

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

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Civil Jurisdiction

Action No. 150 of 1977

Between

SATISH CHANDRA VERMA Plaintiff
s/o Jagjit Singh

and

HOUSING AUTHORITY 1st Defendant
UTKAT NAIKER 2nd Defendant
s/o Kalliappan Naiker

Mr. Jai Raj Singh and Mr. Suresh Verma, Counsel for the Plaintiff
Mr. B. Sweetman, Counsel for the Defendants

JUDGMENT

In this action the plaintiff seeks against the defendants a declaration that his dismissal from his employment with the first defendant was unlawful as being ultra vires and contrary to the principles of natural justice and fairness and claims special damages in the sum of \$6,202 as well as exemplary, punitive and general damages.

At the outset I must observe that the manner in which the cause of action has been pleaded in the statement of claim is somewhat obscure and leaves much to be desired. The statement of claim pleads that the dismissal of the plaintiff was unlawful as being ultra vires (presumably as not being within the scope of the powers of the first defendant). It seems to me that such a proposition would not get the plaintiff very far because the first defendant as employer of the plaintiff would in view of the contract of employment possess either impliedly or expressly the necessary powers to terminate the plaintiff's employment if it chose to do so and therefore the exercise of such powers could not possibly be characterised as unlawful. It may well be that the exercise of such powers was wrongful in the sense that the grounds for so doing were insufficient in law thereby giving rise to a common law action for wrongful dismissal and a claim for damages. But this is not what was pleaded. However, since no objection was taken to the form of pleading in this case and in view of the nature of the evidence put before me, I shall treat the case as one essentially for wrongful dismissal. I have not

dealt with the other aspect of the claim that the dismissal was contrary to the principles of natural justice because having regard to the evidence I consider the issue to be of marginal relevance only to this case.

The basic facts in this case are not really disputed and I hold them to be as follows:-

The plaintiff was until 9th July, 1977 an employee of the Housing Authority (first defendant) a body corporate which was constituted under the provisions of the Housing Act (hereinafter called "the Authority"). The second defendant is the Director and Executive Secretary of the Authority (hereinafter called "the Director") and as such was and still is its most senior officer. The plaintiff joined the Authority in 1974 as clerk of works. In 1975 when the Land Development Unit of the Authority was set up in its present form the plaintiff was appointed construction supervisor of the Unit for the Western Division and based in Lautoka. This was a senior and responsible post. The plaintiff's immediate superior at the material time was Mr. Ram Achal to whom the plaintiff was directly responsible in the conduct of his work. Mr. Achal and the Director were based at head office in Suva.

On or about 7th July, 1977 Mr. Achal and the Director came to Nadi on Authority business and from there to Lautoka. It was during this trip that Mr. Achal received certain information that the plaintiff had personally assisted Sivams Transport to write out and prepare a tender on its behalf. The particular tender was for a large land development work which was called by the Lautoka City Council. Mr. Achal told the Director about the information he had received. The Director instructed Mr. Achal to investigate the matter further to ascertain whether it was reliable. The investigation tended to confirm their information whereupon a meeting was arranged for the morning of 9th July, 1977 at which the plaintiff was told to be present. A meeting was duly held in the office of the Divisional Manager, Mr. Wilkinson who was also present with the Director, Mr. Achal and the plaintiff. At the meeting the plaintiff was told that information had been received that he had personally assisted Sivams Transport to write out and prepare a tender on its behalf in respect of a land development work for the Lautoka City Council. The plaintiff readily admitted that he had done so and said he had prepared the tender in his own spare time and did so because he was friendly with the Sivams family. He said he did not regard what he

aid as wrong because the Authority was in no way connected with the tender concerned.

In his job with the Authority, the plaintiff's main task was to prepare from time to time on behalf of the Land Development Unit of which he was construction supervisor detailed costing and pricing of development works to be carried out in the Western Division. The task entailed much research and required sound knowledge concerning the ruling rates of materials, labour, machinery hire and so on. Such knowledge was necessary to enable the plaintiff to prepare on behalf of the Unit its own tender for development projects of the Authority in competition with private contractors. In 1975 the Unit was given the contract for the development work at Rifle Range Lautoka, (Stage 4D), which was worth about \$800,000 and a contract at Natabua (Stage 1) worth about \$300,000. In these two cases the plaintiff had prepared the necessary tenders. A typical tender document would contain a schedule of items of work to be undertaken which could number as many as fifty items, typical of which would be the removal of top soil, excavation of land to design level, installation of inverts, construction of man-holes. Alongside each item the tenderer would insert the rates at which it was prepared to do the job and these rates would cover materials and labour of various types and machinery hire. As head of the construction unit the plaintiff would have close contact with suppliers of building materials. The Authority used a lot of gravels, crushed metals, sand, pipes, cement, bitumen, timber and sundry materials. Preparation of tender for development work therefore required specialised and up-to-date knowledge of cost and price structures.

In recent years Sivams Transport together with other firms in the same field have done much work for the Authority in the field of hire of plants and machinery. This would be on negotiated rates which would be fixed for all suppliers. The plaintiff had complete discretion as from which firms to hire plants and machinery and as to the times and jobs for which to hire the plants. The decision was a matter of personal choice for the plaintiff who would be in a position to favour any particular firm if he chose to do so. During 1976 and 1977 Sivams Transport was the largest supplier to the Authority of plants and machinery. For that period Sivams Transport earned a sum in the region of \$120,000. The other major suppliers were R.D. Singh & Sons (about \$97,000) while the earnings of Royal Transport, Akim Investments, Raghbir Enterprises ranged between \$30,000 and \$80,000. Among the smaller suppliers were Reddy Construction Limited,

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Narain Construction Limited and Govind Enterprises (between \$10,000 and \$20,000). Apart from hire of plants and machinery Sivams Transport did not deal with the Authority in any other respect.

After admitting at the meeting his part in the Sivams Transport tender to the Lautoka City Council the plaintiff was told that his action was tantamount to gross misconduct and an act of extreme disloyalty to the Authority. The implications of his action were explained to him after which he was told to wait in his office while the others discussed the position, during which the Director decided on behalf of the Authority that the plaintiff's appointment be summarily terminated. A letter was then prepared and signed by the Director and given to Mr. Achal who took it to the plaintiff. The material parts of the letter read as follows:

" In a meeting held with you this morning in the presence of myself, the Land Development Manager and the Divisional Manager Western, you admitted your involvement in an act of gross misconduct associated with your duties.

This action of yours was discussed in detail with you and the implications of your actions explained to you.

You are hereby summarily dismissed and your employment with the Housing Authority is terminated as from noon today."

Explaining his decision to this Court the Director said he took a very serious view of the conduct of the plaintiff for a number of reasons. He said as a construction supervisor assisting Sivams Transport, an outside contractor, in the preparation of its tender the plaintiff would use his knowledge of the costing and pricing system which he had acquired in the course of his employment with the Authority and this would become available not only to Sivams Transport but also to others should it leak out. Sivams Transport could also be expected to tender on forthcoming contracts since that firm had previously shown interest in one or two tenders for development projects called by the Authority. Further, as an employee of the Authority it was wrong for the plaintiff to have formed a working relationship with Sivams Transport which was then already involved in doing jobs for the Authority. Because of their relationship the plaintiff could no longer be expected to exercise proper and clear judgment in his day to/day dealings with that firm particularly when one of the key ingredients of his job was to be fair in the allocation of business among private firms. According to the Director

it was very important that in his dealings with suppliers and contractors the plaintiff was not only fair but should appear to be fair. He said a disturbing element in the conduct of the plaintiff was that his involvement with the Sivams tender had become known to the consultant engineers of the Lautoka City Council and accordingly the reputation of the Authority and the public confidence in it was at stake. He said the Authority was always at pains to take a completely independent and impartial stance in its dealings with private contractors throughout Fiji.

I have given very careful consideration to the matters raised in this action. Rule 2 of the General Office Rules and Procedures of the Authority provides:

"All members of the staff are expected to conduct themselves at all times in such a manner as to promote the Authority's interests both during and outside office hours."

Having regard to the provisions of the above rule and bearing in mind the fact that the plaintiff had indeed personally assisted Sivams Transport to write out and prepare its tender to the Lautoka City Council, I find that his action was such that the Authority was left with no choice in the matter but to terminate his appointment. In forming a semi-professional relationship with Sivams Transport in the matter of the aforesaid tender the plaintiff's conduct was clearly inconsistent and incompatible with his duty and responsibility to the Authority. I do not doubt that the plaintiff had been misguided in thinking that there was nothing wrong in giving assistance to a personal friend because the Authority was not involved in the particular tender. However, unfortunately the implications of his misconduct were such that his position with the Authority had become too vulnerable and untenable so far as the construction and development section of the public is concerned. For these reasons I am satisfied that the dismissal of the plaintiff from his employment in the circumstances disclosed was completely justified.

The other question that concerns me is whether in dismissing the plaintiff in summary fashion the Authority was justified having regard to all the circumstances. Article 4 paragraph (2) of the Master Agreement between the Authority and the Housing Authority Employees Union states:

"(1) For a serious act of indiscipline or misconduct an employee may be summarily discharged without notice."

The above provision gives express powers to the Authority to dismiss summarily and without notice any of its employees for serious misconduct. The question is whether the plaintiff's misconduct was so grave and serious as to justify his summary dismissal.

It is common ground that the plaintiff throughout his period of service with the Authority had been a conscientious and efficient worker. Apart from the one isolated lapse of conduct which ^{has} caused him his job it appears his record of service was excellent. Mr. Wilkinson, the Authority's Divisional Manager Western has much praise for the plaintiff. According to him the plaintiff was popular with his work-mates and there was no reason to doubt his integrity. Bearing all this in mind and having regard to the fact that his misconduct was an isolated one and caused by a bad error of judgment and the fact that his misconduct was unlikely to be attended by any serious consequences upon the Authority, I consider the decision that his appointment be summarily terminated without notice was too harsh a measure in the whole of the circumstances of the case. I feel sufficient weight was not given to the plaintiff's good record of service with the Authority and the absence of any serious consequences upon the Authority of his particular misconduct given of course the fact that his appointment was in any event to be terminated. Viewed in this light I feel the plaintiff had received less than fair treatment in the manner his services were terminated. I am satisfied that the plaintiff was in these circumstances entitled to have been given one month's notice of termination of appointment or one month's salary in lieu of such notice. To that extent therefore the plaintiff's action succeeds and I would order that he be paid a month's salary at the rate ruling at the time of his dismissal which was \$6,202 a year or \$516.83 a month. There will accordingly be judgment for ^{the} plaintiff in the sum of \$516.83. I understand the plaintiff has about \$900 to his credit with the Authority at the time of dismissal and may still be collected.

From the unsatisfactory way the plaintiff's pleadings were formulated and from the outcome of the action itself, I do not consider an order as to costs should be made.

LAUTOKA,
30th May, 1978.

(sgd.) T.U. Tuivaga
JUDGE