IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0006 OF 1994
(High Court Judicial Review No. 4 of 1988)

BETWEEN:

MANUNIVAVALAGI DALITUICAMA KOROVULAVULA — APPELLANT

-and-

PUBLIC SERVICE COMMISSION — RESPONDENT

Mr. G. P. Shankar for the Appellant
Mr. N. Nand and Mr. M. L. Ahmadu for the Respondent

Date of Hearing : 16th August, 1994
Date of Delivery of Judgment : 23rd August, 1994

JUDGMENT OF THE COURT

This is an appeal from the judgment of Byrne J in the High Court at Suva given on the 8th December 1993. The judgment arose out of an application for judicial review made by the appellant, Mr. Korovulavula, initially in respect of a decision made by the respondent ("the Commission") to terminate his appointment as Controller of Road Transport and, later, in respect also of the decision of the Minister for Communications, Works and Transport ("the Minister") to terminate his appointment as Principal Licensing Authority. There was also an alternative claim before Byrne J for damages and costs in the statement filed by the appellant pursuant to Order 53 Rule 3 of the High Court Rules 1988. In that statement he had sought, as an alternative to judicial review, an order that the matter continue as "a private" action for a declaration, damages and costs, presumably in reliance upon the powers given the Court by Rule 5 of the Order.

Byrne J referred to this alternative basis to the proceedings at the commencement of his judgment but does not otherwise consider it nor make any determination in respect of it. In the event, in the way we deal with the appeal we do not think this matters. The appellant's counsel had filed, before the hearing of this appeal, a notice to the effect that he would seek leave to add an additional ground to the grounds of the appeal to the effect that the learned Judge was wrong in not allowing the proceedings to continue as a private action. What he sought, as became apparent later in his argument, was a declaration. In the event he made no submissions as to why he should be allowed to add a further ground and in the view we take of the whole case, as will become apparent later in this judgment, it is not necessary to give leave.

When the proceedings were first commenced in April 1988 they related only to the decision of the Commission to terminate the appellant's appointment as Controller of Road Transport. Later, on the 3rd November 1988, the appellant was given leave by Jesuratnam J to amend the proceedings by including the decision of the Minister to terminate his appointment as Principal Licensing Authority. This amendment expressly asked for an order of certiorari to quash the decision of the Minister and for a declaration that the Minister's decision was null and void. At that stage the Minister was not a party to the proceedings and the printed case on appeal shows that on the 17 October 1990 a formal application was made for his joinder. The printed case does not show how that application was disposed of - but then the

printed case does not include all the documents that make up the record in the High Court - though counsel's written submissions upon the application are included. We note that counsel for the Commission Mr. Cope, Senior Legal Officer for the Solicitor-General, in his written submissions submitted that orders on the application of the 17 October were not necessary because the Court already had, in the order made by Jesuratnam J on the 3rd November 1988 in substance granted the applications made on the 17th October 1988. The case thereafter seems to have proceeded on the basis that the Minister was a party and we are content to do likewise. It seems clear from the papers and submissions of counsel for the Commission that he was dealing in his arguments with both the Commission and the Minister and clearly the Minister was actively involved in the proceedings in a direct way in relation to the Order for Discovery and the claim for State privilege.

In his judgment refusing both applications for judicial review, the nature of the relief sought being certiorari to quash and declarations as to the invalidity of the decisions, the learned trial Judge held, broadly speaking, that the office of Principal Licensing Authority was an appointment made under what once would have been called the Crown's prerogative and is now the State's prerogative, and that therefore a termination of the appointment under the prerogative was not open to review by the Courts; and that the office of Controller of Road Transport was held by the appellant under a contract and thus the common law requirements of public law, such as the requirement to observe

the rules of natural justice and not act for any improper purpose or on any improper basis, had no application. The issue was to be determined solely under contract law.

The Background Circumstances and Facts:

In the High Court the evidence was presented by affidavit. There were only two deponents, the appellant and a Mr. Poseci Bune, the Secretary of the Public Service Commission. The appellant made several affidavits; Mr. Bune only one. Neither deponent was cross-examined and there was very little conflict in what the two deponents said. In the absence of any contradiction or conflict in the evidence of the two deponents what each has said can be substantially accepted.

The appellant was a retired civil servant. He had had considerable experience in the Road Transport Department before his retirement and had been, as Controller of Road Transport, the head of the Department. In August 1987 he accepted the appointment of Controller of Road Transport; it was made clear to him at the time that he was expected to clear up what was said to be a complete mess in the Department. The appointment was not, however, made to the permanent staff of the public service, appointments to which were then made in terms of the 1970 Constitution of Fiji and the Public Service Act (Cap 74), being before the Fiji Constitution Revocation Decree 1987 (Interim Military Government Decree No. 1). It was made in terms of a written contract headed "Government of Fiji Agreement of

Service". This contract was in formal terms between the Commission, for and on behalf of the Government of Fiji, and the appellant and it provided that the Government would employ the appellant and the appellant would serve the Government upon and subject to the terms thereafter set out. These included a provision that the appellant would "diligently and faithfully perform the duties of Controller of Road Transport or any other duties on which the Government may think it desirable to appoint him for a period of service of two years..."

At this point it should perhaps be noted that neither the then Public Service Act nor any Regulations made under it provided expressly for contracts of employment, as opposed to permanent or temporary staff employment, but s.105 of the 1970 Constitution of Fiji gave a general power to the Public Service Commission to make appointments of public officers. Subsequently, after the Fiji Constitution Revocation Decree 1987 there was made the Fiji Service Commissions and Public Service Decree 1987 (Decree No. 5) and amendments which provided for the establishment of a Public Service Commission, which is the present respondent, and for the making of subsidiary instruments which would set out the powers and functions of the Commission. These subsidiary instruments were contained in schedules to the Fiji Service Commissions and Public Service (Amendment) Decree 1987 No. 10, and the first schedule contains such an instrument under the heading "Public Service Order 1987". "The Public Service" is in s.2 of the Order defined as meaning the service in the Military Government of Fiji in any capacity in respect of

the Government other than in a military capacity. Further in that Order s.16 empowers the Commission, with the approval of the Executive Council, to make regulations for the purpose of carrying out its functions. This power is given in wide terms. The Commission apparently then made such regulations for the second schedule to Decree No. 10 contains regulations headed "Public Service Commission Regulations 1987" purporting to be made by the Public Service Commission in exercise of powers conferred on it by the relevant Decrees. It should be noted at this point that when the Military Government was dissolved by Decree No. 25 the then existing laws were continued in force by s.29 of Head of State and Executive Authority of Fiji Decree 1988 being Decree No. 5 of the Government of the Republic of Fiji. Regulation 16 of those Regulations expressly provides that the Commission may offer an appointment on contract for a fixed period to any person. It follows in our view that both at the time the contract was entered into, and subsequently in terms of the legislation made by decree, it was lawful for the Commission to appoint a person to a public office the appointment to be held in terms of a contract. It should be noted that Regulation 26 of the Regulations expressly provides that where an officer is on contract his appointment shall be terminated in accordance with the terms of his contract and the interpretation regulation of the Regulations (Reg. 2) defines an officer in terms which plainly include the appellant. In our view all these provisions make it clear that the appellant held a public office in the Public Service of Fiji, albeit on some special terms as set out in his contract of service.

It was, apparently, the practice for the Controller of Road Transport, to be appointed also to the office of Principal Licensing Authority. That office was provided for by express statutory provision. Section 5(1) of the Traffic Act (Cap.176) provided that the Minister may appoint a Principal Licensing Authority who was charged with the licensing of motor vehicles and drivers and matters incidental thereto. It was no doubt a convenient and practical arrangement that the Controller of Road Transport and the Principal Licensing Authority should be the same person and in due course the Minister appointed the appellant Principal Licencing Authority. It may be noted in passing that while the appellant received a salary of $25,000 per annum under his written contract with the Commission he received no additional salary in respect of his appointment as Principal Licensing Authority.

Early in 1988 it was apparent there was dissension between the Minister and the appellant. Memoranda passing between the two, which were produced as exhibits, show this quite clearly. Indeed dificulty had arisen earlier. On 12 December 1987 an official on behalf of the Minister sent the appellant a memorandum couched in terms of an instruction, invoking a statutory provision S.5(5) of the Traffic Act, which in effect required him to transfer a particular Taxi Permit to a particular person named by the Minister. The memorandum had endorsed on it a handwritten note, apparently by the Minister, in these words:

"PLA

Notwithstanding anything to the contrary,

legal or otherwise, I have no objection to the transfer as above stated.

AT
MCT & W
7/12/1987"

On the 20 January 1988 the appellant sent the Minister a lengthy memorandum explaining the background to the case and the reason why he could not approve the transfer of the taxi permit.

On the 25 January 1988 the Minister received a letter from another Minister in respect of a named person in relation to that person's public service driving licence. He asked the Minister, after reminding him that he had previously spoken to him about the case, if he could help. The Minister then passed this on to the appellant with a note in the following words:-

"PLA

I really think we should help.....
Forwarded for appropriate action.

AT
MCT & W
25-1-1988"

(Name omitted)

On the same day the appellant sent the Minister a memorandum explaining the background to the matter and advising that he had already refused, in writing to the named person, to renew his public service driving licence.

A few days later on the 5th February 1988, the Minister sent the appellant a lengthy memorandum. It was clear from this that

the Minister considered that he was finding it, as he put it, ".....increasingly difficult to reconcile some conflicting views which we seem to have on how certain functions of your department should be handled". It is not necessary for the purposes of this judgment to set out the other points made by the Minister, other than to say they were careful and considered, but we do record that the only matters from the evidence that appeared to constitute the differences between the Minister and the appellant were the two matters already referred to, namely, the refusal to renew a public service driving licence and the refusal to approve the transfer of a taxi permit.

At all events on the 8th February 1988 the Minister revoked the appellant's appointment as Principal Licensing Authority and appointed another officer of the appellant's department to the position. The appellant however, still held the appointment of Controller of Road Transport.

On the 23rd March 1988, that is some six weeks later, appellant was called to the office of the secretary of the Commission. He there discussed the position generally with the secretary, Mr Bune, the deponent of the affidavit made on behalf of the respondent. Mr Bune informed him that the Commission had received submissions from the Minister but he did not tell him what the contents of the submission were. He also advised the appellant that the Commission's re-action to the Minister's submission was that it decided he should be asked to resign and, if he did not do so, to dismiss him. The appellant refused to

resign. Mr Bune said in his affidavit that he then had some discussions with the Minister, who informed him that the appellant was very stubborn and insistent that he would not follow lawful Ministerial directions and as such the Minister was of the view that there was little point in discussing the issue further with the appellant. Mr Bune went on to say that he advised the appellant that, having spoken to the Minister, he had no option but to implement the decision of the Commission to terminate his appointment pursuant to clause 6(b) of the contract. Later that same day the 23rd March, the appellant received a notice in writing terminating his contract of service, with effect from the 24th March 1988, under clause 6(b) of the contract, the provisions of which will be discussed later in this judgment.

The foregoing outline of the background circumstances and facts show that there are two quite separate issues to be determined. First, was the termination of the appellants appointmnent as Principal Licensing Authority Lawful or not; and second, was the termination of his appointment as Controller of Road Transport lawful or not. Counsel for the respondent during the course of his oral submissions contended more than once that it was all really the one matter as the appointment of Principal Licensing Authority was really dependent upon the appointment of Controller of Road Transport. We do not accept that submission; it may well be from a practical point of view that it was administratively convenient to regard the two offices as going together but we are quite satisfied that in law they are separate

and must be so treated in considering the lawfulness of their terminations.

We propose to consider, first, the termination of the appointment as Principal Licensing Authority, and second, as Controller of Road Transport.

Principal Licensing Authority:

The appointment was made by the Minister exercising the power given him in s.5(1) of the Traffic Act, which has been set out earlier in this judgment. There is no provision in the Act fixing a term for the appointment nor for its revocation. However, s.44 of the Interpretation Act (Cap.7) provides as follows:-

> "44. Where by or under any written law a power or duty is conferred or imposed upon any person or authority to make any appointment or to constitute or establish any board, commission, committee or similar body, then, unless a contrary intention appears, the person or authority having such power or duty shall also have the power to remove, suspend, dismiss or revoke the appointment, of, and to re-appoint or reinstate, any person appointed in the exercise of the power or duty, or to revoke the appointment, constitution or establishment of, or dissolve, any board, commission, committee or similar body appointed, constituted or established, in exercise of such power or duty, and to re-appoint, reconstitute or re-establish the same:
>
> Provided that where the power or duty of such person or authority so to act is exercisable only upon the recommendation, or is subject to the approval or consent, of

> some other person or authority, then such powers shall, unless a contrary intention appears, be exercisable only upon such recommendation or subject to such approval or consent."

(We note in passing that the comma after "....revoke the appointment..." in the first paragraph appears to have been inserted in error)

It follows that the Minister had the power to revoke the appointment as he did.

The learned trial Judge in his judgment considered the question of whether the Minister's decision to terminate the appellant's appointment was susceptible of review by the Court and reached the conclusion, after reviewing a number of authorities, that it was an appointment at the pleasure of the Minister, being based on the exercise of the State prerogative which the Republic of Fiji had inherited from the old Crown prerogative, and was thus not open to be reviewed by the Courts. We do not share His Lordship's view for we do not think this was a prerogative appointment. It follows we do not think this case depends upon the prerogative and would add, in passing, that even prerogative powers may be reviewable though the scope of review may be small. The appointment was made by the Minister under a power given to him by statute and was terminated by him under a power given by another statute. It may be, as His Lordship held, that the Minister is not required to give reasons for exercising his power to terminate an appointment but what is clear, in our

view, is that in exercising his power to terminate he does not have an unfettered and uncontrolled discretion. The appellant held a public office created by statute to which he was appointed by a servant of the state, namely a Minister, for a Minister is no less a servant of the state than any other servant of the state, under a power given to that Minister by statute. The Common law makes it clear that, generally speaking a statutory power conferred on any person or authority for public purposes is conferred, as it were, upon trust and not absolutely. Accordingly the holder of such a power does not have an unfettered discretion in exercising the power. The following passage from "Administrative Law" by Sir William Wade, 6th Edition at p.399 aptly states the position:-

> "The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. So a city council acted unlawfully when it refused unreasonably to let a local rugby football club use the city's sports ground, though a private owner could of course have refused with impunity. Nor may a local authority arbitrarily release debtors, and if it evicts tenants, it must act reasonably and 'within the limits of fair dealing'. The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may

use them for the public good.

> There is nothing paradoxical in this imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American law: it is equally prominent in French law. Nor is it a special restriction which fetters only local authorities: it applies no less to ministers of the Crown. Nor is it confined to the sphere of administration: it operates wherever discretion is given for some public purpose, for example where a judge has a discretion to order jury trial. It is only where the powers are given for the personal benefit of the person empowered that the discretion is absolute. Plainly this can have no application in public law.
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> For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere."

See also the discussion in de Smiths Judicial Review of Administrative Action 4th Edn by JM Evans at p.286.

In our view this was a statutory public appointment and the Minister's power to terminate it is reviewable by the High Court. In the numerous papers that make up the Court Record there are in different documents many varied grounds raised to support the contention that the decisions of both the Commission and the Minister to terminate the appellant's appointment should be quashed or set aside. The grounds include allegations that they were wrongful, unlawful, ineffective, in breach of the provisions

of natural justice, unreasonable, took into account extraneous matters or were not exercised properly or correctly. It is not entirely clear to us just how these many and varied contentions were argued though it is clear that great reliance was placed upon the provisions of natural justice in respect of both decisions. We record at this point that solicitors and counsel neither help their clients nor themselves by adopting this shotgunlike approach to pleadings and arguments. By raising every conceivable issue they seem to think that one at least will succeed. In fact they run the very considerable risk of none succeeding for the Court may be left unable to tell what is important and what is not.

It appears to us clear that the dissension between the Minister and the appellant is basically attributable to the two licence matters canvassed earlier. The Minister no doubt thought he had legal justification for giving the appellant directions as to what he should do in respect of those two cases and thus, when he refused to comply, that he was behaving in an unacceptable and obstructive manner. The record shows that the Minister considered he was entitled to give the appellant directions in respect of these two specific cases by virtue of s.5(5) of the Traffic Act. That subsection says:-

> "(5) In the exercise of its powers, duties and functions under this Act, the Principal Licensing Authority shall act in accordance with any general or special directions given to it by the Minister."

We, however, are of the clear view that this subsection did not give the Minister such a power. The Act specifically entrusts the power of licensing motor vehicles and drivers to the Principal Licensing Authority. That duty inevitably requires the Authority to deal with individual cases and, in so doing, he must ensure that all the legal requirements that have to be met are satisfied. He must himself observe the rules of natural justice in relation to the applicant for, and opponents of, the grant of licences or approvals of transfers and so forth. He could not properly carry out his duties entrusted to him alone by the statute, if he were to be subject to directions from the Minister in respect of individual cases. We think, therefore, these directions by the Minister were not lawfully given. Further, and in some respect more importantly from a public law point of view, they were fundamentally improper and so unlawful. A Minister must use statutory powers entrusted to him for the general purposes of the empowering statute and for the public good. It cannot be said that giving specific directions to a licensing authority in respect of individual cases could possibly be in accord with the general purpose of the statute which has expressly entrusted the duty to a particular official; nor can it possibly be for the public good for a Minister of the State to intervene and give directions to an official, whose duty and power it is to grant or decline licences, to act in a particular way in respect of a particular case. Such conduct, if permitted, would mean that individuals who have the ear of the Minister have an advantage over one who has not. It would open the door to corruption in official conduct and would destroy public

confidence in the integrity of the licensing system created by the statute.

In our view the Minister should not have given the two directions discussed above and, had he not done so, there is no reason to suppose the dissension between himself and the appellant, which is the justification for the termination, would have arisen. Accordingly, for this reason we hold the termination of the appellants' appointment as Principal Licensing Authority was unlawful. We add, though we do not intend to discuss the question further since we are satisfied that the termination was unlawful for the reason already discussed, that we think that the Minister also failed to meet the requirements of natural justice in the circumstances. The appellant, though aware of the difficulties in the Minister's mind in relation to the way he was performing his duties should have been told plainly of the Ministers concerns, and that he was contemplating termination of his appointment because of them, and given an opportunity to justify himself. That does not mean anything in the nature of a formal hearing was required; it would have been sufficient to inform him orally or in writing and then give him a fair opportunity to justify himself. This was not done and while it is clear the appellant was aware of the Ministers disagreements with him over the two issues, and had given him explanations for his attitude, he was not to know that the Minister contemplated the course he took. Had he known he would have had the opportunity to take legal advice and he might then have put to the Minister what we have earlier expressed in this

judgment as to the unlawfulness of the Ministers actions.

What relief should be given in these circumstances? The Court always has a discretion as to the form of relief to be granted on applications for Judicial Review. It is six and a half years since these events occurred. It is plainly far too late to quash the notice of termination and re-instate the appellant. The termination must stand. In the circumstances we consider the best course is to make a declaration that the Minister's termination of the appellants appointment as Principal Licensing Authority was improper and unlawful. Accordingly there will be a declaration to that effect.

Controller of Road Transport:

As already outlined this appointment was made by the Commission and, as we have already said, was an appointment to a public office in the Public Service of Fiji, albeit on some special terms as set out in his contract of service. That contract contained three clauses relating to the termination of the appointment. They were as follows:

> "6. Without prejudice to the provisions of paragraph 8 (relating to dismissal) Government may terminate this Agreement:
>
> (a) by giving the officer not less than three months' notice in writing of the date upon which the Agreement will be terminated;
>
> (b) at anytime by giving the officer one month's salary in lieu of the notice

aforesaid;

(c) in that event of the officer being certified by a Government medical officer as being medically unfit for service under this Agreement, by giving him one month's notice in writing of the date upon which the Agreement will be terminated.

7. The Officer may, after the expiration of three months' service, determine this Agreement:

(a) by giving not less than three months' notice in writing of the date upon which he proposed to terminate the Agreement; OR

(b) at anytime by paying to the Government one month's salary in lieu of the aforesaid notice.

8. If after reasonable inquiries Government is satisfied that the officer has been guilty of misconduct or a breach of any term of this Agreement, the officer may be summarily dismissed by the Government and upon such dismissal all rights and advantages reserved to him under this Agreement shall cease."

Clauses 6 and 7 deal with the termination of the contract before the expiry of the term of two years at the will of either the Commission or the appellant while clause 8 deals with dismissal for misconduct or breach of any term of the agreement.

As has been already recorded in this judgment the appellants contract was terminated in accordance with Clause 6(b). It follows that notwithstanding the reference in one paragraph in the affidavit of the appellant to "dismissal" the decision of the Commission, which Mr Bune as secretary of the Commission

implemented, was to terminate his employment pursuant to Clause 6(b) and not "dismiss" him pursuant to Clause 8. The termination was effected by notice given in terms of Clause 6(b) and so far as we are aware there is no suggestion of any breach of contract in that respect. The termination was strictly in accord with the contract.

Mr Shankar for the appellant accepted that had this been a contract between a private person or corporation and the appellant then the appellant could have had no cause for complaint. He submitted however, that because the respondent Commission was a Government body there should be a term implied in the contract that the rules of natural justice and other public law principles applied to it. We do not accept that submission. The contract appears complete on its face, is carefully drawn and we cannot see any justification for importing such an extensive term by implication.

Mr Ahmadhu had submitted that the relationship of the appellant and the Commission was wholly a matter of contract. The learned trial Judge accepted this submission for he held that the applicants employment as Controller of Road Transport was wholly governed by his Agreement of Service.

In our view it is necessary to go further than the express words of the contract in determining whether what was done here by the Commission was proper. We accept that there was no breach of contract; the Commission acted directly in accord with the

terms of the contract and in our view the appellant has no grounds for complaint about that. However, it must be recognised that the Commission had a discretionary power to decide whether it would exercise the rights it had in terms of Clause 6 of the contract to terminate the appointment. Likewise, in the same way the appellant had a discretionary power to decide whether he would exercise the rights he had in terms of Clause 7 of the contract to terminate it. But while the appellant, as a private individual, had the right to decide to exercise those rights for any reason whatsoever, the respondent, being a statutory body created for public purposes, to carry out public functions and to ensure the carrying out of public functions by the Public Service, was required to exercise its rights under the contract in good faith in accord with the general purposes of the statute for the public good.

It is clear that the Minister wrote to the Commission about the appellant early in March 1988. That letter was not produced in evidence, State privilege being claimed in respect of it. It obviously related to the difficulties that had arisen between the Minister and the appellant. The Commission on the 22nd March decided that the appellant should be called upon to resign and that, if he did not, his employment should be terminated in terms of Clause 6(b) of the contract. Mr Bune in his affidavit said that the decision of the Commission to terminate the applicants appointment was proper, fair and reasonable in view of certain statements the appellant made to a newspaper, The Fiji Times, of the 25 February 1988 and in view of his inability to accept and

undertake directions from his Minister. It is necessary therefore, to consider these two matters to determine whether it could properly be said the Commission was exercising its rights under the contract for the public good.

The statements made by the appellant to the Fiji Times, as reported in the newspaper, were in answer to inquiry by the newspaper as to why his appointment as Principal Licensing Authourity had been cancelled. He would have been wise to have declined to answer but he in fact said, in effect what we have held, that he had been required by the Minister to do certain things which he thought were unlawful and was not prepared to do them. The second matter, in our view, can reasonably be inferred to relate only to the two licence matters and accordingly could not be a good reason for exercising the rights given in Clause 6(b). It could scarcely be said to be for the public good to terminate a servants employment because he refused to do something that was unlawful.

In result it follows we are satisfied that the Commission's decision to exercise its rights to terminate the appellants employment under Clause 6(b) could not be said to have been made in accord with the general purposes of the statute for the public good.

The question of the relief to be granted should, in our view, be resolved in the same manner as in respect of the termination of the appellant's appointment as Principal Licensing

Authority and for the same reasons. It is again plainly far too late to quash the decision and re-instate the appellant. The decision therefore stands. The termination of the appellants employment was strictly in accord with the contract and there is thus no breach of contract. It is the earlier decision of the Commission, that is the decision to exercise its powers under the contract, that was unlawful. There will therefore, be a declaration that the Commission decided unlawfully to exercise its right to terminate the appellants employment as Controller of Road Transport under Clause 6(b) of the contract of employment.

The appeal is allowed and the appellant is entitled to costs. There will be an order that the respondent pay the appellants costs, including those on the interlocutory proceedings, unless the High Court had ordered otherwise. If the parties cannot agree the costs are to be fixed by taxation.

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Sir Edward Williams
Judge of Appeal

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Mr. Justice Savage
Judge of Appeal

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Mr. Justice Dillon
Judge of Appeal

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