IN THE COURT OF APPEAL OF BELIZE, A D 2023

CIVIL APPEAL NO 12 OF 2019

ISAAC LONGSWORTH	**APPELLANT**
v	
ANGLICAN DIOCESE OF BELIZE	**1st RESPONDENT**
BELIZE TEACHING SERVICE COMMISSION	**2nd RESPONDENT**
TEACHING SERVICE APPEALS TRIBUNAL	**3rd RESPONDENT**

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BEFORE:

The Hon Madam Justice Hafiz-Bertram	-	President
The Hon Madam Justice Woodstock-Riley	-	Justice of Appeal
The Hon Mr. Justice Foster	-	Justice of Appeal

Heard: 12 October 2022
Date of Promulgation: 28 April 2023

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Darrell Bradley for the appellant
Agassi Finnegan for the 2nd and 3rd respondents
No-appearance for the 1st respondent

JUDGMENT

HAFIZ-BERTRAM, P

[1] I have read in draft the judgment of my learned sister, Woodstock-Riley JA and I agree with the Order made by her and the reasons for doing so.

HAFIZ-BERTRAM, P

WOODSTOCK-RILEY, JA

[2] The Appellant, Isaac Longsworth, was the acting principal of Saint Barnabas' Anglican School from September 2013.

[3] In August 2015 he was placed on leave pending investigation into allegations made against him and disciplinary proceedings commenced. Further to the disciplinary hearing of the several charges levied under the **Education (Amendment) Rules 2012** ('the Rules'), the First Respondent recommended the Appellant's dismissal which was subsequently approved by the Second Respondent and ultimately confirmed by the Third Respondent and he was purportedly dismissed on the 29th September 2017.

[4] The Appellant by Claim No. 63 of 2018 filed on 28th day of March 2018, sought judicial review of the decision to terminate his employment, seeking the following relief:

a. A declaration that the Defendants acted unlawfully in dismissing the Claimant from his employment as principal of Saint Barnabas Anglican School, owing to the fact that the managing authority for the Anglican Diocese of Belize failed to conduct any, or any proper, hearing in accordance with principles of natural justice, including that the Anglican Diocese of Belize failed to afford the Claimant a reasonable opportunity to be heard and failed to complete the disciplinary process against the Claimant within the statutory allowable period contained in Rule 93(11) of the Education Rules, and further that the managing authority's decision was biased because the tribunal was not constituted impartially and that the decision was unreasonable, irrational and against the weight of the evidence and that there was no actual hearing to dismiss the Claimant;

b. An order of certiorari quashing the decision of the Teaching Service Appeals Tribunal dated on or about 29 September, 2017, the decision of the Belize Teaching Service Commission dated on or about 3 November 2016 and the decision of the Anglican Diocese of Belize dated on or about 7 June 2016 to dismiss, or recommend the dismissal of or approve the dismissal of the Claimant as the principal of Saint Barnabas Anglican School;

c. An order of mandamus forthwith requiring the managing authority of the Anglican Diocese of Belize to re-instate the Claimant as principal of Saint Barnabas Anglican School;

d. An order for debt or damages for unlawful or wrongful dismissal and or for unlawful or wrongful termination of the Claimant including loss wages;

e. An order for consequential relief;

f. Costs;

g. Such further or other relief that this Honourable Court deems just in the circumstances.

[5] Upon hearing the matter, the Hon. Madam Justice Shona Griffith found in favor of the Claimant, by oral decision given on 23rd January 2019 and written dated the 29th day of March, 2019 in the following terms

1. The decision of the Managing Authority of the Anglican Diocese of Belize recommending the dismissal of the Claimant on the 7th June, 2016 was made without affording the Claimant a fair opportunity to be heard and is declared void;

2. The approval by the Teaching Service Commission on the 3rd November, 2016, of the recommendation of the Managing Authority for the dismissal of the Claimant, was made without affording the Claimant a fair opportunity to be heard and is declared void;

3. As a consequence of paragraphs 1 and 2 above the Teaching Service Appeals Tribunal's decision affirming the dismissal of the Claimant on the 29th September, 2017 is declared void.

4. The Claimant's status as principal of St. Barnabas' Anglican Primary School remains effective from the 29th September, 2017 to the 31st August, 2018, being the 5th year anniversary of his employment as principal at St. Barnabas' Anglican Primary School.

5. The Claimant is entitled to payment of full salary and emoluments as Principal of St. Barnabas' Primary School from the date of 29th September, 2017 to the 31st August, 2018 being the sum of thirty-four thousand six hundred and seventy-seven dollars and sixty-eight cents ($34,677.68).

6. Costs are awarded to the Claimant in the sum of $7,500 apportioned at 50% against the 1st Defendant and 50% against the 2nd and 3rd Defendants.

[6] By Notice of Appeal dated 23rd April, 2019, the Appellant appeals the portion of the Trial Judge's order on the issue of reinstatement to his position and the assessment of damages and her finding with regard to the time limit within which a disciplinary hearing must be commenced and concluded. The Appellant set out four grounds of appeal:

(a) The Learned Trial Judge was wrong in law to declare that pursuant to the Belize Education and Training Act, Chapter 36:01 and the Education (Amendment) Rules, 2012, the Appellant is required to renew his full teaching licence after five years, and that his award of damages is limited to a period of five years from the date set in the order.

(b) The Learned Trial Judge was wrong in law to deal with this matter of limiting damages to five years because there were no pleadings on behalf of any of the Respondents, at all, or in any event, challenging this averment of fact contained in the Claimant's Statement of Case. So, this was not a trial issue properly before the court, it being conceded or accepted by the Respondent owing to their lack of

pleadings challenging this issue. The Learned Trial Judge should have found that the Respondents did not plead any issue limiting damages based on the time period of the licence, and so the Respondent should have been taken to have accepted that the damages should have continued until the Appellant reached retirement age. Or, alternatively, the Learned Trial Judge should have directed a further hearing on the issues raised in relation to this aspect of the assessment of damages or should have given the Appellant an opportunity to respond to these findings.

(c) The Appellant further appeals the finding of law and fact of her Ladyship Madame Justice Shona Griffith that he should not have been reinstated to his post of principal, and the Appellant says that, having determined that the decision of the Respondents was void and of no effect and that the Appellant continued in his employment, the judge should have ordered the Appellant to have been reinstated to his post of principal.

(d) The Learned Trial Judge was wrong in law in failing to make a finding that, because the hearing was not concluded within 30 days, the First Respondent should have reinstated the Appellant in accordance with Rule 93(11) of the Education Rules, and in dismissing this ground that the continuation of the disciplinary hearing was ultra vires the Managing Authority's powers. The Appellant says that the rules fix a period of thirty days within which a disciplinary hearing must be commenced and concluded and that the First Respondent had no power and acted ultra vires to go beyond that period.

[7] The Appellant asks this Court to order that the decision of the court below be reversed or varied to provide that, because the Appellant continues to be in his employment (as a result of the decision to dismiss him being void), that his damages, including his salary, shall continue until retirement or until he is lawfully dismissed as principal.

Issues

[8] The main issues arising for determination on this appeal are whether the trial judge erred in her judgment in her assessment of damages and/or by not reinstating the Appellant to his

position as principal.

Assessment of Damages

(i) Whether the learned trial judge was wrong in law to declare that pursuant to the Belize Education and Training Act, Chapter 36:01 and the Education (Amendment) Rules 2012, the Appellant is required to renew his full teaching licence after five years; and further to limit damages to a period of five years from the date set in the order

[9] The Second and Third Respondents make the preliminary point that it is a misrepresentation of the trial judge's decision that there was a declaration that the Appellant was required to renew his full licence after 5 years. In this respect, it is agreed that the Trial Judge did not phrase her orders in the way represented by the Appellant, however her order does limit the Claimant's entitlement to a five-year period and the relevant consideration is whether such limitation is justified.

[10] The Appellant submits that the Learned Trial Judge erred in her interpretation of **Rule 64(4) of the Education (Amendment) Rules, 2012** as setting a term for the Appellant's employment whereas the provision merely provides for a conditionality on the Appellant's continued employment as principal. He further maintains that there was a failure to place proper weight on the fact that the First Respondent was the direct cause of the Appellant's non-completion of the Certificate of Educational Leadership (hereinafter referred to as 'CEL'). The Appellant's argument follows that teaching is a tenured, pensionable profession and a teacher or principal can only be lawfully terminated under the disciplinary process as set out by the Rules. Whilst it is qualified by the requirement of a teaching licence, continuous training to maintain the licence, obtaining a CEL in the case of a principal, these are solely credentialing conditions for maintaining tenured employment. Once these are satisfied, the fullness of tenured employment should follow. There is no right or authority given to automatically terminate employment at 5 years.

[11] **Rule 64(3)** provides 'a teacher employed as a principal or a vice principal is in the first instance required to hold a full licence in addition to a certificate of educational leadership' Rule

64(4)(a) that:

> "Rule 64(3) notwithstanding, a person employed as a principal or vice-principal with a full licence and nothing more may be so employed, but only on a year to year basis for a maximum of 5 years until obtaining the certificate under 64(3)."

[12] The Trial Judge's rationale of the limitation of damages to five years was as follows:

> "*Having regard to the above Rules and provisions, the precise nature of the Claimant's position was not expressly stated in the evidence. In the first instance, the evidence was that the Claimant was employed as principal at the primary school for the year 2013-2014. Thereafter, his contract of employment was clearly renewed for 2014-2015 given that the charges were imposed against him in September, 2015. It is also the evidence that the Claimant was pursuing his certificate of educational leadership, which was interrupted and left incomplete as a result of the disciplinary proceedings. Having been in pursuit of his certificate of educational leadership, the Court infers that the Claimant was in possession of a full licence and nothing more, as opposed to a provisional licence and nothing more. There was no mention or assertion (oral or documentary), of the Claimant having been appointed, therefore the Court finds the Claimant's status to have been one of employment, as distinct from appointment. In the circumstances, the Claimant's entitlement to any remedy, cannot go beyond what his status at the time of his dismissal affords him. As determined by the Court, at the time of his dismissal, the Claimant was employed by the Anglican Diocese, as Principal of St. Barnabas' Primary School, on a full licence, with nothing more. The status of the Claimant licence to teach is that it remains as it was at the time of his unlawful dismissal, unless or until altered in accordance with the provisions of the Rules*."

[13] The Trial Judge accepted that the Claimant had a full licence and was in the process of obtaining the CEL and at that time it was interrupted and left incomplete as a result of the disciplinary procedures (para 55 of Judgment). As the Appellant points out he was in the final stages of completion. The Trial Judge however held that five years would have been the ceiling of

his employment.

[14] The Trial Judge noted the difficulty recognized in the authorities of determining remedies on judicial review. However, what is clear as recognized by the Trial Judge is that '*the legal consequence flowing from such a finding (breach of right to a fair hearing) is that the hearings at both levels are void and decision of the Appeals Tribunal is accordingly void. There is no want of clarity as to this being the effect of the Court's finding of a breach of natural justice by the failure to afford the Claimant a fair hearing.'* (para 46 of Judgment)

[15] According to the principle in ***McLaughlin v Governor of the Cayman Islands [2007] UKPC 50*** cited by the Appellant, as the decision was void, the Appellant's employment was never lawfully brought to an end and he therefore retained his position and entitled to the renumeration attached. At paragraph 14 Lord Bingham states:

> "*It is a settled principle of law that if a public authority purports to dismiss the holder of a public office in excess of its powers, or in breach of natural justice, or unlawfully (categories which overlap), the dismissal is, as between the public authority and the office-holder, null, void and without legal effect, at any rate once a court of competent jurisdiction so declares or orders. Thus the office-holder remains in office, entitled to the remuneration attaching to such office, so long as he remains ready, willing and able to render the service required of him, until his tenure of office is lawfully brought to an end by resignation or lawful dismissal*."

[16] While the trial judge declared and recognised the decision of the Respondents was void her determination refers to 'the time of his unlawful dismissal' as opposed to the principle that the decision being void the Appellant legally remained in his position.

[17] It is accepted this would be a particularly difficult matter to determine when as a matter of fact while undertaking his required accreditation the Appellant had not yet obtained same. That is an added dimension of contingency/uncertainty that was not a factor in ***McLaughlin***. Yet as a matter of fact it is the Respondents unlawful action that halted the Appellant's attainment of accreditation and cannot then claim a benefit from this action. Having indicated he was in the teaching profession since 1988, possessing a teaching licence and pursuing his accreditation it does

not follow that his employment would or should be limited to 5 years.

[18] The Appellant asks that the court consider that his employment was pensionable under ***section 6 of the School Teacher's Pension Act*** which provides as follows:

> *(1) "Every teacher who has occupied for not less than ten years the position of a teacher in any designated school and who had attained the age of fifty-five years may on his retirement be granted a pension as provided in this Act, but a teacher who has attained the age of fifty years may in special cases with the approval of the Governor-General be allowed to retire."*

[19] They aver that the fact that the position is pensionable weighs into considering the legal effect of Rule 64(4)(a) of the Rules in that the Appellant should have been given a fair opportunity to continue his service to pension age, including that he should have been given the benefit of the doubt to complete the certification requirement to enjoy tenure and being able to pursue his pension.

(ii) Whether the learned trial judge was wrong in law to limit damages notwithstanding the absence of pleading on behalf of any of the Respondents, at all, or in any event, challenging this averment of fact contained in the Claimant's Statement of Case

[20] The Appellant submits that there were no pleadings in respect of the matters of tenure and limitation of damages by the Respondents which was their duty in accordance *with* ***Part 10 of the Supreme Court Civil Procedure Rules*** which requires the defendant to set out their full defense. They maintain that had the Appellant been put on notice by pleadings, they would have responded appropriately by amending the claim or putting forward further evidence, and that the Respondents cannot now rely on any factual contention that was not set out in its defense. Ultimately, they claim that this creates prejudice, defeats the fairness of the trial process and undermines the requirement for pleadings.

[21] The Respondents refute the argument that the onus was theirs to raise the matter, on the basis of ***section 38 of the Supreme Court of Judicature Act CAP 91*** which states:

> *"The Court, in the exercise of the jurisdictions vested in it by this Act, shall, in every cause or matter pending before it, grant, either absolutely or on such terms and conditions as the Court thinks just, all such remedies whatever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided."*

[22] They further aver that all parties made arguments as it related to the issue of damages before the Court which was clothed with discretion by ***Rule 56.13(3) of the Civil Procedure Rules*** to grant any relief that appears to be justified by the facts proved before him whether or not such relief should have been sought by an application for an administrative order. The Court used this discretion and made orders based on the submissions and law in application to the circumstances, that being that the maximum period of time foreseeable by the Court that the Appellant could have been employed at the time of dismissal, taken as he then was, is five years.

[23] There is the discretion granted to the court in accordance with ***section 38 of the Supreme Court of Judicature Act***, alongside ***Rule 56.13(3)*** which stipulates that relief is not circumscribed to those sought in an application for an administrative order. In my opinion the issue of damages was inadequately addressed by the parties. However, the Appellant did give evidence of his salary at the time of the disciplinary proceedings, that he received a full salary up to the time of his purported dismissal, and that he was unemployed and was unable to obtain employment despite efforts. There was absolutely no cross examination or challenge to this evidence, sparse as it was. It is indicated by the authorities that claims for monetary awards can be brought by separate proceedings but in certain circumstances such claims can also be included in a claim for judicial review. Both parties concentrated on the judicial review.

[24] As noted in **Judicial Review Principles and Procedure**[1] 'where a claim for a monetary award is included in a claim for judicial review, the usual though not invariable, practice is to deal with the public law issues arising on the claim… it is usually only once the court concludes that the public body has acted unlawfully that it will deal with the claim for a monetary award. …there does not appear to have been any guidance from the courts on the extent to which it is necessary for a claimant to particularise his or her claim for a monetary award in the claim form and statement of facts and grounds. Similarly, there has been no guidance on the extent to which a claimant must deploy his or her full evidential case in relation to the claim for a monetary award when he or she files the claim form. Likewise, there is no guidance on the detail in which defendants are expected to respond to a claim for a monetary award when they file either their summary grounds or their detailed grounds and evidence.'

[25] The Appellant's claim form includes a request for *'an order for debt or damages for unlawful or wrongful dismissal and or unlawful or wrongful termination of the Claimant, including loss wages'; an order for consequential relief; such further or other relief that this Honourable Court deems just in the circumstances'*.

[26] In all the circumstances I am of the opinion that an award to the Appellant should not have been limited to 5 years, however before us there is no information on any changes in salary since 2019, the position of any employment or income of the Appellant and the issue of damages will have to be remitted to the High Court for assessment.

[27] Reinstatement

Whether the learned trial judge was wrong in fact and law in when she held that the Appellant should not be reinstated to his position as principal

[28] The Appellant submitted that having determined that the decision of the Respondents was void and or of no effect and the Appellant continued in his employment the judge should have ordered the Appellant to have been reinstated to his post of principal. The Appellant relied on the Privy Council decision of ***McLaughlin v Governor of the Cayman Islands [2007] UKPC 50***.

[1] Pages 744 -777

[29] The Council at paragraph 18 noted that,

> "*It was reasonable for the first Court of Appeal to decline to order that Dr McLaughlin be restored, after a delay of nearly four years, to the specific office he had held in December 1998. It is not entirely clear whether the Court, in refusing to order reinstatement, meant more than this. It was never, unfortunately, clarified at the time. But if the court did mean that Dr McLaughlin was no longer an officer in the Government service, it was failing to recognize the legal effect of the declaration granted, an error from which reference to authority would have saved it.*"

[30] While noting that Dr McLaughlin must be considered to be still employed, the Privy council did not order reinstatement noting '*it is lamentable that so many years have passed since 1998 during which Dr McLaughlin has, in fact, rendered no service to the Government but the Governor acted unlawfully in purporting to dismiss him. He applied for judicial review with reasonable promptitude*'. The Council declared *1. The purported dismissal of Dr Mclaughlin as from 31 December 1998 was ineffective in law to determine his tenure of office and 2. That Dr McLaughlin is entitled to recover arrears of salary since 1 April 1999, and to payment of pension contributions on his behalf, making allowance for his earnings in the United States, until he resigns or his tenure of office lawfully comes to an end . The matter is remitted to the Grand Court for the computation of what is due to Dr McLaughlin, including interest, unless this can be agreed'.*

[31] The Respondents argue that ***McLaughlin*** is wholly distinguishable from the facts of the present case and submit as an accepted principle of law that the Court is slow to order reinstatement of terminated persons as it would be difficult to supervise a situation of conflict and could further be seen as usurping the function of the managing authority. In support of their argument, they refer to the House of Lords decision of ***Chief Constable of North Wales Police v Evans [1982] 3 ALL ER*** in which Lord Brightman at paragraph 156 states:

> "*I feel that the choice of remedy is a difficult one. It is a matter of discretion. From the point of view of the respondent who has been wronged in a matter so vital to his life, an order of mandamus is the only satisfactory remedy. I have been much*

tempted to suggest to your Lordships that it would in the circumstances be a remedy proper to be granted. But it is unusual, in a case such as the present, for the court to make an order of mandamus, and I think that in practice it might border on usurpation of the powers of the chief constable which is to be avoided."

[32] Here, the Trial Judge gave detailed consideration to the authorities in this area including reference to the Caribbean Court of Justice decision in ***Edwards v Attorney-General of Guyana and the Public Service Commission [2008] CCJ*** where the court alluded to the difficulties attendant upon reinstatement as a remedy, *'the notion taken from public law that a dismissal may be a nullity presents problems in terms of relief appropriate in a case where a considerable period of time numbered in years has passed since dismissal during which the employee has performed no services for the employer'*, but also noting contrasting approaches.

[33] This was clearly taken into consideration by the Trial Judge along with the facts, the time that had elapsed from the point of termination, the position having already been filled by a third party, that the court is not inclined to conceive an environment of conflict given the nature of the circumstances surrounding the purported dismissal, and lastly the court's resistance to usurp the function of the Managing Authority. I find no error in the Trial Judge's line of reasoning on the issue of reinstatement and it was a reasonable exercise of her discretion.

(iii) Whether the learned trial judge was wrong in law in failing to make a finding that because the hearing was not concluded within 30 days, the First Respondent should have reinstated the Appellant, and in dismissing this ground that the continuation of the disciplinary hearing was ultra vires the managing Authority's powers

[34] The Appellant submits that the learned Trial Judge was wrong in law in failing to find that because the hearing was not concluded within 30 days, the First Respondent should have reinstated the Appellant in accordance with ***Rule 93(11) of the Education (Amendment) Rules, 2012*** which states:

> "Where a hearing for a teacher placed on interdiction pursuant to sub-rule 10(c) is not concluded within thirty days of the date of notification under sub-rule (10)(a) the teacher shall be reinstated without prejudice to his status or emoluments if the teacher had presented himself at each scheduled hearing".

[35] The Trial Judge found that the Appellant was present at all the hearings and the process did exceed a period of thirty days. The issue at instance concerns the interpretation of the provision – whether its operation is that once the hearing was not concluded within 30 days that the Appellant was required to be immediately reinstated to his position as principal at St. Barnabas.

[36] The Appellant submits that the provision must be given a purposive interpretation with sight to the legislative intent of ensuring that a teacher is not prejudiced in awaiting the conclusion of the hearing. The Respondents agree that the rule's purpose is to ensure that a teacher is not made to face any such harsh effects for an extended period of time but rebuts the Appellant's contention that the effect of the provision is to oust the jurisdiction of the disciplinary body in 30 days.

[37] The Trial Judge agreed with the interpretation urged by the Respondent, that the limitation of 30 days is not intended to nullify the actual hearing, but directed towards protecting the teacher from the effects of interdiction for any extended length of time …*the rule does not state that the proceedings shall cease or be disposed of upon the expiration of the 30 days from date of notification of the charge. Rather the Rule speaks to the consequences of failing to conclude the hearing ... the use of the word 'reinstate' is perhaps the culprit giving rise to a construction that the proceedings are in fact disposed of, for reinstatement in legal terms, is generally a remedy following upon resolution of a dispute in legal proceedings. The court agrees with the construction that the mischief of the Rule is really directed at ensuring that the teacher who is charged and placed on interdiction, generally with a reduction in salary) is not subjected to that prejudice for longer than a period of 30 days. Further it is not inconceivable, that whilst the standard of disposal of the hearing has been set at 30 days, the life of a hearing could easily surpass 30 days, due to illness or other lack of availability of a party, or some other good reason. ...if indeed the legislature's intent was that the disciplinary hearing itself should be nullified by its non completion within 30 days, such an effect ought to have been expressly mandated in clear terms within the Rules.* The court dismissed the ground of review that the continuation of the hearing past 30 days

was ultra vires the Managing Authority's powers pursuant to Rule 93(11) of the Education Rules. (para 45 of Judgment)

[38] I find that the Trial Judge's interpretation is within the reasonable boundary of what was open to be made, that the hearing beyond 30 days was not ultra vires. As noted above the effect of the Trial Judge's declarations that the purported dismissal decision was void indicates the Appellant is considered to have continued in his position and the issue of damages and any limitation on those damages would be the matter for determination.

[39] Accordingly, the Court makes the following Order:

1. The Appeal against the Trial Judge's decision limiting the award of damages to the Appellant is upheld and paragraphs 4 and 5 of the judgment set aside. The matter is remitted to the High Court for assessment of the amount due to the Appellant being arrears of salary and emoluments and any loss of opportunities from October 2019, less any income earned. On assessment the court should receive evidence on mitigation and consider contingencies in making a determination of damages.

2. Grounds 2 and 3 of the Notice of Appeal are dismissed.

3. As the Appellant has been partially successful, the 2nd and 3rd Respondents to pay 50% of his costs in the appeal to be agreed or assessed.

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WOODSTOCK-RILEY, JA

FOSTER, JA

[40] I have had the opportunity to read the draft judgment of my Learned Sister, Woodstock Riley, JA and I agree with her reasoning and the Orders she has made.

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FOSTER, JA