

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC49/2012

[2016] SCSC 702.

JEANETTE MELINA NOURRICE

Versus

THE PUBLIC SERVICE APPEAL BOARD

Heard: 28 September 2016
Counsel: Mrs Amesbury for plaintiff
Mr. Boniface for defendant
Delivered: 28 September 2016

RULING

D. Karunakaran, J

[1] This is an application for the exercise of the supervisory jurisdiction under Article 125 (1) (c) of the Constitution wherein the petitioner challenges an administrative decision delivered by the PSAB that is the Respondent on the 27th March 2012, on the ground that the said decision is illegal and unreasonable.

[2] Briefly the facts of this case are these:-

At all material times the petitioner was employed by the Seychelles Revenue Commission as a Recovery Officer. The Respondent is a Constitutional body whose function is to hear complaints by persons aggrieved by the termination or disciplinary actions taken against

the person working for a public authority. It is evident from the file forwarded by PSAB that on 3rd June 2011 the petitioner was suspended from duty because there was a complaint at Anse Aux Pins Police Station against her in which it was alleged that she had entered Montagne Posse prison with illegal items namely cigarette. Subsequently, she was charged before the Magistrates Court and acquitted of the charge as the prosecution had failed to prove a *prima facie* case against the petitioner. Learned Magistrate acquitted the petitioner of the charges on 2nd December 2011. Following the acquittal on 30th December 2011 she was terminated from her employment from SRC. Aggrieved by the said termination she lodged a complaint with the respondent. After hearing the complaint, the Respondent dismissed her case as it felt that the petitioner was not aggrieved as alleged in her complaint. The said decision was delivered on the 27th March 2012 by PSAB. Now, the Petitioner has filed this judicial review before this Court alleging that the said decision of the Respondent is illegal, unreasonable and irrational in the light of the wednesbury principles. Therefore the Petitioner seeks this Court for an order to quash the said decision of the Respondent issue a writ of *certiorari*, accordingly. Moreover, in the same petition the Petitioner seeks this court for a writ of *mandamus* compelling the Respondent to order the reinstatement of the petitioner in her job as the termination of employment was not justified after the Court had found that there was not even a *prima facie* case against her. Moreover the Petitioner in the same petition seeks a compensation order for the prejudice she has suffered as a result of the unjustified termination of her employment.

Learned counsel for the petitioner Mrs Amesbury submitted that when a person is completely acquitted from a case in which he or she had been charged with a criminal offence enjoys complete freedom from such charge or allegations made by the prosecution in that criminal case. She further submitted that since the criminal case lodged against the Petitioner was dismissed any decision made by the employer or the PSAB presuming that she had committed an offence or acted against the interest of the employer is illegal and unreasonable. On the other side, learned counsel for the Respondent Mr. Leslie Boniface submitted there in the criminal charge lodged against the petitioner before the magistrate Court requires a standard of proof namely proof beyond reasonable doubt. If a person had been acquitted of a crime because of the strict

application of the said standard of proof, that person cannot simply be considered as an innocent since an allegation has been made against that person which is sufficient to terminate her from employment. Hence Mr. Biniface submitted that the decision of the PSAB in this matter is legal, reasonable and rational in the given circumstances of the case.

[3] I carefully listened to the submissions made by counsel, I carefully perused the file forwarded by the PSAB in this matter. Also I went through the affidavit of the petitioner filed in support of his petition. First of all, I note even if a person who had been accused of any offence before any criminal Court if acquitted the acquittal *ipso facto* creates a presumption in favour of the acquitted person that the person is innocent despite the fact that he or she was an accused person in the case before the Court. As I look at the entire record of proceedings I am satisfied that PSAB has acted unreasonably holding the Petitioner, an innocent person as a delinquent whereas that person had already been acquitted of the charge levelled against her in the criminal case. Therefore I find the decision of the Respondent dated 27th March 2012 is illegal, unreasonable and irrational having regards to all the circumstances of the case.

[4] Accordingly I hereby quash the said decision of the Respondent. I issue a writ of *certiorari* accordingly. As regards to the request for *mandamus* to compel the Respondent to order the reinstatement of the petitioner in her job, in my view, is beyond the petition for Judicial review. When the Court reviews the decision of any public body it can either say “the decision is legal or illegal, reasonable or unreasonable, rational or irrational. Once if the Court finds that the decision is illegal, unreasonable and irrational the Court to quash the said decision by issuing a writ *certiorari*. I believe that is the end of the matter. The Petitioner might have suffered consequential loss and damages as a result of the impugned decision made by the Respondent. However, she had to seek a proper legal remedy before the competent forum to get damages for the loss and damages she suffered as a result of the said unreasonable decision of the Petitioner affecting her interest. In the circumstances I allow this petition and issue the writ of *certiorari*, accordingly I make no order as to cost

Signed, dated and delivered at Ile du Port on 28 September 2016



D Karunakaran
Judge of the Supreme Court