

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 04 of 2016

BETWEEN: **ARTI JYOTIKA VIKASH**

PLAINTIFF

AND: **FJI NATIONAL UNIVERSITY**

DEFENDANT

Appearances:

Mr. D. Nair for the Plaintiff.

Mr. B. Singh and Mr. R. Chand for the Defendant.

Date/Place of Judgment:

Friday 28 July 2023 at Suva.

Coram:

Hon. Madam Justice A. Wati.

JUDGMENT

A. Catchwords:

Employment Law – Unlawful and Unfair Dismissal of Employment – Whether the worker's termination of employment lawful and fair – examination of the reasons and procedure for termination to determine the lawfulness of the termination- to determine whether the termination was fair, the manner in which the dismissal carried out examined.

B. Legislation:

1. *Employment Relations Act 2007 ("ERA"); s.30.*
2. *Fiji National University Act 2009; s. 30.*

Cause

1. The plaintiff brings this claim for unlawful and unfair dismissal of her employment from Fiji National University ("**FNU**").
2. Ms. Arti Jyotika Vikash ("**Arti**") was employed as an Accountant [Levy & Grants] from 1 September 2015 to 31 August 2020. On 21 December 2015, she was summarily terminated from her employment.
3. The reason for her termination was that she had provided false information to FNU regarding her salary and position with her previous employer, the University of the South Pacific. It was also alleged that she failed to provide the employer with the latest pay slip from her previous employer when officially requested to. It was alleged that her actions amounted to deliberately misleading the interview panel to secure employment.
4. The letter of termination which was signed by the Deputy Chancellor Mr. Arvind Maharaj reads as follows:

"It has been brought to our attention that during your interview for the position of Accountant Levy and Grants at NTPC which was held on 28th May 2015, you provided false information to FNU regarding your salary and position at your last position at the University of the South Pacific.

It is also noted that you failed to provide FNU a copy of your latest pay slip from your previous employer when officially requested to.

After investigations we find that you had deliberately misled the interview panel in order to secure employment.

Given the above and in our considered view we are inclined to believe that your actions were deliberate, intentional and not as a result of circumstances beyond your control.

Therefore, and pursuant to section 33(1) (a) and (b) of the ERP and section HR Policy 29 on section 27: 27.1, 27.2, (a) & (b) & 1: 1.6 of the HR Policy No. 2, you are summarily dismissed with immediate effect.

You are required to duly complete the Exit Form and hand over to General Manager Levy and Grants, together with all FNU property in your possession”.

5. The parties have filed a Pre-Trial Conference and agreed that the following issues be tried by the Court:

1. *Whether the decision of 21st December 2015 to terminate the employment of the Plaintiff was lawful, justified and fair?*
2. *Whether the then Deputy Chancellor, Mr. Arvind Maharaj had the authority to terminate the employment of the Plaintiff?*
3. *Whether the Plaintiff is entitled to be compensated for the balance of her unexpired employment contract from 21st December 2015 to 31st August 2020?*
4. *Whether the Plaintiff is entitled to compensation for loss of future earnings?*
5. *Whether the Plaintiff is entitled to damages for her sufferings caused by the actions of the Defendant in summarily dismissing her from her employment?*
6. *Whether the Plaintiff is entitled to costs on an indemnity basis?*

Evidence, Law & Analysis

6. I will deal with the issue of unlawful termination first. To determine whether the termination was lawful, I will examine the reasons for the termination and the procedure to terminate Arti. If the reasons are not justified and the procedure improper, then the termination will be unlawful.
7. The employer's basis for terminating Arti was that she had falsely informed the interview panel that she was paid \$45,000.00 annual salary when she was only paid \$21,358.42.

8. Arti refuted in her evidence that she ever told the employer that she was paid \$45,000.00 in annual salary. Her evidence indicated that she told the employer that she was receiving \$45,000.00 in salary and benefits as she also received study benefits from the University of the South Pacific. Arti does not deny that her salary was \$21,358.42.
9. The employer's witness testified that she did not provide any false information to FNU in her application form. The witness also testified that no one clarified from Arti's former employer what her total salary and benefits amounted to. All that the employer is saying is that the evidence provided to them by the University of the South Pacific was that Arti's salary was \$21,358.42.
10. The employer is also relying on an internal memorandum of the FNU which was tendered in evidence and marked as Exhibit P-A(1). This is a document which consists of 3 pages. It is an internal memorandum from the Acting Manager recruitment to the Acting Vice Chancellor. It contains information from the interview panel about the interviewees and the best suited candidate for the position.
11. The employer's witness highlighted the handwritten notes on page 3 of the internal memorandum. She is not the maker of the document but she read out the notes. The relevant parts of the note reads.

"Arti – Associate CPA member

- *Over 8 years of work experience*
- *Has held several positions as an accountant.*
- *Currently at University of the South Pacific (deals with Method A Levy & Grants). currently pursuing Masters in Professional Accounting.*
- *With study benefits, receiving \$45K (so anything above)*
- *Receiving \$42 annualized salary (one month notice period)."*

12. Whoever wrote the notes did not come to clarify what was written and what was told to the interview panel. From my reading, it is clear that Arti had informed the interview panel that she was receiving \$45,000.00 annually which included study benefits. The words *"with study*

benefits” makes it clear that Arti had at no point in time said that she earned \$45,000.00 in annual salary.

13. The last line reads “*receiving \$42 annualised salary*”. I do not know what that means \$42 in the form it is written means. It is written 42 dollars. Even if it means \$42,000, did it mean the net salary or the net salary with benefits? The notation is very confusing and the employer ought to have clarified that in evidence.
14. From the evidence of both Arti and the employer, it is clear that she had not misled the employer. She had always reflected on what salary and benefits she was getting from her former employer and naturally that would be the reflection of any employee. No employee would want to be paid less by the new employer. If Arti was going to join a new employer, her intention will always be to get the salary and benefits better than the one she was receiving. Why would she then talk about her salary alone? It does not make sense to me.
15. I therefore accept the evidence of Arti which was not challenged that she did not give any information which was not correct. There is no evidence from any one that Ms. Arti was not paid \$45,000.00 in annual salary and benefits. The employer has failed to establish that Arti misled the panel to secure an employment.
16. In any event, how much salary Arti was paid is not part of the qualification required to get the job that was advertised. However, if the employer considered the information on previous salary as crucial then it should have put some measures in place to extract correct information from the applicants. One way to do that was to ask the applicants to provide written confirmation of these things with supporting evidences. It cannot blame the employee for something it was responsible to do.
17. The employer also alleged that Arti did not provide a copy of the latest pays lip from her previous employer when officially requested to. There is no evidence in the internal memorandum to that effect or any oral evidence to establish that Arti was asked about providing her salary slip. If she was then she should not have been given the employment when

she was not complying with the instructions. I therefore, do not accept that Arti had failed to act in accordance with the instructions.

18. Further, if Arti was asked to provide her salary slip, then there is no reason why she would say that her salary is \$45,000 per annum. That request of the employer for the salary slip would mean that Arti would be exposed about lying, if she did. This again fortifies my view that when Arti talked about the \$45,000, she meant what she received in the form of annual salary and benefits and I do not find that she had been dishonest in making that representations to the employer. I do not find that the reasons for which Arti was terminated is justified.
19. In terms of procedure, I find that Arti should have been given a certificate of service at the time of her dismissal. That was not complied with. If she was given her certificate of service at the time of the dismissal, the termination letter would mention that and have with it attached the certificate of service.
20. I now turn to the powers of the Deputy Chancellor to terminate the employment of Arti. The power to terminate a staff is vested in the Vice Chancellor: *s. 30(3) of the Fiji National University Act 2009*. That power can be delegated to an appropriately qualified member of the University's staff: *s. 30(5) of the Fiji National University Act 2009*.
21. I have gone through the evidence of the employer. It has tendered Exhibit D-A(2). The Exhibit is signed on 31 December 2015. That document indicates that the powers of the Vice Chancellor was vested in the Chancellor. The employer's evidence clearly indicates that the Chancellor and Chair at the time was Mr. Iqbal Janiff.
22. If Mr. Iqbal Janiff was the appointed delegate to perform the functions of the office of the Vice Chancellor then where did Mr. Arvind Maharaj get his authority to sign the termination letter? No one has given evidence that Mr. Iqbal Janiff had delegated his work to Mr. Arvind Maharaj. No such written delegation was given to the court.
23. The employer says that Mr. Iqbal Janiff was out of the country. That does not mean that Mr. Iqbal Janiff could not perform the functions of his office from abroad or that Mr. Arvind

Maharaj could presume the powers and authorities vested in Mr. Iqbal Janiff. I find that Mr. Arvind Maharaj did not have the powers to terminate Arti.

24. Further, the date when Mr. Iqbal Janiff was vested the powers of the Vice Chancellor appears to be post the termination of Arti. She was terminated on 21 December 2015 and the delegation authority is dated 31 December 2015. This then again raises the question whether even Mr. Iqbal Janiff could have carried out the termination as he was delegated only after Arti was terminated.
25. I therefore find that Arti's termination was unlawful in that the reasons for her termination was not justified and that proper procedures were not followed in carrying out the termination.
26. On the question of unfair dismissal, there is no evidence that the employer's conduct was such that caused humiliation to Arti. Arti felt the humiliation and her feelings were injured as a result of the termination and not by any conduct of the employer which was not proper.
27. On the question of what is the appropriate remedy, I find that it is lost wages from the date of termination until November 2016. In August 2016 Arti moved to Melbourne. She says that she only found work in March 2017. She did not provide any evidence of her employment history in Australia. I am of the view that having gone to Australia in August 2016, she ought to have secured some work for herself in the two months period. It is not easy to survive in a foreign land without work. The purpose of Arti leaving for Melbourne was to get work. It may not be anything permanent but when she went to Australia for that purpose, she ought to have secured some sort of an employment for herself. I am not satisfied that she did not find work as she went to Australia.
28. I find that she should be paid lost wages for a period of 11 months. She was on an annual salary of \$46, 446 per annum. She would have also received benefits in the form of contributions by the employer towards her Fiji National Provident Fund. On that Fiji National Provident Fund monies, she would have received interest. I find that a sum of \$45,000 should be paid to her as lost wages and benefits for approximately 11 months.

29. Even if Arti was in Fiji, I would have expected her to have found employment between 6 to 12 months and have mitigated her loss. She would have to show to me why with the qualification she had, she could not secure work for herself. In this case I find that she did mitigate the loss by leaving the shores in the hope of securing an employment there. Even if she did find work abroad and went there to start work immediately, it is not unfair to allow her 2 months from the time she left the shores to put herself in order and start work without any hindrance.

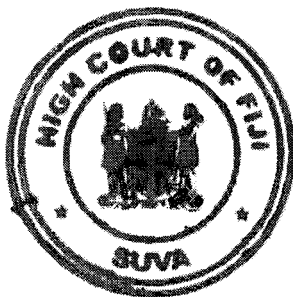
30. In terms of costs of the proceedings, I find it fair that the employer pays costs to the employee. The trial was very short and Arti did not incur expenses coming to Fiji as I had allowed her to give evidence through Skype. The employer's counsel had also not consumed any trial time on irrelevant issues. A lot of time was thus saved. The costs therefore would not be huge against the employer.

Final Orders

31. I find that the termination of the worker Arti from her employment was unlawful and that she should be paid a sum of \$45,000.00 in the form of lost wages and benefits.

32. There shall be costs to the plaintiff in the sum of \$3,000.00 as well.

33. All the monies should be paid to her within 21 days.



Hon. Madam Justice Anjala Wati

Judge

28.07.2023

To:

1. Naco Chambers for the Plaintiff.
2. Fiji National University Legal In-House for the Defendant.
3. File: Suva ERCC 04 of 2016.