Judge of the Supreme Court