

**IN THE EMPLOYMENT RELATIONS COURT**  
**AT SUVA**

**ERCC No: 26 of 2018**

**BETWEEN** : **SAGAR SHANIL PRASAD SHARMA**

**PLAINTIFF**

**AND** : **MINISTRY OF EDUCATION, HERITAGE AND ARTS**

**DEFENDANT**

**BEFORE** : **M. Javed Mansoor, J**

**COUNSEL** : **Mr. D. Nair for the Plaintiff**

: **Ms. M. Ali with Mr. S. Kant for the Defendant**

**Date of Hearing** : **05 October 2020**

**Date of Judgment** : **27 November 2023**

# JUDGMENT

EMPLOYMENT

Non renewal of employment contract – Breach of contract – Redundancy – Employment Relations Act 2007

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1. The plaintiff instituted action seeking compensation for loss of future earnings and for humiliation, anxiety and loss of dignity that he suffered due to the non-renewal of his contract of employment. He sought declarations that the redundancy caused by the defendant was unfair, unjustified and unlawful, and that its actions were discriminatory.
2. The plaintiff was employed as a clerical officer with the Ministry of Education, Heritage and Arts. His three year contract of employment was to end on 3 July 2018, but was extended until 30 November 2018. By letter dated 2 October 2018, received by the plaintiff on 12 November 2018, he was informed that his role was no longer required. His employment ceased with effect from 30 November 2018.
3. By its statement of defence, the defendant pleaded that the plaintiff was advised his contract would not be extended upon its expiry. The defendant disagreed that termination of the contract was arbitrary, saying that his employment ceased when his contract expired. The defendant denied that the plaintiff's employment was made redundant, and said that there is no requirement to provide him work after expiry of the contract.
4. The main issue before court is whether the defendant acted lawfully in not renewing the plaintiff's employment when the contract ended on 30 November 2018.
5. In his evidence in chief, the plaintiff said that by letter dated 2 October 2018, the defendant communicated that his role was no longer required. Upon receipt of the letter, he spoke to an official of the human resources department, but did not receive a reasonable response. He did not know that there was a restructure within the ministry. The plaintiff says he has incurred financial losses as a result

of losing his employment, and that he has faced humiliation and undergone anxiety. The plaintiff said that his expectation is to continue working until 55.

6. In cross examination, the plaintiff said his claim is based on redundancy because the defendant's letter of 2 October 2018 stated that his role was not needed anymore. He said that although the employer asked him to apply for a suitable position, he did not do so as the matter is in court. The plaintiff conceded that the defendant was within its rights not to renew his contract. He agreed that he was not made redundant and that his employment ceased as the ministry did not renew his contract.
7. On behalf of the defendant, Kacarini Buaserau, a human resources officer, gave evidence. She testified that the plaintiff was a clerical officer and last served in the library service division. He was responsible for managing records such as leave information. She said that the plaintiff's contract was not renewed as his position was no longer required, following a restructure within the ministry. The restructure was after positions were evaluated in 2017 following a government policy decision concerning the civil service.
8. The defendant's witness said that the plaintiff was moved to library services after he was suspended following a disciplinary issue, and at that point there was already a clerical officer in library services. She said the ministry guidelines allowed employees to continue in their roles until the cessation of their employment contracts.
9. She said the ministry attempted to find placements for employees whose contracts were not renewed according to guidelines, and that some who lost their jobs were employed when they applied to other available positions in the ministry. The witness said the plaintiff could have been employed in other positions if he had applied.
10. In cross examination, the witness explained that the plaintiff's final contract was of a short duration as the reforms were being implemented. She denied that non-renewal was due to suspension and non-performance of the plaintiff. The

witness said the permanent secretary gave reasons for not renewing the plaintiff's contract, and he was encouraged to apply for available vacancies.

11. The plaintiff's claim is based on the breach of his employment contract. His statement of claim says he was made redundant, but this was not pursued in his testimony, and in cross examination he agreed that he was not made redundant.
12. The duration of the plaintiff's contract was for three years. After a short extension, the contract ended on 30 November 2018. The contract provides that renewal is at the absolute discretion of the government, with the employee to be informed a month before expiry of the contract whether it would be renewed or not.
13. Renewal of the contract was subject to a satisfactory performance assessment report, to be carried out by the supervising officer or head of the department. The contract says that non-renewal of the contract will not give rise to any cause of action against the government.
14. By letter dated 2 October 2018, the plaintiff was informed that his role is no longer required. He was advised to apply for suitable vacancies. He continued in employment until the expiry of his contract. He did not apply for other positions.
15. In these circumstances, the plaintiff has not made out a case against the defendant for breach of his employment contract. The evidence does not establish the claim of redundancy, which, in any event, the plaintiff did not press.
16. A complaint against dismissal based on redundancy should be referred to mediation services in terms of the Employment Relations Act 2007. The plaintiff also pleaded that he faced humiliation by the loss of his employment. That, too, is a matter to be raised as an employment grievance by referring it to mediation services in terms of the statute. The plaintiff's action is liable to be dismissed.

**ORDER**

- A. The action is dismissed.
- B. The parties will bear their respective costs.

Delivered at **Suva** this 27<sup>th</sup> day of **November, 2023**.



A handwritten signature in blue ink, appearing to read "M. Javed Mansoor".

M. Javed Mansoor  
Judge