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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT M111 OF 1995

CORAM: THE HONOURABLE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE ELLIS
THE HONOURABLE MRS. JUSTICE HARRIS

In the matter of an application by Castel Gordon for leave to apply for an Order of Certiorari quashing the decision of the Board of Governors of the Johnathan Grant High School to terminate the employment of Castel Gordon.

Mrs. A. Haughton-Cardenas and Miss R. Ridguard instructed by Gifford, Haughton & Thompson for Applicants

Mr. A. Williams instructed by Myers, Fletcher and Gordon for Respondents

Heard: October 28, 1997 and November 24, 1997.

WOLFE, C.J

I have had the benefit of perusing the draft Judgment of Harris, J and I support the conclusions drawn by her and agree that the motion ought to be dismissed.

ELLIS, J.

I agree that the motion ought to be dismissed based on the conclusion reached by Harris, J.

HARRIS, J.

On the 28th October, 1997 a Notice of Motion for an order for certiorari was listed before us. A preliminary point was taken by the attorney-at-law for the Respondent. The preliminary point succeeded and motion was dismissed. We promised to put our reasons in writing and now do so.

The applicant was a teacher at the Johnathan Grant High School. By an order contained in a letter dated the 26th July, 1994, his employment was terminated by the School's Board of Governors based on their findings of his being in dereliction of his duties and his absence from the island without permission. He contended that he had been wrongfully dismissed, as a result, he issued an ex parte summons on the 20th December 1995, by virtue of which he sought and obtained leave to apply to the full court for an order of certiorari to quash the order of the Board of Governors. An originating Notice of Motion was filed by him subsequent to the granting of order for leave.

Section 564(c) of the Judicature Civil Procedure Code, which governs the granting of leave to apply for an order of Certiorari, provides as follows:-

"Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than one month after the date of the proceeding or such shorter period as may be prescribed by any enactment and where the proceedings is subject to appeal and a time is limited by law of the bringing of the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired."

It is mandated by the foregoing provision than an application for leave to apply for an order of certiorari must be made within one month after the date of the proceeding which it is sought to quash. The decision of the School

Board was communicated to the applicant by letter dated 27th July 1994. Receipt of the letter was acknowledged on the 18th August 1994 as shown in his affidavit sworn on the 18th December, 1995. He would therefore have had knowledge of the order of his dismissal on the 18th August, 1994, the date on which he received the letter. Consequently, the time limit for the pursuit of his application for leave for an order to issue the writ or certiorari would have commenced on the 18th August 1994 and would have expired thirty days thereafter, that is, on 17th September, 1994.

The application was not filed until 20th December, 1995, one year and three months after the applicant was informed of the decision of the School Board. Having failed to take necessary steps to present his application within the time prescribed by the Act, when he filed his summons on 20th December, 1995, he had placed himself outside of the period within which he was entitled to have obtained the relief which he has sought.

Although an applicant is late in the presentation of an application for leave to apply for order of certiorari the court may extend the time within which to do so under Judicature Civil Procedure Code Section 676 which is expressed as follows:-

"The court shall have power to enlarge or abridge the time appointed by this Law, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require; and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed."

An applicant under S564(c) supra, who wishes to avail himself of the opportunity for such extension of time, must give notice to the party who would be affected if the order challenged were quashed and the court will extend the time if it is convinced that it is a proper case in which to do so. This is clearly demonstrated in the words of Lord Goddard,

C.J, in R. v. Ashford Kent Justice Ex parte Richley 1955 2

All Er 327 when he declared:-

"Thus an applicant for extension of time limited by R.S.C. Order 59 r. 4(2) [which is substantially similar to J.C.P.C. 564(c)] must give notice to the person who in the ordinary way would be made respondent to the motion in order that he may be heard on the question whether or not it is a fit case in which to extend time."

In the matter under consideration, the applicant did not seek an extension of time to make his application. Additionally, there is no evidence that he had given to the Respondent notice of his intention to apply for leave to make application for order of certiorari. This he was required to do in order to enable the court to establish whether his case is a suitable one in which time should be extended.

A further procedural irregularity which ought to be mentioned is the fact that, although leave had been granted to the applicant he failed to comply with Judicature Civil Procedure Code Section 564 D(2) which reads:

"Unless the notice or summons is filed with fourteen days after leave has been granted the leave shall lapse."

Leave to apply for the order of certiorari was granted on July 10th, 1996 and proceeding on the premise that the granting of leave had been regularly obtained, a Notice of Motion should have been filed on or before the 25th July, 1996 but was however filed on 10th February 1997, a date which far exceeded the 14 days limited for its filing. The leave granted would have lapsed by the 25th July, 1996.

There has been non-compliance on the part of the applicant in making his application for leave to apply for an order of certiorari within one month of the decision of the School Board, which is sought to be quashed. No application for extension

of time to make the application was presented, nor was any notice of intention to extend time given to the Respondent. Although leave was granted to apply for the order to issue the writ of certiorari, the notice of motion was not filed within 14 days as prescribed and the leave would have therefore lapsed.

Notice of Motion is dismissed. No order as to costs.