IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

CIVIL CASE No 148 OF 1993

BETWEEN: The Vanuatu Public Servants' Association

APPLICANTS

AND: The Public Service Commission

FIRST RESPONDENT

AND: The Government of the Republic of Vanuatu

SECOND RESPONDENT

Mr Silas Hakwa for the Applicant
The Attorney General, Mr Patrick Ellum and the Solicitor General, Mr Julian Ala for the Respondents.

This matter comes before the Court by way of leave granted by The Honourable Mr Justice Downing on the 16th December 1993 upon an application by the Vanuatu Public Servants' Association (V.P.S.A.) for leave to obtain certain prerogative writs, pursuant to their ex-parte application dated 15th December 1993, upon the following matters:

B. CERTIORARI quashing and/or setting aside the decision taken by the Second Respondent to ban and prevent all access to the official media outlets, namely Radio Vanuatu and the Vanuatu weekly newspaper by V.P.S.A., its members and/or its officials;

C. MANDAMUS commanding and directing the First Respondent and/or the Second Respondent to re-instate and/or restore those members of V.P.S.A. whom the two Respondents had purported to dismiss from their employment on the grounds that they had taken part in the industrial action called and sanctioned by their Trade Union, i.e. V.P.S.A.;

D. INJUNCTION prohibiting and restraining the first Respondent and/or Second Respondent from attempting to and/or terminating the employment of any or all members of V.P.S.A. who had supported and/or taken part in the industrial action called and sanctioned by the V.P.S.A.;

E. INJUNCTION prohibiting and restraining the First Respondent and/or Second Respondent from recruiting and/or attempting to recruit other persons on temporary terms or any other such terms and conditions for positions within the Public Service of Vanuatu where there are no vacancies;

F. INJUNCTION prohibiting and restraining the First Respondent and/or the Second Respondent from withholding and/or attempting to withhold any or all salaries and/or remuneration lawfully due to all members of the V.P.S.A.;

G. INJUNCTION prohibiting and restraining the First Respondent and/or the Second Respondent from any or all unlawful interference in the activities of the V.P.S.A., which the V.P.S.A. is lawfully engaged in, or which V.P.S.A. is conducting in accordance with and in compliance with the relevant laws of the Republic of Vanuatu.

AND as set out in their notice of motion dated 15th December 1993

AND also as contained in a summons dated the 7th day of January 1994, seeking Declarations in the following terms:

A. A DECLARATION that there is in existence a trade dispute between members of the V.P.S.A. and the Government of the Republic of Vanuatu.

B. A DECLARATION that the industrial action in the form of a strike, taken by the V.P.S.A. and its members, and which strike is still continuing, is validly called and that the same is lawful.

The Applicant is a Trade Union duly registered under the Trade Union Act 1983 (CAP 160). It is claimed that it draws its membership from all persons employed in the Public Service of the Republic of Vanuatu. That in June 1993 it presented to the Second Respondent various claims regarding the terms and conditions of service of its members and various matters of concern pertaining to the treatment of its members within the Public Service. Following the submissions made by the V.P.S.A., as contained in their "Log of Claims" dated 11th June 1993, there was a meeting with the Second Respondent on the 5th November 1993. It is claimed that the meeting was: "In an effort to resolve the differences and disputes existing between the two sides in so far as the terms and conditions of service of members of V.P.S.A. are concerned." It is alleged that the meeting "failed to resolve the differences and disputes between the two sides." It is further claimed that there were further attempts by the V.P.S.A. to resolve the "dispute" between the two sides and that "the Second Respondent was not prepared to negotiate any further changes to its stand." It is apparently upon the failure of such alleged further attempts to negotiate, that the V.P.S.A. gave notice that unless the Second Respondent was prepared to sit down with the V.P.S.A. and agree to negotiate further, the V.P.S.A. would call for and sanction industrial action in the form of a strike. It is said, for and on behalf of the V.P.S.A. that it was as a result of the total failure of the Second Respondent to negotiate as aforementioned or at all,

that at Midnight on the 24th November 1993, its members commenced the strike. It is submitted, therefore, by counsel for the V.P.S.A.:-

i) that a trade dispute existed between the Second Respondent and his clients
ii) that the decision to take industrial action in the form of a strike was lawfully taken

and he now seeks Declaratory judgments from the court to that effect.

Mr Hakwa further alleges on behalf of his clients that:

iii) The Second Respondent unlawfully ordered them to be banned from having lawful access to the media and he seeks a writ of Certiorari to quash such alleged orders.
iv) The First and/or Second Respondents had unlawfully dismissed members of his clients from their employment in the Public Service as a result of their having taken part in a strike lawfully called and sanctioned by his clients; and he seeks a writ of Mandamus commanding and directing the Respondents to re-instate them to their posts, and he further seeks an order of prohibition and/or an injunction restraining the Respondents a) from dismissing those members who have taken part in the allegedly lawful strike sanctioned by their union, his clients; b) from employing others on temporary or any other terms in the Public Service, where there are no vacancies; c) from withholding their salaries; and d) from interfering in the lawful activities of the V.P.S.A..

The evidence was by way of affidavits on both sides, although the Applicants also chose to call four witnesses, and save for the last of those witness who gave irrelevant evidence, all were cross-examined by the Attorney General.

I found the facts as I heard them, to bear little resemblance to the claims or to the submissions that were being made on behalf of the Applicants. Mr Barton Bisiwei, the President of the V.P.S.A. deposed in his affidavit of the 15th December 1993 at paragraph 3, that "for several months now, VPSA had been trying to negotiate various disputes concerning the conditions (sic) of its members with the Second Respondent." He goes on to state that by a letter dated 11th June 1993, VPSA presented its log of claims to the Prime Minister. In fact there was no evidence that the Prime Minister had received the log of claims at that stage. By letter dated the 13th of July 1993, the first secretary to the Prime Minister, Father Gérard Leymang, acknowledge receipt of

that letter on behalf of the Prime Minister who was then absent from the country, in these terms: "En l'absence du Premier Ministre M. Charlot KORMAN, J'accuse réception de votre lettre, porteuse de differentes réclamations." Father Gérard was quite right in his assertion in his letter of 13th July that the VPSA letter of the 11th June was no more than a letter "Porteuse de differentes réclamations." In other words, a letter making various requests to the Prime Minister, on behalf of the members of the VPSA. He assured them in the same letter that the matter would be referred to a group of persons, which included the Director of Public Service, who would study their claims before any decision on the matter could be reached, taking into consideration the financial means available to the Government and Government policy generally. At that stage there was clearly no dispute between any of the parties. The VPSA had lodged a log of claims which, apart possibly from one matter, namely the request that the rent money deducted from those of the Public Servants who were fortunate enough to be allocated Government houses should be paid to their respective Department in order to be administered by them for the purpose of the upkeep of those houses, were all claims which could reasonably and justifiably be made by a Trade Union acting within the legitimate scope of its powers. Thereafter, there was some delay in dealing with these matters. The VPSA wrote four letters to the Prime Minister dated, 31/8/93, 23/9/93, 29/9/93 and 8/10/93. The first two letters were by way of an inquiry as to whether the Prime Minister had considered the log of claims and could provide the VPSA with an answer. The 3rd and 4th letters were identical letters save, that the former was written in Bislama and the latter was an English translation of the former. It referred to resolutions made at a meeting of the Executive Council of the VPSA held on the 24th September 1993, in which it noted that i) they had not yet received a response to their log of claims or the letters of 31/8 and 23/9/93; ii) they requested an answer by the 15/11/93 as they were holding the annual general meeting of their Union members at the end of November; iii) they reiterated their demand for a 16% increase in salary as of January 1st 1994; iv) they said that they could not accept the 5% announced by the Government. Mr Bisiwei in evidence said that the "Government announcement" to which he had made reference to in his letter had not been notified to them officially by the Government, but that he was referring to some announcement they had heard about on the radio. The next two items in that letter could hardly be described as the subject matter of legitimate claims that could be made of the Prime Minister on behalf of workers. The remaining items may or may not be the subject matter of legitimate claims depending on the truth of the matters stated therein. Mr Bisiwei told the court that after this last letter; on the 5th November 1993, a meeting was held at the Prime Minister's office, between the Prime Minister and the Executive Members of the VPSA. Indeed in his affidavit, Mr

Bisiwei produces a copy of the minutes of that meeting p epared by the secretary of the VPSA in which it appears that there was a frank and c rteous discussion between all the parties. This was followed by a letter from the Prim Minister to Mr Bisiwei, in which he takes each and every item raised in the log of c ims of the 11th June and deals with them in the order in which they were raised. ave for items 2) where he makes an offer of 5% increase to start in January 1994, w h a promise to look into a further salary review at that stage, and 9) where he disagr s with the payment of rent to each Department on the very sensible basis that to d so would be duplicating accounts and managements of public funds; he substantiall agrees with the Union on all other matters raised in their log of claims. Undeniabl at that stage there was a difference between the parties on a point of considerabl importance to a worker, namely some 11% difference in a claim for an increase i salary. It is true that the Prime Minister had not entirely closed the door to further n egotiations and one would have hoped for at least one further approach on conciliato y terms, but it was not to be. Tempers rose on the side of the VPSA. Letters w e written in inflammatory terms by Mr Bisiwei to the Prime Minister, particularly th ne of the 17th November which demanded a round table talk of the Prime Minist r on Radio Vanuatu. A further letter written on the 22nd November told the Pri e Minister that there had been a secret ballot of its members, taken by the VPSA n the 19th November and that strike action had been decided upon by the membersh , as a result of the Prime Minister's "totally negative response" to their log of claims.

On the facts as I find them to be, there had been no attemp s at all made by the VPSA to negotiate further as claimed, or at all, after the Prime finister's letter of the 9th November. What there had been, was a demand that the P ime Minister should come to Radio Vanuatu, in order to have a debate about it on th radio with the Executive members of the VPSA. Nor was it true to say that "the S cond Respondent through the Prime Minister, was not prepared to negotiate any fu her changes to its stand." The Second Respondent had clearly allowed the door to fu her negotiation to remain wide open. Indeed they had gone further than that. In the P ime Minister's letter of the 9th November he was inviting further discussion abou the matter as from the beginning of January 1994. Nor was it true to say, as con ned in Mr Bisiwei's letter of the 22nd November, that there had been a totally nega ve response by the Prime Minister to their log of claims.

A trade dispute within the Act is defined under Section 1 a ollows:-

"Trade dispute" means a dispute between employers and workers or between workers and workers, which is connected with one or more of the following:-

a) **the terms and conditions of employment**, or the physical conditions in which any workers are required to work

b) **engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;**

c) allocation of work or the duties of employment as between workers or group of workers;

d) **matters of discipline;**

e) **the membership or non-membership of a trade union on the part of a worker;**

f) facilities for officials of trade unions;

g) **machinery for negotiation or consultation and other procedures relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;**

It is not every disagreement that will be a "trade dispute." Although the above definition provides a very wide area of possibilities for there to be a "trade dispute;" in order for a "trade dispute" to exist under that definition, the dispute must be "connected with" one of the specified subject matters, and it must be "something definite and of real substance."

The words "trade dispute" has been used in a number of Acts of Parliament in the past, and has received interpretation before. Lord Loreburn L.C. from whom I borrowed the above definition, in Conway v. Wade (1909) A.C. 506, at 509 defined it as follows:

> " 'Trade dispute' is a familiar phrase in earlier Acts of Parliament, and is defined in this Act. I do not know that the definition is of much assistance. If this section is to apply there must be a dispute, however the subject matter of it be

defined. A mere personal quarrel or a grumbli ; or an agitation will not suffice. It must be something fairly definite and of al substance"

But it certainly does not follow from the above that the arties must have come to blows before a trade dispute exists, it is sufficient tha there be a difference of substance.

The letter of the 22nd November goes on to say: "The 'SA had a meeting on the 19th at which by secret ballot they decided to take strike ction." In his evidence on oath in court Mr Bisiwei said in chief that the mem ership of the Union was approximately 2000. In cross-examination he said: "In fa t what happened was this: we had a meeting of 200 of our members on the 16th and a ain on the 19th November when the same 200 met again. We had informed all our m embers of the meeting. It was the meeting of the 19th that decided to take some act n. It was on or about the 20th of that month that the Executive Committee met a l decided to go on strike. Members cannot decide on strike. Only the Committe can do so." This was a sufficiently important point for me to ask him to clarify wh he had said in order to be sure that he had meant that the membership had not in fact voted on strike action, that such action had been taken solely by the Executive Comm ttee. He said: **"We were 200 members present at the special general meetings o the 16th and of the 19th November. At the 19th November meeting the 200 me bers present decided by secret ballot that some action should be taken. It was the Committee at a later meeting around the 20th, who alone decided to ca a strike."** Clearly the statement in the letter of the 19th November that it was the membership who by secret ballot had decided on strike action, was not true.

After the strike call, on the 6th December, the Prime Minis r issued a Discontinuance Order, pursuant to Section 34 of the Trade Dispute Act (CAP 162). This has no direct bearing on the questions that are being posed here. he effect of the order as I see it is: i) To create an offence in law as against anyone n ned in the order who fails to comply with any of the directions contained in the orde ii) The person also looses the immunity against liability in tort conferred on a registe l trade union or any other person by section 18 or 19 of the Trade Union Act. A bre h of the order would also render the person, no doubt, liable to disciplinary proce lings. But those are not matters with which I need to be concerned.

Under the Trade Union Act (CAP 161) all trade unio must be registered; see Section 4. The application to be registered as a trade union s subject to the conditions specified under Section 5, which specifies that the union m st send copies of its rules

to the Registrar who must approve of them. These rules must also contain the matters specified in the schedule to the Act; see Section 7. A refusal to register the union by the Registrar means that the union is then dissolved, see Section 9. The effect of registration means that the union is able to do "all things necessary for the purposes of its **registered rules;**" see Section 12. Of course the consequence of doing anything inconsistent with its objects or registered rules may lead to the suspension or cancellation by the Registrar of the union's certificate of registration; see Section 13 (3) (d). In practice that would mean that the union could no longer act as such; see Sections 14&15. Those trade unions that are not registered under the Act, would have none of the protection afforded to a union registered under the Act; see Section 16. Under Section 28 of the Act, all trade unions rules must comply with the schedule of the Act and cannot be altered so as not to contain them. The schedule provides that the rules will contain, inter alia: 4) the description of persons eligible for membership of the trade union. In this case the rules of the union were produced to the court. Under rule 15, the union membership is limited to "bonafide Public Servants" Rule 55 deals with the quorum necessary to hold the Annual or Special General Meeting and states that there must be 20% of its members present. Rule 56 states that all decisions taken at a meeting relating to strikes or lock-outs must be done by secret ballot.

The membership of the union concerned, we were told by Mr Bisiwei, numbered 2000. They had been convened by way of a Special General Meeting. Mr Bisiwei told the court that the entire membership had been notified, apparently in writing. He also told the court that he represented daily rated workers, who were also members of his union. They of course would not have been "Bonafide Public Servants" and indeed to qualify as a Public Servant and obtain the protection of the Constitution of Vanuatu under Article 57, one must be a Public Servant. Daily rated workers do not qualify. The term "Bonafide Public Servant" can mean nothing else but a permanent Public Servant. My view of that matter is confirmed by the Public Service Act. Although that act does not contain a definition of Public Servant, a history of the orders and instructions made thereunder confirms it. For the purpose of this interpretation, the original Act 3 of 1981 must be looked at, and not the chapters as compiled by Mr Kattan in CAP 129. He has left out Section 18 of the original Act when he compiled CAP 129. In the original Act Section 14 did not permit officers of the Public Service to be members of a trade union. They had the right to be members of a Public Service Staff Association recognised by the Prime Minister, and that remains so to-day. They were then members of the very same Association which later registered as a trade union, when the Trade Union Act was passed in 1983, namely the VPSA. Only

Section 18(1) of the original Public Service Act was repealed. Section 18(2) was specifically preserved and stated:

> "Any orders made under the Public Service Regulation No 7 of 1978 or Public Service Instructions made prior to the coming into force of this Act shall remain in force until revoked."

Thus any Orders made under the Public Service Regulation No 7 of 1978 or Public Service Instructions made prior to the coming into force of this Act remained in force until the Public Service Staff Manual was published in 1981. By Orders made thereunder the Orders and Instructions made in 1978 were revoked. As amended and added to they are now contained in what is known as the Public Service Staff Manual. Chapter I : is headed "Validity and Application" and at 1.7 states as follows:

> All provisions of previous regulations, orders, instructions, circulars, etc concerning conditions of service or other matters dealt with in these orders are revoked with effect from the date on which the provisions of these Orders come into operation.

The introduction to the manual states:

> The Public Service Staff Manual was originally issued in 1981.

These could only have been issued pursuant to Section 5 'Orders' and Section 16 'Instructions'. The difference being that it is not necessary for 'Instructions' to be Gazetted. The Interpretation Act Section 14 states:

> 1) Subject to the provisions of this section-
>
> a) The commencement of a statutory order shall be such date as is provided in or under the order or where no date is so provided the date of its publication as notified in the Gazette.
>
> b) every statutory order shall come into force immediately on the expiration of the day next preceding its commencement.

The Staff Manual therefore has the force of law under Sections 15 and 16 of the Act. If not, the Orders and Instructions made under the Public Service Regulation No 7 of 1978 would still be in force and the contents of which would not affect the substance of this case.

The Instructions given under Section 16 have the limits imposed upon them by Section 16(4) as follows:

whenever there is any conflict between any in uctions made under this Section and any regulations under Section 15 or a provision of this Act, the Constitution or any written law the regulations or p visions shall prevail.

Apart from that limitation, the instructions clearly have th force of law. Chapter 1.4 (ii) (c) of the manual defines "Public Servant" as an offic appointed in a permanent capacity. Chapter 9. 12 (i) says that officers on perman nt, contract, or temporary terms but not daily rated employees may become member f an association formed to promote and safeguard the interests of officers of Public Service, provided that the membership of the association shall be limited to such offic rs. This is not inconsistent with the Trade Union Act, since Section 23 of that Act ays that any worker of a description of which that trade union, in accordance wi its rules, is intended to consist, shall not be prevented from becoming a member. I is plain that by law a trade union can, under its rules, limit its membership to a class f worker. That is exactly what was done here. Rule 9. 12 (iii) of the staff manu states that to qualify for official recognition as the body competent to negotiate wit the government on behalf of Public Service Officers or employees, a staff associatio will be required to satisfy the Minister responsible for Public Service (inter alia) that:

(a) The association only represents either officers or e ployees (but not both) of the Vanuatu Public Service.

Under rule 1.4 (i) (b) "employee" means a daily rated empl ee.

The rule is a sensible one as there may well be conflicts interest between the two categories of workers. Furthermore that rule was preserv l in rule 15 of the VPSA, which limits its membership to "Bonafide Public Serva s." Plainly the meaning attributed there to Bonafide Public Servant must have the me meaning as in the staff manual.

Mr Bisiwei said in evidence that his membership consisted Public Servants and daily rated employees. That puts his union not only in breach f its rules, but renders it incompetent under the law to negotiate for its memb s, since in order to be competent to negotiate with the government on behalf of s members it must satisfy the Minister responsible that it represents either officers employees but not both. So long as it purports to represent both categories of wo ers, it is in breach of its rules and remains incompetent to represent all its members.

Section 2 of the Trade Dispute Act states: A trade dispute to which a registered trade union ..... is a party shall be treated for the purpose of this Act as a trade dispute to which workers ..... are parties

The learned Attorney General submits that in order to have a "trade dispute" under Section 2 of the Act, the dispute must exist between employers and a trade union competent to act on behalf of its members. To assist him in this submission, he refers to the definition of "trade dispute" in Section 1 of the Act (as above)

And he submits that under the Act a trade dispute exists only when workers are a party to it. Since Section 1 defines a "trade dispute" (for the purposes of this case) as a dispute between employers and workers, and since Section 2 puts the union in the 'boot' of the worker; unless the union is a competent party to the dispute, there is no "trade dispute" in law. In other words, he submits that unless it can represent the workers, there is no trade dispute, as there are no workers in dispute with there employers.

There is no doubt that so long as it represents the two classes of workers that it purports to represent, the VPSA is not competent to enter the fray as a party to the dispute. If it cannot enter the dispute, is there then a dispute at all? There is no one else with whom there has been a dispute. The workers themselves had not been in dispute with their employers. The "dispute" if there was one was started by the union acting as spokesmen for the workers. In order to be a trade dispute as we have seen, it must be "connected" with one or more of the grounds in section 1 of the Act. In order to find out what the possible dispute was likely to be about, one must look at the log of claims of the 11th June 1993. As at the time the the strike was declared, namely midnight on the 24th November 1993, the log of claims had contained claims connected with items (a), (b), (d), (e) and (f) of section 1 of the Trade Disputes Act. These claims had been put forward by the union on behalf of both Public Servants and Daily-rated employees. Both categories of employees together, on the submissions of the learned Attorney General, could not be validly represented by this union, and therefore since the union was not competent to be a party to the "dispute" and the dispute was not one which had existed between the workers and the employers, but was one which had been created by the union acting in its purported representative capacity under section 2 of the Act, there was therefore no trade dispute under the Act. It is also right to say that at no stage was that put taken on behalf of the employers prior to the strike. If it had been, then the dispute would also have been "connected with" item (g) of section 1 which reads as follow:

"machinery for negotiation or consultation, and other procedures relating to any of the foregoing matters, **including the recognition by employers or employers associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;**

That would then have been sufficient to create a trade dispute under the Act as the dispute would have been connected with one or more of the matters listed in section 1. That particular dispute did not arise until some considerable time after the strike had started when an attempt was made to conciliate. The attempted conciliation appears to have broken down over the union's view that it was entitled to represent the daily-rated workers' interest in the matter. Mrs Crowby, the Director of Public Service, took the view that they could not. (see the minutes of the meeting of the 3rd January 1994, annexed to Mrs Maria Crowby's affidavit). If the union's rules are as I found them to be, Mrs Crowby would have been right; but that would not have prevented it from being a genuine dispute under Section 1 (g) of the Act. Any dispute as to whether a worker can or cannot be represented by a particular union would be "something fairly definite and of real substance" as stated by Lord Loreburn in Conway v. Wade.

In their summons of the 7th day of January 1994, the Applicant ask for:

A. A DECLARATION THAT there is in existence a trade dispute between members of the VPSA and the Government of the Republic Of Vanuatu.

I am bound to reply in the affirmative to that question. But if I had been asked the question: Did a trade dispute exist prior to the strike action at midnight on the 24th November 1993? On the evidence that I have heard and for the reasons I have stated above, my answer would have been in the negative. If I had been asked when did the trade dispute begin? My answer would have been: on the 3rd January 1994. Furthermore, all this is of academic importance, in view of the answer to the next question posed by the Applicants in item B. of their summons dated 7th January 1994. Then would they be entitled to a Declaration on a point of more academic importance?

The power to make binding declaration of right is a discretionary power. See Russian Commercial and Industrial Bank v. British Bank of Foreign Trade (1921) 2 A.C. 438. Although the remedy by way of declaration is wide and flexible yet it will not be granted to a plaintiff whose claim is too indirect and would not give him "relief" in any

real sense. See Thorn Rural District Council v. Bunting (1972) Ch. 470; (1971) 1 All E.R. 439. In the present case, if the court granted a declaration that a trade dispute existed as from the 3rd January 1994 when the "representative" capacity of the union was first doubted, it would serve no purpose, as it was not a deciding factor in the decision to take industrial action, and furthermore, the answer to the question it would raise is bound to be that the union had, in the circumstances no "representative capacity" in view of the fact that it was purporting to act ultra vires its own rules. Therefore in the exercise of the court's discretion, no declaration will issue on that matter.

The next question posed is as follows:-

B. A DECLARATION that the industrial action, in the form of a strike, taken by VPSA and its members, and which strike is still continuing is validly called, and the same is lawful.

It follows from what I have already mentioned above, that the quorum necessary to call a Special General Meeting under this union's rules must not only be 20% of its members, but 20% of its members capable of voting. Only those members who qualify as members under the rules can vote. The necessary quorum under the rules would have been 400 and not 200 as stated by Mr Bisiwei, that is assuming at best that when Mr Bisiwei was saying 2000 members, he meant people capable of being members under the rules. He cannot be presumed to have meant otherwise. In any event if he did, that would not have made the vote any more valid as it would have included the vote of people not entitled to vote. That would have rendered the ballot invalid in any event. He also told us that it was not the membership who had voted for the strike, but the Executive Members, and that they did so some days later behind closed doors. Therefore, for any of the reasons that I have just mentioned, the calling of the strike was ultra vires the rules and invalid. On that ground, if on no other, I cannot declare that the industrial action in the form of a strike, taken by the VPSA (and not its members as claimed) is lawful. I have not been asked for any counter declarations by the Respondents and cannot issue any. Had I been asked to issue one, I would certainly have done so in terms that would have left no doubt that the strike call at Midnight on the 24th November 1994, was unlawful and it continues to be so to this day.

As for the matters set out in their Notice of Motion and for which the VPSA obtained leave on the 15th December last, I will deal with them in the order that they are raised:-

B. Certiorari, quashing and or setting aside the decision taken by the Second Respondent to ban and prevent all access to the official media outlets, namely Radio Vanuatu and the Vanuatu weekly newspaper, by VPSA, its members and/or its officials.

The court has heard no evidence upon which it could be satisfied that the Government had prevented the VPSA from gaining access to the media. There was some evidence that some articles written by the VPSA had not been broadcasted on the Radio, but there was no evidence, 1) that there was any obligation on behalf of the media under the law to publish any of the documents emanating from the VPSA and, 2) there was no evidence whatsoever that the Government had prevented them from being published. Therefore no certiorari will issue on that application.

C. Mandamus, commanding and directing the first Respondent and/or the Second Respondent to re-instate and/or restore those members of VPSA whom the two Respondents had purported to dismiss from their employment, on the grounds that they had taken part in the industrial action called and sanctioned by their trade union.

This is a matter which would be more appropriately dealt with by a personal action brought by the individuals concerned, rather than in the form of a blanket action on behalf of all the members of the VPSA who may or may not have been dismissed on lawful grounds. If it is suggested that the particular members have been dismissed on the ground that they had taken part in this strike, that would not in any event be sufficient grounds on which this court could, on the findings that it has made in this case, interfere with such dismissals. The members would have been dismissed for having taken part in an unlawful strike. It may be that on some other grounds the dismissals could be challenged, I know not. That in any event would have to be the subject matter of another action. For those reasons Mandamus will not issue on this application.

D. Injunction prohibiting the First Respondent and/or the Second Respondent from attempting to terminate and/or terminate the employment of any or all

members of VPSA who had supported and/or take part in the industrial action called and sanctioned by the VPSA.

For exactly the same reasons as stated at C. above no injunction will issue on this application.

E. Injunction, prohibiting and restraining the First Respondent and or Second Respondent from recruiting and/or attempting to recruit other persons on temporary terms or any other terms and conditions for positions within the Public Service of Vanuatu where there are no vacancies.

The court has heard no evidence upon which it could be satisfied that persons were being employed to posts within the Public Service where no vacancies existed. Therefore no injunction will issue on this application.

F. Injunction, prohibiting and restraining the First Respondent and/or Second Respondent from withholding any or all salaries and/or remuneration lawfully due to all members of the VPSA.

Article 9. 3 (b) of the staff manual reads as follows:

> All absences from duty of half a day or more due to any reason except leave of sickness shall be without salary. All absences must be recorded and reported for deduction to be made as and when necessary.

A strike therefore, whether lawful or unlawful, would not entitle a striking member to be paid by his employer. No injunction, therefore, will issue on this ground.

G. Injunction prohibiting and restraining the First Respondent and/or Second Respondent from any or all unlawful interference with the activities of VPSA, which VPSA is engaged in or which VPSA is conducting in accordance with and in compliance with the relevant laws of the Republic of Vanuatu.

The court has heard no evidence upon which it could be satisfied of the allegation made herein. Therefore on this application no injunction will issue.

All the applications made by the VPSA are therefore dismissed, with costs to the First and Second Respondents.

Delivered on Monday..... the 28th day of February..... 1994

CHARLES VINCENT MERIDIN d'IMECOURT
Chief Justice

REPUBLIC OF VANUATU COUR SUPREME COURT LEX LEX REPUBLIQUE DE VANUATU