

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

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**Civil Case No.13 of 2001**

**(Administrative Law jurisdiction)**

**BETWEEN: JOE TIMOTHY AND  
ISAIAH ISAAC**

Applicants

**AND: MATEVULU COLLEGE**

First Respondent

**AND: MATEVULU SCHOOL  
COUNCIL**

Second Respondent

**AND: MINISTER FOR  
EDUCATION**

Third Respondent

Date: 15<sup>th</sup> August, 2001, 9 a.m.

Coram: Mr Justice Oliver A. Saksak

Clerk: Ms Cynthia Thomas

Counsel: Mr Hillary Toa for the Applicants

Mr Bill B. Tamwata for the First and Second Defendants

Mr Tom Joe for the Third Respondent

**JUDGEMENT**

The Applicants seek certain declarations by Motion dated 9<sup>th</sup> August, 2001 as follows:-

- (1) The letter issued by the Teaching Service Commission (TSC) on 19<sup>th</sup> July 2001, to the two Applicants did not constitute an Appeal, but has amounted to charges which were never put before the Applicants to answer, but have now been disclosed with an intention to refer the matter back as an actual Disciplinary Hearing whereby the Applicants would be forced to appear upon response to that letter, and be forced to answer these allegations which in the first place never existed upon which the Minister responsible would be justified in suspending the Applicants.
- (2) The letter of 19<sup>th</sup> July, 2001 by the TSC amounted to a bar to an appeal hearing by the TSC as they would not be sitting as an Appeal Tribunal but the actual Disciplinary Tribunal.
- (3) That the letter of 19<sup>th</sup> July, 2001 was issued late in the proceedings as this should have been issued before the two Applicants were suspended on 25<sup>th</sup> April, 2001 by the Minister responsible.
- (4) That given the approach made by the TSC in the letter of 19<sup>th</sup> July, 2001 they have clearly indicated by that letter that the Appeal would in fact be a Disciplinary Hearing whereby the Applicants would be facing 8 to 11 charges instead of hearing an appeal where the real issue would have been the 'validity of the Minister's decision to suspend the Applicant'.
- (5) That the letter of 19<sup>th</sup> July, 2001 amounted to an intention to conduct a Disciplinary Hearing instead of an Appeal, and therefore should not be used as proof of the Applicants' misconduct that would justify the Minister to suspend the Applicants on 25<sup>th</sup> April, 2001.

- (6) That the letter of 19<sup>th</sup> July, 2001 has amounted to an abuse of process by the TSC with no attempts to conduct a proper appeal where the Applicant's Appeal would be fairly heard by an impartial tribunal.
- (7) That the letter of 19<sup>th</sup> July, 2001 constituted a presumption of guilt against the Applicants by the TSC whereby the Applicant's are prejudiced by their own confessions or statements.
- (8) That this case now be transferred back to the Supreme Court for hearing as there had been no valid attempt to hear the Applicants' Appeal by the TSC.

The Applicants have filed affidavits in support of their Motion annexing copies of the letter by TSC of 19<sup>th</sup> July, 2001 and their respective responses. Their responses have not yet been delivered to the TSC. I have read these documents and heard oral arguments and submissions from counsels representing all the Parties in this matter.

Mr Toa admitted at the outset that the Motion was filed without regard to section 35 of the Teaching Service Act [CAP.171] (the Act). However he argues that section 35 should be read in conjunction with section 32 of the Act. He submits that when read as such only the Minister has powers to suspend the Applicants for a period of one only month. He further submits that the TSC does not have the power to extend or prolong the suspension of the Applicants.

*Section 32 of the Act reads -*

- 1. *If, in the Opinion of the Minister, an officer -*
  - (a) *is inefficient, incompetent or unfit or unable to perform his duties; or*
  - (b) *is guilty of misconduct,*  
*the minister may, by notice given to the officer specifying the grounds for suspension, suspend him from duty for a period not exceeding 1 month.*
- 2. *Where the Minister suspends an officer -*

- (a) the Minister shall, in writing, immediately inform the Commission of the suspension and the grounds for suspension;
- (b) the Minister may, at any time, remove the suspension; and
- (c) the Minister may determine that the officer shall not be paid his salary during the period of the suspension."

Section 33 of the Act provides for appeals to the Commission (TSC) as follows:-

1. An officer who has been suspended under section 32(1) may appeal to the Commission against the suspension by writing delivered to the Commission.
2. Where an officer appeals to the Commission under subsection (1), the Commission shall determine the appeal by -
  - (a) revoking the suspension; or
  - (b) dealing with the matter under section 34 or 35, and the Commission's decision shall be final."

Section 34 of the Act provides for retirement etc, on grounds of inefficiency, in capacity etc. But the TSC did not proceed with the Applicants' appeals under this provision. They did so under section 35 of the Act. The relevant parts are subsections (1) and (2) which read:-

"(1) Where, after inquiry as directed by the Commission, it is found that an officer has been guilty of misconduct, the Commission may -

- (a) caution or reprimand him;
- (b) .....; (reduction of salary)
- (c) .....; (delay of incremental benefits)
- (d) reduce him to a lower position or salary; or
- (e) dismiss him from the Service.

"(2) In an inquiry for the purposes of subsection (1), a formal hearing is not required but the officer shall be informed of the nature of the alleged misconduct and be given an opportunity of furnishing a statement in relation to the matters alleged to constitute the misconduct."

There are seven other subsections to section 35 but which are not relevant at this stage.

To construe section 35 in conjunction with section 32 to support the Applicant's contention that only the Minister is empowered and to suspend, which suspension shall be for one only month and to suggest that any prolonging of the suspension is illegal is unsustainable. These provisions are very clear.

Section 32(1) of the Act gives the Minister the discretion to suspend an officer for reasons stated therein for a period of not exceeding 1 month.

Section 32(2) provides for the procedure of suspension and other powers the Minister may exercise.

Where the Minister exercises his discretion under section 32 and has given notice thereof to the TSC, the matter goes off his control. The TSC now assumes the matter.

Did the Minister do this? Yes he did. His letter of 25<sup>th</sup> April 2001 to the Applicants is very clear. It is copied to the TSC. He has complied with section 32(2)(a). He advised the Applicants of their right to appeal and the period in which they should appeal.

Both Applicants appealed on 26<sup>th</sup> April, 2001.

So now the appeal procedure in section 33 of the Act had to be followed. TSC now has the matter in its control. They did not revoke the suspension, so naturally, it has to continue to flow on. But TSC decided to deal with the matter under section 35 of the Act. When that happens, automatically the appeal continues in force even beyond the initial one month. It continues as such by operation of the laws and is therefore legal. Section 33(3) allows this to happen.

The actual process is quite a long one under section 35 of the Act. It begins with an inquiry. The TSC did that on 19<sup>th</sup> July, 2001 when they wrote to both Applicants as follows:-

***"Re: Your appeal to the Teaching Service Commission  
against the decision of the Minister dated 25 April  
2001 to suspend you from the Teaching Service.***

*Before the TSC makes a determination on your appeal  
against the Minister's decision to suspend you from the  
Teaching Service it invites you to provide a statement in*

relation to the matters alleged to constitute the misconduct on your part which gave rise to your suspension.

The matters alleged to constitute the misconduct are as follows:-

1. That on 23 March 2001 you voluntarily resigned from employment without giving appropriate notice, or alternatively took an authorised leave of absence from duties, by posting a memo to all students, teachers and ancillary staff giving notice of your vacation of office as Assistant Principal and advising them to report directly to the Principal or Bill Lewis.
2. That on 23 March 2001, taking an authorised leave of absence and failing to follow the appropriate complaint procedure in not firstly discussing your complaint or grievance with the officer to whom you were immediately responsible, you wrote to the Chairman of Matevulu School Council advising that as from that date you were personally staging indefinite strike action against your Principal for the reason that in your views the Principal was not running the school or capable of doing so, and tendering all office keys.
3. That on 24 March 2001 you disregarded your immediate superior and failed to comply with the appropriate complaints procedure in failing to comply with an official request from your Principal to meet with him in his office at 8 a.m, and indicating that you did not need to talk to the Principal as the matter would be handled by the School Council.
4. That on 27 March 2001, while your complaint was before the School Council, you posted a further joint memo, with Mr Isaiah Isaac, to all teachers, students and ancillary staff, explaining your actions on the basis that they were taken in response to your Principal's poor leadership (as set out in that memo) and asking teachers to support your cause. That your action in posting this memo, and the text of the memo, shows that you acted with complete disregard and respect for the appropriate complaints procedure; that you made public allegations against your Principal which could be construed as defamatory; and that your actions were

unprofessional and calculated to bring the Principal, into disrepute and destabilize the administration of the College

5. That on 10 April 2001, contrary to College Policy, you took the side of a student in that you wrote to the Chairman of Matevulu School Council questioning the appointment of Mr Renjo Samuel and Mr Frederick Tamata to the posts of Acting Deputy Principal and Acting Assistant Principal respectively and challenging the actions of Mr Samuel in expelling a student for being drunk, under Matevulu College 2001 Disciplinary Policy Offence No.1.
6. That on 17 April 2001, you wrote to Mr Gregory Hollis HoD Science at Matevulu College, advising that you had been offered a job in Port Vila to commence shortly, indicating that you would not be teaching Year 12 Physics for the time being and advising HoD Science to seek your immediate replacement. That by this action, if you had not already resigned, you signaled a continuing refusal to perform your duties and an immediate intention to resign.
7. That on 22 April, after you had voluntarily vacated your office, you conducted yourself improperly and unprofessionally in writing a letter to Mr Bill Lewis of Matevulu College using intimidatory language and attempting to discourage his involvement in "the issue at hand."
8. That on 23 April 2001 after a police talk at Matevulu College on respecting and securing the school properties you openly showed your support of the students' strike, an act of exploiting the students for personal interest amounting to improper and unprofessional conduct on your part.
9. That at 6.30 a.m on 24 April 2001 you conducted yourself improperly and unprofessionally in going to the dining hall of Matevulu College to stir up the students to resume their strike against their Principal, which they had abandoned at lunchtime on 23 April 2001, while they were waiting for the Ministry's decision on their strike petition.



10. That, if you had not voluntarily resigned from employment on 23 March 2001, you were on unauthorised leave of absence from Matevulu College on and from 26 March 2001 up to the date of your suspension on 25<sup>th</sup> April, 2001.
11. That all of your actions as described above above that you conducted yourself improperly and unprofessionally in a manner calculated to cause maximum disruption to the College in pursuit of your own interest in you dispute with your Principal; that you behaved improperly towards your Principal; that you either resigned without notice or took prolonged unauthorized absence from duties; and that you failed to follow the appropriate complaints procedure for dealing with your grievances.

*In dealing with your appeal under section 35 of the Teaching Service Act, the Commission conducts an inquiry into your alleged misconduct. If it finds that you are guilty of misconduct it may take various actions, ranging from reprimand to dismissal.*

*You are urged to provide the Commission with a statement in response to these matters, which will be taken into account in the consideration of your appeal. Any such statement must be provided within 14 days of the date of this letter, after which two the Commission will proceed to determine your appeal and may do so without further notice to you."*

This letter was signed by Mr William Mael, Chairman of the TSC.

The letter to Mr Isaiah is identical. It contains eight allegations which are similar in many respects to those against Mr Timothy. The only allegation that is different is contained in paragraph 5 -

*"That on 26<sup>th</sup> April, after the Matevulu School Council had decided to recommend your transfer from Matevulu College, you were instructed by Mr Thomas Simon at the Principal Education Office, Sanma Office to transfer to Liro Junior Secondary School on Paama by aeroplane on 24<sup>th</sup> April, 2001.*



*That you did not comply with this instruction and used it to incite students to organize a strike to delay your eviction from Matevulu College."*

This letter was signed also by Mr W. Mael, Chairman of TSC. It contains the same ending as per letter to Mr Timothy.

Both Applicants were given 14 days in which to respond. None of them responded. All they provide through Counsel is that TSC was not acting within the law. However TSC was acting perfectly within the procedure clearly laid down in Section 35(2) of the Act. The TSC was not holding a formal hearing nor laying charges as argued by Counsel. TSC was merely giving the Applicants an opportunity to be heard by furnishing a statement in response to the allegations contained in their respective letters. The Applicants are now complaining that their respective suspensions are being prolonged by TSC who is acting outside its powers. These submissions cannot be sustained. The Applicants have by their failure to respond in the time specified are simply not helping themselves.

For the reasons stated herein the Motion by the Applicants was dismissed.

**DATED at Luganville, this 14<sup>th</sup> day of August, 2001.**

**BY THE COURT**



**OLIVER A. SAKSAK**  
Judge