

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO.: HBJ 10 OF 2006

BETWEEN:

THE STATE v. PUBLIC SERVICE COMMISSION

1ST RESPONDENT

PUBLIC SERVICE APPEAL BOARD

2ND RESPONDENT

EX-PARTE: ERONI MOTO LUVENIYALI

APPLICANT

Mr. V. Maharaj for the Applicant

Ms A. Uluviti with Mr. S.D. Turaga for the Respondents

Date of Hearing: 6th April 2006

Date of Ruling: 7th April 2006

RULING

On 16th March 2006 on an ex-parte application the applicant sought two orders from the court –

- (a) leave to apply for judicial review alternatively

- (b) stay of implementation of the decision of the 1st defendant to demote the applicant from the post of Director of Immigration to that of Principal Immigration Officer pending the hearing of his appeal by the 2nd respondent.

I refused leave as the applicant's appeal before Public Service Appeal Board was still pending and therefore the alternative remedy had not been exhausted. However having looked at the affidavit, I considered the interests of justice warranted a stay. The Public Service Appeal Board has no powers to grant stay pending appeal.

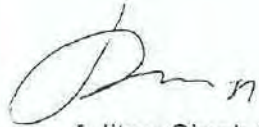
The 1st respondent has sought to set aside the stay order I had granted. Ms Uluiviti submitted since the court had refused leave, it had no jurisdiction to grant stay. Once leave was refused the court was functus she submitted.

The applicant had not sought leave and such leave to act as grant of stay but rather sought stay as an alternative. The Public Service Appeal Board has no powers to grant stay of decision of Public Service Commission. Hence he has come to this court. This court has in its supervisory capacity powers to control subordinate courts and Tribunals – Lila Wati & Others v. Alitia Vakaraubuca.

Ms Uluiviti submitted the grant stay would open floodgates to similar applications and interfere with the work of the Public Service Appeal Board. I think not. There must be exceptional circumstances before such applications would succeed. The court is unlikely to venture into merits of the case in granting such stays. Substantial injustice because due process was not adopted needs to be shown.

I gather from the affidavit of Tom Lee that the Commission has difficulty understanding my order. The effect of my order is that the applicant is to be reinstated to his previous post of Director of Immigration on a salary which he received as Director. I have not ordered refund of any salary he may have lost since the date of suspension or demotion until the day I made order. My order

subsists only until the Public Service Appeal Board has heard the appeal on merits and made a decision. The sooner the appeal is heard the better it is for all parties concerned. I expect the Commission to implement the order by 12th April 2006 which would give it sufficient time to organize the matters.



[Jiten Singh]

JUDGE

At Suva

7th April 2006