

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
ACTION NO. 138 OF 1981

Between:

TEVITA PA & JONE VEISAMASANA

PLAINTIFFS

- and -

FIJI PUBLIC SERVICE ASSOCIATION

DEFENDANT

Mr. H. Patel for the Plaintiffs.
Mr. K. Chauhan for the Defendant.

J U D G M E N T

The plaintiffs are both civil servants and were financial members of the defendant association (FPSA) until FPSA purported to expel them from the Association on the 17th day of February, 1981.

The relief sought by the plaintiffs is as follows :

- "(a) A DECLARATION that on a fair and proper construction of Rule 24 (v) of the Fiji Public Service Association Constitution read in the light of the facts outlined in the Affidavits of TEVITA PA and JONE VEISAMASANA and filed herein, no disciplinary offences had arisen.
- (b) A DECLARATION that the purported expulsions of the Association are unlawful and/or that the plaintiffs continue to remain members of the Association.

The facts are not in dispute.

By letter dated the 25th August, 1980, signed by 51 civil servants, including the two plaintiffs, and addressed to the Registrar of Trade Unions the Registrar was requested

to invoke his powers under section 14 of the Trade Unions Act and forthwith cancel registration of the Association. The 51 civil servants were at the time financial members of FPSA.

Reasons were given in the said letter why the 51 civil servants felt they were compelled to seek cancellation of FPSA's registration. It is only necessary to mention my judgment in Tevita Pa & Ors. v. Timoci Bavadra & 16 Others C.A. 271 of 1980 which I delivered on the 22nd August, 1980, three days before the date of the letter to the Registrar. The 17 defendants in that action were the office bearers in FPSA.

I held that the purported elections of the 17 defendants at the Annual General Meeting held at Suva were invalid. The first plaintiff in that action is the first plaintiff in this action. I also declared in that case that Rule 81(a) of the Constitution of FPSA was invalid to the extent that it purported to permit proxies to make up the quorum required by the provisions of the Trade Unions Act.

The letter to the Registrar indicates that the 51 members who signed it considered that as a result of my judgment, there was no ruling body to administer the affairs of FPSA and that they faced difficulties in calling another annual general meeting. They informed the Registrar they proposed to form another association once the registration of FPSA was cancelled.

What happened between the date of the letter to the Registrar and the 13th January, 1981 is not in evidence but on the later date the Secretary of FPSA wrote to both plaintiffs informing them that he had been directed by the Association's Disciplinary Committee to lay a charge against them. Both letters are in similar terms except as to the change of names and I therefore reproduce the letter written to the first plaintiff the body of which states :

"DISCIPLINARY CHARGE

The Disciplinary Committee of the Association has directed me to lay a charge against you for breaching Rule 24 of the FPSA Constitution. Accordingly, take note that the following charge against you, is :

CHARGE

" That you, Tevita Fa, being a financial member of the Fiji Public Service Association, acted in a manner detrimental to the interest of the Association in that in a petition dated 25th August, 1980 to the Registrar of Trade Unions, you sought the deregistration of the Fiji Public Service Association (Refer Rule 24(v) of Constitution)"

This charge is laid against you under the provisions of Rules 23 - 26 of FPSA Constitution. You are to take note that the Disciplinary Committee will deal with the charge on 17th February, 1981 at the FPSA Headquarters, 298 Waimanu Road at 5.00 pm and you are requested to be present to answer the charge laid against you. Under Rule 30 you are also entitled to have your case stated by a financial member of the Association nominated by you. If you are desirous of having another financial member to represent you in the hearing you should then notify me of his name no later than 16th February, 1981."

The plaintiffs do not contend that the Disciplinary Committee did not faithfully follow the procedure laid down by FPSA's constitution which makes it unnecessary to state what the Committee did after the date of the letter. It is also not disputed that both plaintiffs were informed that they had been expelled from FPSA each having been found guilty of the charge laid against them.

The sole issue I have to decide is whether on the facts alleged by FPSA's Disciplinary Committee in the charge against each plaintiff they had committed a breach of Rule 24(v) of FPSA's Constitution.

I would mention before considering Rule 24(v) that Rule 28 permits an expelled person to appeal to the Council of FPSA and Rule 31(a) permits him to appeal to members at the next Annual General Meeting or a special general meeting. Both rules are enabling or permissive rules. There is nothing in the Rules which prevents the plaintiffs from

coming direct to this Court to seek relief.

* The plaintiffs did not avail themselves of their right to appeal to the FPSA's Council or its members but have sought a declaration from this Court as to the validity of their expulsion from FPSA. It is also not in dispute that under Rule 27 the Disciplinary Committee is empowered to expel a member against whom disciplinary action has been taken.

I set out in full Rules 23 and 24. Rule 23 is relevant because Rule 24(1) mentions contravention of any of the provisions of Rule 23.

"DISCIPLINE AND PROCEDURE"

- 23.(a) Every person applying for membership of the Association, and for so long as he continues as a member in accordance with the Association's Constitution (as may be amended from time to time) shall be deemed to have undertaken :-
- (i) to work for the interest of the Association and its members collectively in a spirit of mutual co-operation;
 - (ii) to abide by the majority decisions of members committees and such other bodies within the scope of the Constitution but without prejudice to his right to work to vary such decisions within the framework of the Association in accordance with the Constitution.
- (b) In any case where the Council or a Committee authorised by the Council has made representation or has made known that it intends to make representations to Government or to any authority, organisation or body in respect of any matter affecting the Association or its members, no member of the Association either as a member or in his capacity as an official or representative of the Association, shall, at any time make or permit to be made any public statement or public communication, without the express authority of the Council.
- (c) No meeting of the Association shall be open to the press without the approval of the Council and no report of account of matters dealt with at any meeting of the Association shall be supplied to the press except with the approval

of the Council.

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24. Any member who :-

- (i) contravenes any of the provisions of the last preceding section;
- (ii) refuses to comply with any of the Rules of the Association;
- (iii) refuses to abide by a resolution carried at any meeting of the Association;
- (iv) acts in opposition to the objects of the Association;
- (v) does any act which is detrimental to the interest of the Association;
- (vi) defrauds or attempts to defraud the Association;
- (vii) without just cause or excuse makes a false charge against an officer or fellow of the Association;

shall be liable for disciplinary actions:

Provided, however, that he shall not be guilty of such a breach if he has acted solely in his official capacity as part of his duties for his employer."

I consider it is significant, for reasons to be stated later, that Mr. Chaudhary, the General Secretary of FPSA, should in his affidavit sworn by him on the 24th March, 1981 (after the plaintiffs had been expelled) state in paragraph 4 thereof as follows :

"THAT as to paragraph (6) of the said Affidavit, I say that the First Plaintiff whilst being a financial member of the Association acted in contravention of the Rules of the Association by signing and presenting the said Petition as he did and thereby the First Plaintiff committed a breach of the Rules 23(a)(1) and (ii) and 24(v) of the Association notwithstanding any adverse remarks and or findings made by the learned trial judge in the said judgment."

Paragraph 9 of his affidavit is in similar terms and refers to the second plaintiff.

Both plaintiffs in the charge brought against each of them were alleged to have acted in a manner detrimental to the interest of the Association in that they sought deregistration of the Association.

On examination of the charge no specific act is specified but an objective stated in the petition is stated namely deregistration of the Association. Each plaintiff signed the petition. That was an act by each of them and appears from the evidence before me to be the only act they performed. One or other of them may have prepared the petition, procured the signatures of other members, and sent the petition to the Registrar.

What FPSA was really complaining about was the conduct of the plaintiffs which could have been detrimental to the interests of FPSA.

For a member to seek deregistration of his own Association whatever his reasons may be, shows complete disregard for the rights and interests of other members. If, as appears from one of the second plaintiff's affidavits, he was leader of a group of civil servants who were generally dissatisfied with the leadership of FPSA, and particularly its General Secretary, FPSA's Constitution provides a democratic way of changing the leadership and the secretary.

I am only concerned, however, to consider whether the facts disclosed that an offence under Rule 24(v) had been committed by them.

While Courts will not sit as Courts of Appeal from a decision which a domestic tribunal has reached on the facts, it is clear from English authorities that they must concern themselves with the merits in an expulsion case. Construction of Union rules is a question of law and Courts will ensure that domestic tribunals keep within their jurisdiction and do not wrongly extend it by a misconstruction

of the rules. In addition Courts will examine the facts to ascertain whether they are reasonably capable of being held to constitute a breach of the rule in question.

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 In Lee v. The Showmen's Guild of Great Britain (1952) 2 Q.B. 329 the principles on which the Courts will intervene were considered. It was a case where the construction of the rule under which the plaintiff was charged had to be considered and it was held by the Court that his conduct was not within the rule and his fine and expulsion were ultra vires and void. In that case, as in this case, the facts were not in dispute and the only question was whether he could be found guilty of "unfair competition" with rule 15(c) of the Guild's constitution. Lee's case concerned the interpretation of what might be called a specific expulsion rule. In the instant case rule 24(v) is a specific rule the breach of which could lead to expulsion. It is not a general rule expressed in vague terms such as "conduct contrary to the best interests of the Union".

There is no difference in my view between an expulsion for an offence with which a member has not been charged and an expulsion for an offence which he has not committed albeit he may have committed another offence.

In the Privy Council case of Annamunthodo v. Gilfields Workers' Trade Union (1961) 3 All E.R. 621, the appellant had been convicted of four specific offences none of which gave power to expel him. He was informed he had been expelled by yet another rule which had not been mentioned in the charges. This rule related to conduct prejudicial to the interests of the Union.

In the Privy Council case Counsel for the Union sought to treat the specific formulation of charges as immaterial but the Privy Council would not accede to that view. Their Lordship said at page 624: "If a domestic tribunal formulates specific charges, which lead only to

a fine, it cannot without due notice resort to other charges, which lead to far more severe penalties". I would go further and state that if, as in this case, they charge a member with a specific offence they cannot expel him if the admitted facts do not disclose Commission of that offence but might disclose some other offence for which he could be expelled.

Rule 24(v) is in quite clear terms and I repeat it for clarification "does any act which is detrimental to the interest of the Association".

The elements of the offence are :

- (a) an act by the accused;
- (b) which is detrimental (or harmful) to the interests of FPSA.

The rule does not use the word "conduct" nor is it framed to cover an act "likely" to be detrimental to the interest of FPSA. There must be a specific act and when that act is performed it must then be considered detrimental to the interests of the Association. The possibility that the act might be detrimental to the interests of FPSA in the future is not within the rule.

I do not consider Rule 24(v) was designed to cover conduct of a member that may or may not turn out to be detrimental to those interests. It is a specific rule designed to cover the Commission of a specific act which the Committee can quite properly hold damages the interests of FPSA. Viewed in this light, signing a petition whatever it seeks does no immediate damage to FPSA.

Seeking deregistration of FPSA is not in my view an act but the reasons for or intent behind an act or series of acts or an objective.

I mentioned earlier that Mr. Chaudhary had in one of his affidavits alleged that the plaintiffs had acted in contravention of and committed a breach of rules 23(a)(1) and (ii) as well as 24(v). He framed the charges and I consider

he has now belatedly realised that he may have preferred the wrong charge. I am sure he has. Rules 23(a)(1) and (11) are undertakings and breach of either of those undertakings is covered by rule 24(1).

If the Disciplinary Committee instructs FPSA's General Secretary to prefer a charge against a member in relation to a specific offence, it behoves the Secretary to ensure that the facts come within the rule the member is alleged to have breached.

The plaintiffs' conduct, in my view and I so hold, cannot be considered to constitute a breach of Rule 24(v).

I grant the relief sought by the plaintiffs but in modified form.

(1) I declare that on a proper construction of Rule 24(v) of the Fiji Public Servants Association Constitution the act or acts attributed to the plaintiffs or either of them did not constitute an act which was detrimental to the interests of the Association within the meaning of those words in the said rule.

(2) I further declare that the purported dismissals of both the two plaintiffs were unlawful and ultra vires the powers of the Disciplinary Committee of FPSA.

I would add that it is apparent that the plaintiffs' group of civil servants were seeking to oust the office bearers of FPSA. The members of the Disciplinary Committee, if they were office bearers, should in my view have considered whether they should have acted on the charges or whether they should have suspended the plaintiffs and referred the matter to the members at the Annual General Meeting which was held very shortly after they purported to expel the plaintiffs. It is difficult to see how they could have acted impartially in all the circumstances. Their singling out only 2 of the 51 signatories of the petition for disciplinary action is not

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an indication of impartial consideration of the
alleged offences.

The plaintiffs are to have the costs of this
action.

R
(R.G. KERMODE)
ACTING CHIEF JUSTICE

SUVA,
19 JUNE, 1981.