

Fale v Kingdom of Tonga & Heimuli

Supreme Court, Nuku'alofa

Ward CJ

Civil Case 576/94

17 February, 6 & 10 March 1995

Administrative law - judicial review - suspension from school

Education Act - suspension from school - discipline

Judicial review - school - suspension - discipline

The plaintiff applied for judicial review of a decision of the defendants to suspend him from Tonga High School and to demote him from Head Boy. In dismissing his claims it was

Held:

1. A principal had power to make rules for the running of a school. Such rules are not confined to any written form of words. The principal may, if acting reasonably, extend rules or make new ones and, as long as they are communicated to the pupils and, if they wish to know, the parents, they may be enforced to maintain necessary discipline. When parents send a child to school they accept the transfer of authority to the teacher within reasonable limits - the teacher is *in loco parentis*.
2. Here the rule against abnormally short hair was communicated to the plaintiff, and normal procedures followed in disciplining the plaintiff. The principals' actions were justifiable and not in breach of the agreement to provide education for the plaintiff.
3. The principal's decision was not unreasonable and in any event was not so unreasonable that no reasonable authority could have come to it.

Cases considered : Fitzgerald v Northcote (1866) 4 F&F 656
Price v Wilkins (1888) 58 LT 680
Monsell v Griffin [1908] 1 KB 160
Ryan v Fyden [1938] 3 All ER 517

Statutes considered : Education Act

Counsel for plaintiffs : Mr Taufateau

Counsel for defendants : Mrs Taumoepeau

Judgment

The plaintiff suing by his next friend, seeks judicial review, with leave given on 8 September 1994, of a decision by the defendants to suspend him from school and demote him from Head Boy, and damages. Evidence was by affidavit and, although there was some dispute of the facts, no deponent was examined orally and a number of documents were put in by consent.

The decision challenged related to events in April 1994. At that time, the plaintiff was a pupil at Tonga High School which is under the control and management of the Ministry of Education. The second defendant was the principal teacher at Tonga High School and it is not disputed, was acting in the course of her employment by the first defendant.

The plaintiff was selected as Head Boy of the school on 4 February 1994 and later that year, on 7 and 8 April, the school was to take part in the Inter-College Sports. There was to be a sports team marching practice on 6th and, when the plaintiff turned up, he was seen by the second defendant to have had a very short haircut.

The principal asked why he cut his hair in that way but it is not recorded what, if any, answer was given. She felt the haircut was abnormally short and was done in disobedience to the school rules but, in order to prevent any upset to the sports team as a whole, decided not to take any action until after the games. The following Monday 11 April, she stated that she warned the students again against such haircuts. She says that the announcement caused comment, in her words "an outburst", by the students because of the Head Boy's haircut.

It is agreed the plaintiff was not actually present at the assembly. He says he was carrying out his duties as Head Boy within earshot and heard an announcement he had been suspended until the following Monday but did not hear if his demotion was also announced. He explained that "upon hearing of the announcement I went home promptly and subsequently informed my parents."

In his earlier affidavit he said he heard the announcement "to the effect I had been demoted and suspended. In accordance with my understanding of the term 'suspension' I considered that I had no right to remain on the school premises and consequently vacated" them.

Whatever the reason, it seems to be undisputed that the plaintiff stayed away until Thursday when he saw the principal. The principal says she had telephoned the plaintiff's father on the Monday and he had come to see her on the Tuesday. She told him then the action she intended to take, namely suspension and demotion. She says he "expressed the family's disappointment" at the plaintiff's haircut. The father denies he was contacted directly by the principal, first hearing of her wish to see him from his second son. He denies expressing any opinion beyond his personal dislike of the haircut.

At their Thursday meeting, the principal told the plaintiff he had broken the school rules by wearing an abnormally short haircut and running away from school. She informed him he was suspended for one week effective from the previous Monday 11th April and he was demoted from Head Boy but would remain a prefect.

The plaintiff claims this haircut was not abnormally short and, in any event, the school rules do not prohibit it.

He has produced a document headed "School Rules. To teachers and the parents of the students of Tonga High School."

Clause three reads:

"DISCIPLINE & PUNISHMENT : This is to be at the direction of the Principal. Every student must show obedience to the Principal and his Deputy, staff and prefects where directed. Regular offenders may be suspended. No student shall administer corporal punishment upon another student at any time, but students have the right to report offending students."

Another document is headed:

"Tonga High School Offences & Punishment."

That lists a number of offences in three categories; A, most serious, B, serious and C, light offences. Included in the serious offences are missing class and disobedience with the note "(5 times - sent (sic) for Parent).

Later is a note that:

"Persistant (sic) committing of offences in C will become category B offences. The same applies to persistant (sic) committing of offences in B and will become category A."

Under a heading "Nature of Punishment" it is stated:

| | | |
|-------|-------------|--|
| "For: | Category A: | Principal's decision and Department |
| | Category B: | 1st time - PD & warned letter to parents |
| | | 2nd time - PD see the Counsellor |
| | | 3rd time - Suspension" |

In no document is there specific mention of hair style or length.

The principal deposed that "in Term 1 school assemblies, the boys were repeatedly reminded to refrain from wearing abnormally short hair cuts, shaving off their hair or long hair. In the first few months of Term 1, four students were suspended for wearing this kind of hair style."

In his first affidavit, the plaintiff states "I was and am unaware of any school regulations as to length of hair. I was at all times unaware of breaking any school rules, regulations or of breaking or abusing any school code of conduct or dress." In his later affidavit he replies to the statement by the principal set out above. "I deny any warnings were given in school assemblies and pertaining to the wearing of abnormally short or long hair, but admit that students were warned against "shaving off their hair". In Court, his counsel stated he admits students were suspended for shaving their hair.

The plaintiff complains that his hair was not abnormally short, that there was no rule as such against such hair, than if he was to be suspended it should have occurred at the time it was first seen on Wednesday 6th April and that the penalties imposed were out of proportion to the offence. He also denies "running away from school." He complains there was a breach of natural justice because he was not asked for his explanation nor advised, before it happened, that he was going to be suspended.

The defendant's case is that the Court must consider three main questions:

1. Did the principal have power to create rules for the daily running of the school?
2. Was the rule relating to abnormally short hair communicated to the students at Tonga High School?
3. Was the normal procedure followed in disciplining the applicant?

It is accepted Tonga High School is a government school and falls under the control of the Ministry of Education. Equally there is no dispute the second defendant was appointed to the position of Acting Principal.

The Education Act (Cap.86) is silent on the power of principals to make rules. Counsel for the defendants cited the English position but that is covered by the Education Acts which are not, by their nature, acts of general application. I consider the position, in the absence of Tongan legislation, to be governed by the Common law.

The early authorities cited such as Fitzgerald v Northcote (1866) 4F & F 656, Price v Wilkins (1888) 58 LT 680 and Goldney v King are not available to me. However, they are the authority for the statement of the common law rules in Vol 12 of the first edition of Halsbury's Laws.

*284. The master is in loco parentis; the parent delegates to him all his own authority over the child so far as it is necessary for the child's welfare, though this delegation is revocable. The parent further undertakes that the master shall be at liberty to enforce with regard to the child the rules of the school, or at all events such rules as are known to him and to which he has expressly or impliedly agreed.

287. For purposes of correction the school master (who in this respect represents the parents and is the delegate of the parental authority) may inflict moderate and reasonable punishment A headmaster has authority to expel any pupil whose conduct is such that he could not any longer be permitted to remain without danger to the school, but such authority must be exercised honestly and reasonably, and not wantonly or capriciously."

When a parent sends a child to a school he accepts the transfer of authority to the teacher within reasonable limits; the "ordinary authority which is presumed from the fact of a parent sending a child to a school," as it was described by Walton J in Mansell v Griffin [1908] 1 KB 160 at 169.

Tucker J in Ryan v Fylder [1938] 3 All ER 517 at 521 explained:

"When a parent sends his child to school he delegates to the teacher the taking of such steps as are necessary to maintain discipline with regard to the child committed to the teachers' care. I think that that is the general position with regard to parents and school teachers."

I am satisfied the principal has power to make rules. Those rules are not confined to any written form of words. The principal may, if acting reasonably, extend rules or make new ones and, as long as they are communicated to the pupils and, if they wish to know, the parents, they may be enforced to maintain necessary discipline.

One of the issues of fact is whether the proscription of abnormally short hair was communicated to the plaintiff. I am satisfied it was. His affidavits show he knew the rule about shaving hair despite his earlier assertion to the contrary. He accepts boys were suspended for shaving their heads and indeed, as Head Boy, I find it inconceivable he would not have known. Clearly, at least in his case, such a punishment was announced publicly to the school according to his own evidence.

The plaintiff argues his hair was not abnormally short. That is a question of degree this Court cannot resolve. It was clearly short enough to evoke a comment from the principal the first time she saw it and to cause her to take the immediate step of discussing the possibility of taking him out of the sports competition. I am satisfied she considered it was abnormally short and the question left for this Court is whether her action is

suspending and demoting the plaintiff was unjustifiable and a breach of the agreement to provide education for the plaintiff as pleaded in the statement of claim.

The common law position cited above provides the answer to the second part in favour of the defendant.

Was the action taken by the defendant unjustifiable? I have already stated I do not believe it necessary to decide whether the hair cut was abnormally short and I assume in favour of the second defendant she considered it to be so. I also accept the pupils had been made aware of the ban on such hair styles.

200 The procedure she followed is set out in a document written on behalf of the Director of Education and put in by consent. On 12 April 1994 she sent a saving to the Ministry of Education recommending the suspension and demotion. That day the Director of Education submitted an internal memorandum to the Minister seeking his approval and the next day the principal was advised by telephone that it was approved.

Having heard that, she reduced the adverse effect on the pupil's schooling by backdating it to cover the time he had already absented himself.

210 I accept, on the evidence before me, that suspension was a punishment used and accepted as a disciplinary procedure at Tonga High School. There is no evidence that the warnings against shaving off hair or cutting it very short were accompanied by a statement of the punishment but, by the time of these events, I am satisfied the plaintiff knew suspension was the penalty at least for shaving off the hair.

Counsel for the plaintiff suggests that the failure to take immediate action before the sports meeting was an unreasonable delay. I do not accept that. The decision to allow the plaintiff to continue to participate was justified both for the rest of the team and to prevent an additional punishing effect on the plaintiff.

220 The demotion also I accept was reasonable. The Head Boy should set an example. Once the principal was satisfied he had broken a rule by a deliberate and, by its very nature, public act, she was entitled to consider whether he should remain in that position. That she found the way she did was not unreasonable.

The answer to the three questions suggested by the respondent is plainly 'yes'. There is a further test; whether the decision was so unreasonable that no reasonable authority could have come to it, the so-called "Wednesbury test." I have considered that, I have considered the matter taken into consideration by the principal and I am satisfied this decision was not unreasonable.

I am satisfied the plaintiff knew the attitude of the school to abnormally short hair cuts. I am also sure that, even if he felt the length of his hair should not be so described, he must have known and I find he did know it was likely to be so considered.

230 He was Head Boy. He was selected to that position not just to set an example but because he had the qualities of a leader. As such, his actions would have more effect on his fellow pupils than would be the case normally. Such a position carries with it responsibilities and I have no doubt he knew he was at least pushing the rule to its limit. As it happened, the principal considered it went past the limit and that was a decision she was entitled to make.

240 A principal, making a decision as to whether there has been a breach of the rules and the appropriate punishment when there has, must be careful to take into account all relevant matters and only relevant matters. That must include the pupil's reasons for the action. Whilst she did ask the plaintiff's father to bring the plaintiff back to school and,

when he came on the Thursday, heard his side, she had already decided on the course she would take.

That was unfortunate but I do not feel, in the circumstance of this case, that it affected the issue of reasonableness. The breach was clear. However, there may have been an innocent explanation, it may have been for example for medical reasons. As it happened no such suggestion has been made and I do not consider her failure makes the decision unreasonable.

250 It should not pass unremarked that despite the deliberate breaking of a rule, the principal mitigated the effect of the suspension to a very great extent by allowing it to cover the days the plaintiff had already absented himself. I can only comment that it is a pity such restraint and moderation was not shown by others.

The nature of a school and the need for discipline means inevitably that decisions are often arbitrary. School children may be left with a feeling of injustice. In the normal course of school life, such feelings are soon overtaken by the normal activities of the school routine. It is unfortunate this was not dealt with in a manner to try and reduce the effect rather than exaggerate it. Within a few weeks, a solicitor's letter was sent to the principal. Clearly that was the result of instructions received even earlier. It refers to the emotional and psychological effect on the plaintiff and the effect on his studies.

260 It is apparent on the evidence that the plaintiff is an exceptional pupil. His academic ability was emphatically demonstrated when, in the 1994 Pacific Senior Examination, he had grade 1 passes in all six subjects he sat. He is an outstanding sportsman and he clearly showed the enthusiasm and willingness to participate in school activities that marks the popular and successful pupil. That was no doubt why he was chosen as Head Boy for his last year.

270 Having committed a single stupid act, I have no doubt he regretted what he had done and felt humiliated by the penalty. He may have disagreed with the principal's view of his hair style, he may well have felt the punishment too severe but how much better it would have been for him if he had been encouraged to put it behind him and continue with his studies as normal. Instead the matter was taken to a lawyer, and then to the Courts. The effect on the plaintiff as a result is magnified to an unreasonable extent. He will now always feel the hurt of the events of April 1994. The actions taken will leave him, I have no doubt, with a strong sense of injustice.

How different it would have been if others had shown more restraint and encouraged him to accept the situation and simply to return to being the exemplary student he had been apart from that one silly action.

The plaintiff's claim is dismissed with costs.