[2013]JMSC Civil 102

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2011 HCV06694

BETWEEN	*ALVIN LAWSON*	*APPLICANT*
A N D	*PROFESSOR CLAUDE PACKER*	*1ST RESPONDENT*
A N D	*THE BOARD OF DIRECTORS OF THE MICO UNIVERSITY COLLEGE*	*2ND RESPONDENT*

Judicial Review – applications for order for declarations, certiorari; mandamus and for damages – Education Act 1980 and the Education Regulations 1980 – termination of employment.

Miss. Georgia Hamilton instructed by Mesdames Georgia Hamilton and Company for the Applicant.

Mr. Garth McBean instructed by Pickersgill, Dowding and Bayley Williams for the Respondents.

Heard: May 9 and July 25, 2013

P. A.Williams, J.

[1] The Mico University College has the distinction of being the oldest teacher training institution in the Western Hemisphere. Known as "The Mico", it enjoyed, what some may regard as dubious, the reputation of being the poor man's university.

Some may have deemed it a privilege for Mr. Alvin Lawson, the Applicant, as an alumnus of this noble institution, to have returned there some thirteen (13) years after graduating as a part-time Lecturer in the Education Department in the Faculty of Liberal Arts and Education in 2009.

This privilege however, for the applicant could be viewed as short-lived as after being advised in July 2010 that his permanent employment had been approved pending ratification from the

Ministry of Education, he was in June 2011 informed that his temporary employment would not be extended beyond August 31, 2011.

[2] This dismissal was viewed by Mr. Lawson as being unlawful, arbitrary and invalid. His efforts to get redress from the Principal, Professor Claude Packer, the 1st Respondent, the Board of Directors, the 2nd Respondent and the Ministry of Education proved futile and so in September 2012 he sought and was granted leave to seek judicial review of this action.

[3] By way of Fixed Date Claim Form dated July 11, 2012 the applicant seeks the following orders:

A. A declaration that the Applicant is a permanent member of the academic staff of The Mico University College "The Mico" and is entitled to security of tenure;

B. Further and/or alternatively, a declaration that the Applicant can only be dismissed from the Mico for cause;

C. An order for certiorari quashing the decision of the 1st and 2nd Respondents purporting to terminate the permanent employment of the Applicant in breach of Education Regulations, 1980;

D. A declaration that the Applicant had a legitimate expectation that his permanent appointment would be considered and addressed by the Ministry of Education.

E. An order of Mandamus directing the Board to reinstate the Applicant as a permanent member of the academic staff of the Mico with effect 1st September, 2011, subject only to the requirement for confirmation by the Ministry of Education.

F. An order for restitution of income and/or damages for loss of income and all other consequential losses flowing from the decisions of 1st and 2nd Respondents, purporting to terminate the Applicant's employment.

The Factual Background

[4] The Applicant was initially employed to the Mico as a Lecturer on a one year contract with effect from January 5, 2009. He was assigned in the Education Department in the faculty of Liberal Arts and Education.

The offer for this employment had been communicated to him by way of a letter dated December 29, 2008 over the signature of Dr. Claude Packer C.D, J.P., President of the Mico University on behalf of the institution.

[5] On March 25, 2010 a letter was sent to the Permanent Secretary of the Ministry of Education advising that the Board of Directors of the Mico approved the recommendation for the permanent appointment of the Applicant along with others. The Applicant's appointment was to have effect from April 1, 2010 and it was to be vice a member of staff who had retired. This letter from the 1st Respondent and R. Karl James CD, EdD (Hons.) chairman of the 2nd Respondent closed with a request for approval of the appointments.

[6] The Applicant subsequently received a letter dated July 27, 2010 from the 1st Respondent advising that his permanent employment as a Lecturer in the Faculty of Education and Liberal Arts with effect September 1, 2010 had been approved pending ratification from the Ministry of Education. He was invited to sign an attached copy of the letter indicating his acceptance of the terms and conditions outlined therein.

The Applicant complied with this request and signed and dated his acknowledgement on the 19th of August, 2010.

[7] In his affidavit the applicant exhibits what he describes as letters of commendation he received during his tenure at the Mico.

The first dated December 7, 2009 was from the 1st Respondent thanking him for his devotion to duty as displayed in the execution of the recently held Graduation Exercise.

The second dated September 27, 2010 was from the University registrar thanking him for the part he played in the successful staging of the Matriculation and Consecration Ceremony. It was expressed that the function would not have been successful without his personal touch.

[8] Further, in his affidavit the Applicant exhibited his performance evaluation which he said rated his performance as a member of the academic staff as satisfactory. Indeed in the thirty (30) possible areas he was evaluated, he received sixteen (3) = average ratings, nine (4) = good ratings and five (5) = excellent rating.

This evaluation was signed by him and the dean of the faculty in June 2011, and by the head of the department on the 1st of July, 2011.

[9] A letter dated June 6, 2011 over the signature of the 1st Respondent and addressed to the Applicant, advised the latter that his temporary employment would not be extended beyond August 31, 2011.
On July 7, 2011, the Applicant's attorneys-at-law wrote to the 1st Respondent challenging this "purported termination" of his services and this was followed by another one of July 25, 2011. On that date, another letter from the Mico was sent to the Applicant advising him that his temporary employment was not extended due to certain organizational changes in the department. This letter was signed by the 1st Respondent and the chairman for the 2nd Respondent.
It was stated therein that "this letter supersedes our correspondence dated June 8, 2011".

The submissions

For the Applicant

[10] Miss. Hamilton started her submissions on behalf of the Applicant by seeking to establish the applicable statutory framework as being found in the Education Regulation 1980, made pursuant to section 53 of the Education Act 1980.
Specifically she referred to the following regulations, which will be expressed more fully where appropriate and considered when an analysis of the law is required:-

(i) Reg. 43 which speaks to the appointment of teachers
(ii) Reg. 54 which deals with the termination of employment of teachers by notice
(iii) Reg. 89 which addresses the duties and responsibilities of a board of management
(iv) Schedule A which outlines; inter alia types of appointment which a Board of Management may make.

[11] She recognized that the employment of an individual by a public authority does not *ipso facto* give rise to an element of public law as is required for judicial review. This matter, however, she submitted, had the requisite statutory underpinning governing the manner of the appointment and dismissal of the employee which makes it subject to such review.

Reliance was sought on the dicta of Panton P, in the local Court of Appeal decision **Lafette Edgehill et al v Greg Christie (Contractor General of Jamaica) [2012] JMCA Civ. 16** where at paragraph 16 he quoted what had been held by the English Court of Appeal in **Regina v East Berkshire Health Authority ex-parte Walsh [1984] 3 All ER 425.**

> *".....whether a dismissal from employment by a public authority was subject to public law remedies depended on whether there were special statutory restrictions on dismissal which underpinned the employee's position, and not on the fact of employment by a public authority per se or the employee's seniority or the interest of the public in the functioning of the authority".*

[12] She also relied on the Supreme Court decision of E. Brown J, in Claim **No 2009 HCV 04341 Karen Thames v National Irrigation Commission Ltd.** where it was found that there was no evidence of any legislative underpinning of the Applicant's employment neither any statutory restriction on the manner in which that employment could be terminated.

[13] Appropriately she then turned to a consideration of the regulations to determine the nature of the Applicant's appointment as at the date of his "purported termination."

> *"Regulation 43 (1) provides – The appointment of every teacher in a public educational institution shall be made by the Board of Management of that institution after consultation with the principal of the institution and shall be subject to confirmation by the minister".*

This provision she noted may make it unclear whether the Applicant's appointment took effect only after confirmation by the minister or whether it takes effect on the decision of the Board thus rendering confirmation by the minister a mere rubber stamping exercise.

[14] The provisions, she opined becomes clearer when read in conjunction with Regulation 43 (2), 89 (1) (e) and schedule A.

Regulation 43 (2) states:

"Every appointment shall be in accordance with one of the categories of teachers and one of the types of appointments stipulated in schedule A".

This schedule lists the types of appointments which may be made by the Board as:-

(1) Permanent appointment

(2) Provisional appointments

(3) Temporary appointments

(4) Acting appointments

Regulation 89 (1) states, inter alia,

"The Board of Management is responsible to the Ministry for the administration of the institution for which it has been appointed and in discharging its responsibilities the board shall be responsible for –

.....(e) appointing in consultation with the principal, the academic staff, the bursar.....and such other administrative and ancillary staff as are approved for the establishment of the institution; and such members of staff shall be paid such salary and other allowance as the Minister may approve and shall be eligible for such leave and other fringe benefits as may be determined by the Minister, and the appointment and termination of appointment of such members of staff shall be in such terms and conditions as may be approved by the minister".

[15] For Miss. Hamilton, these sections provided support for her opinion that confirmation by the Minister is merely a rubber stamping exercise; because this confirmation arises from the fact that following an appointment by the Board, the Minister plays a critical role in determining the teacher's salary, allowance, leave and other fringe benefit. Hence she concluded the requirement for confirmation "makes a lot of sense, as it is the Minister who is the paymaster".

[16] Further she noted that in its letter advising the Applicant of his being appointed stated the date at which his appointment would take effect. As she expressed it.....

"Logic would dictate that if the Minister's decision could disperse with the appointment of Mr. Lawson or any appointment under the provisions

of the said Regulations, then a decision from the Minister would have had to be forthcoming before the date on which the appointment was intended to take effect".

[17] Miss. Hamilton also argued that there was further support for her view to be found in the case **Owen Vhandel v The Board of Management Guys Hill High School SCCA No. 72/2000.** She highlighted the approach of Downer J.A which she said clearly shows that His Lordship considered the appointment was made by the Board and that confirmation was a separate and subsequent act. After evaluating the evidence to determine whether the Applicant had been temporarily appointed or appointed in an acting capacity, His Lordship noted that,
'This confirmation [by the Minister] supports the Appellant's contention that he held an acting appointment'
In other words the appointment is not derived from confirmation but rather is divorced from and wholly independent of this requirement.

[18] She concluded in this area by submitting that the Applicant's appointment was always intended to be permanent which is evidenced by the fact that his appointment was meant to fill the vacancy created by the retirement of another member of staff.

[19] In the alternate she urged that the Applicant should be viewed as having continued as a temporary teacher serving in excess of one (1) year. He having commenced employment on a temporary basis in January 2009 continued to serve without interruption until receipt of the notices of termination in 2011.
Schedule A 3(2) provides –

"A temporary appointment shall be for a period not exceeding three terms unless the Board of the institution at the end of that period has agreed to extend the period of such appointment".

Thus Miss. Hamilton urged the conclusion that since the Applicant's employment had continued beyond three terms, this indicated that there must have been an implied agreement by the Board to extend this appointment.

[20] Thus Miss. Hamilton opined whether viewed as permanently or temporarily appointed, "his employment had the necessary statutory underpinning thereby rendering the circumstance of his appointment reviewable"
Having established this, she then turned to consider what would have been the applicable procedure for terminating his services.

[21] If his appointment was permanent the Applicant would have enjoyed security of tenure and could only have been dismissed for cause and after strict adherence to the procedure set out under Regulations 54 to 56 was the first plank of Miss. Hamilton's argument.
She further opined that he should not be denied security of tenure simply because he is awaiting confirmation of his appointment.
She reasoned that he would have been in a disadvantageous position for having been permanently appointed merely awaiting the confirmation of the Minister. Further she argued such a person if deprived of security of tenure would provide a huge disincentive for persons serving temporarily provisionally or in an acting capacity to aspire for permanent appointment. As she expressed it –

> *"It could never have been legislative intent to stifle upward mobility. Further depriving such persons of security of tenure would be repugnant to the legislative intent, which is clearly meant to recognize persons who have served".*

[22] She then went on to ague in the alternative that if he is viewed as a temporary employee who had served for over one year, the Applicant would still be entitled to insist that he can only be dismissed for cause following strict adherence to the procedures set out under Regulations 54 to 56.
Once again she relied on the case of **Owen Vhandel v. The Board of Management of Guys Hill School** [supra] and the words of Downer J.A. where at page 18 he states-

> *"In fact, the wording of the Regulation implies that there is a right to a hearing. It obliges the Board to give reasons coupled with the payment of one month's salary or a month's notice. The necessary implication from the obligation to give reasons is that a hearing from*

both sides is mandatory. If this were not so, why is the delivery of reasons obligatory?"

[23] Recognizing that in that case the facts concerned termination on the basis of misconduct thereby rendering the need for observance of Regulations 54 to 56, Miss Hamilton submitted that there was nothing in the Regulations to permit any such construction. It is her interpretation that Parliament intended to insulate teachers who had been permanently appointed or who had served for over one (1) year from dismissal except in cases where cause has been shown.

[24] In support of this proposition, reliance was sought in the local Court of Appeal decision of **Lorna Elaine Jackson et al and The Chairman of Board of Management Haile Selassie Comprehensive High School et al SCCA Nos. 52, 53 and 54 of 2001 and Hermine Campbell et al and the Chairman Board of Management Edith Dalton James High School et al at SCCA 57, 59, 60, 61 and 63 of 2001.**

She summarized the case as showing where the appellants successfully challenged the findings of the Court at first instance that a Government restructuring programme aimed at addressing student teacher ratios in school lawfully could deprive them of the protection afforded by Regulations 54 to 56.

She noted that the appellants who were all permanently appointed were found to only be dismissable by the Board if found guilty of professional misconduct as prescribed by Regulations 55 to 59.

[25] It became Miss. Hamilton's contention that since there was no question of any disciplinary proceedings taken against the Applicant, "extreme changes" at the MICO did not provide a proper basis for his dismissal.

Further he was never afforded any hearing into the matter whether fair or otherwise and Miss. Hamilton submitted that he enjoyed an inalienable right to a fair hearing.

[26] In any event Miss. Hamilton further noted that the Regulations 89 (1) (e) requires that the Board obtain the Minister's approval of the Applicant's dismissal, a mandatory requirement

which does not appear to have been sought much less obtained, thus rendering the dismissal invalid.

She noted under Regulation 89 (2) the Board may delegate responsibility for matters at paragraph 1(e) to the principal, however she opined this is restricted to appointment of staff as the reference to 'termination of appointment' was not speaking to the Board's power to terminate but rather specifically to the role of the Minister in such matters.

[27] She relied once again on the **Lorna Elaine Jackson et al v The Chairman Board of Management et al** [supra] and argued that the decision to terminate the applicant's service could only have been properly taken by the Board.

She therefore urged the Court to find that the 1st Respondent was not acting on behalf of the 2nd Respondent in the letter signed by him alone of the 6th of June 2011. Since this function cannot be delegated even if this was what the Board purported to do, it had no power to do so and its actions would have been ultra vires and of no effect.

[28] She further attacked the letter of the 6th of June from the 1st Respondent urging that neither he nor the 2nd Respondent should be allowed to say that it had been written by the Board. Her reasons for so saying was that firstly it began with a reference to the first person proving it was the 1st Respondent's belief he could terminate the Applicant's appointment.

Secondly the letter was copied to the Board and the Board would have no need to copy itself on its own correspondence.

[29] Although in her written submissions, Miss. Hamilton had addressed the issue of whether the Respondents had frustrated the Applicant's legitimate expectation to a substantive benefit, she abandoned the argument when addressing the Court.

She referred to the inclusion of such an argument as trying to put everything possible before the Court even if it meant "throwing in the kitchen sink".

[30] She concluded her submissions by considering the question as to whether certiorari should lie. She recognized this to be a necessary consideration since the 1st Respondent had asserted in his brief affidavit that:-

"3.....since the termination of the temporary employment of Alvin Lawson on 31st August 2011 the post which he occupied has ceased to exist, as in 2011 the Mico University College carried out extreme changes in several Faculties. The Department of Professional Studies in which Alvin Lawson was employed, no longer exists being subsumed along with several Departments into a new Faculty known as Education and Leadership.

4 The Faculty of Education and Leadership has its full complement of staff. Two senior faculty members who were away on study leave have since returned and are teaching in this field".

[31] Miss. Hamilton challenged this assertion since she maintained that there must be clear legislative authority for the Minister to abolish the post of a permanent teacher.
For this proposition she referred to the dicta of Smith J.A. in the "Lorna Elaine Jackson decision" where he cites the authorities of **Perinchief v. Governor of Bermuda [1997] 1 LRC 171** and **Director General of Education v. Suttling (1997) 162 LLR 427 at 442 – 3.**

[32] Miss. Hamilton further challenged this assertion by pointing to the lack of documentary evidence or any disclosure other than "the say so of the 1st Respondent." She argued that there should be a paper trail in the form of agreements, written reasons, minutes of Board meetings, communications with the Minister in matters requiring his approval.
Thus she opined and expressed –

> *"given the ambit within which the Respondents operate and the nature of their operations, it is inconceivable that such "extreme changes in several Faculties" at the Mico could have taken place without a single shred of documentary evidence".*

It became Miss. Hamilton's view that the 1st Respondent ought not to be regarded as credible and in any event she felt the court ought to mark its displeasure at the Respondent's blatant disregard of the order for standard disclosure by rejecting the assertions in the affidavit of the 1st Respondent, thereby preventing them from standing in the way of making an order of certiorari.

For the Respondent

[33] Mr. McBean, for the Respondents began his submission by identifying the relevant provisions of the Education Act Regulations as being Regulation 54 (2) dealing with termination of employment by notice.

In applying the relevant law to the instant case he also referred to Regulation 43 (1), (2) and (4)

He conceded that the Applicant was temporarily employed for more than one (1) year.

[34] He noted that the disciplinary procedure as set out in Regulation 56-59 only applies where a complaint in writing is received by the Board and the Board is of the opinion that the conduct warrants disciplinary action.

In the instant case no such complaint having been received, the procedure was not applicable and there was no basis for a hearing; neither, he submitted was there a basis for declaration sought that the Applicant could only be dismissed for cause.

[35] He submitted that there was no legal basis for the submission that the Minister's approval for an appointment is a mere rubber stamp. He urged that without the approval, the appointment cannot be considered complete hence the Applicant cannot be deemed to have been permanently employed.

He noted that this means that the Applicant was temporarily employed for more than a year and continued to be so until his appointment was approved.

[36] He argued that the "Vhandel case" and the "Lorna Jackson case" were both clearly distinguishable from the instant case.

The former because there were allegations of misconduct requiring a hearing even though the Regulations setting out the disciplinary procedure were inapplicable as the teacher had been employed temporarily for less than a year.

The latter because the teachers at issue had been permanently employed and could only be dismissed for cause, given the nature of their "security of tenure".

[37] In the instant case no disciplinary proceedings could have been instituted since no allegations of misconduct were made. In any event, Mr. McBean went on to urge it cannot be

that even though the Applicant was not permanently employed and there was no complaint re his conduct, he was still entitled to the procedure as outlined in Regulations 56-59.
This led Mr. McBean to question whether there could be a statutory underpinning as required for there to be a judicial review if Regulations 56-59 does not apply.

[38] In any event, Mr. McBean opined that the nature of the Applicant's employment being employed for more than one year but not appointed meant that the provisions of Regulation 54 (1) was applicable whereby his employment could be terminated by the Board by one month's notice being given stating the reasons for the termination.
The Board had done what was required of them as was appropriate to the case hence the orders being requested could not be granted.

[39] On the issue of whether the Respondents had failed to make disclosure, Mr. McBean argued the case was one to do with essentially interpretation of the Regulations and the law hence, the matter of a paper trial was irrelevant. The issue of credibility he also posited did not arise. If the termination of employment was deemed null and void given the provisions of the Act and Regulation it was Mr. McBean's view that the absence of a paper trial was irrelevant.

The review of relevant law and application to the facts

[40] The reliance of the Applicant on the dicta of Panton P, in the case of **Lafette Edgehill et al v Greg Christie** [supra] is well founded. The need for a statutory underpinning governing the manner of the appointment and dismissal of an employee to make such action thereafter subject to judicial review cannot be disputed.
Panton P. reference to Donaldson MR in his judgment in **Regina v. East Berkshire Health Authority ex parte Walsh** [supra] at page 431 e-g is also instructive.

> "*The ordinary employer is free to act in breach of his contracts of employment and if he does so his employee will acquire certain private law rights and remedies in damages for wrongful dismissal, compensation for unfair dismissal an order for reinstatement or re-engagement and so on. Parliament can underpin the position of public authority employees by directly restricting the freedom of the public*

authority to dismiss, thus giving the employee 'public law rights' and at least making him a potential candidate for administrative law remedies".

[41] In the instant case, the Applicant's employment and subsequent termination are to be in accordance with the Regulations pursuant to section 43 of the Education Act which provides inter alia:-

The minister may make regulations generally for the proper carrying out of the purposes and provisions of this Act and in particular but without prejudice to the foregoing may make regulations:-

(a) for the management and conduct of public educational institutions

(b) specifying the powers and duties of Boards of Management of Public Educational Institutions and of Educational Boards.

(c) .....

(d) .....

(e) .....

(f) With respect to the appointment terms of employment, disciplinary control and payment of salaries of teachers and other personnel in public educational institution.....

[42] It is therefore immediately apparent that, this being the statutory basis by which the Minister is responsible for this area of the education system, it provided the framework underpinning the rights of the Applicant to seek judicial review of matters to do with his employment and termination thereof.

There is no dispute that his initial employment fell squarely with the provision of Regulation 43:-

43 (i) The appointment of every teacher in a public educational institution shall be made by the Board of Management of that institution after consultation with the principal of the institution and shall be subject to confirmation by the Minister.

(ii) Each appointment shall be in accordance with one of the categories of teachers and one of the types of appointments stipulated in Schedule A.

[43] The initial letter offering the Applicant employment at the Mico was signed by the 1st Respondent indicating that he was speaking on behalf of the Board. It began –

> *"We are pleased to advise that the Board of Directors of the Mico University College is hereby offering you a one year contract as Lecturer in the Education Department, in the faculty of Liberal Arts, with effect from January 5, 2009."*

[44] Thus turning to Schedule A to determine the type of appointment being offered the applicant would perhaps be a useful place to start.

The schedule provides for:-

1. Permanent appointments in which the holder enjoys security of tenure in the particular institution until retirement unless his employment is terminated in accordance with regulation 54.
2. Provisional appointments
   - (1) Teachers
   - (a) A teacher who joins the service for the first time shall be appointed on a provisional basis. The duration of such provisional appointment shall not normally exceed three (3) school terms.

   .....
3. Temporary appointments
   - (1) A principal or a teacher may be appointed temporarily to the staff of an educational institution –
   - (a) if he does not have the qualifications or experience to be offered appointment to that particular post on a permanent basis.
   - (b) to fill a vacancy for which there is no substantive holder
   - (2) A temporary appointment shall be for a specific period not exceeding three (3) terms unless the Board of the institution at the end of that period has agreed to extend the period of such appointment.
4. Acting appointments

(1) A Board of Management may make an acting appointment to replace a principal or a teacher who is on leave or secondment or is for any other reason absent with approval for a specific period.....

[45] The Applicant was offered and accepted a one year contract as Lecturer. This offer, without more would be seen as a temporary or acting appointment.
Given his qualifications and experience at the time; it could hardly have been temporary due to his lacking in either requirement. The letter is silent as to whether it was to fill a vacancy for which there was no substantive holder.
It was equally silent as to whether it was in replacement for an absent teacher.
There seems to be no requirement or expectation for a reason as to why this offer was for a one year contract but it is accepted that his employment was to be temporary.

[46] It can be best described as uncertain and untidy when at the end of the year the Applicant remained on staff with no further communications evidently exchanged to govern this continued employment.
The initial letter had given no indication as to under what circumstances it could be extended. There is no evidence that there was compliance with the Regulation which provided that the Board had agreed to the period of such appointment being extended.
This caused the conclusion that the fact that he remained must mean that they had agreed.
Thus the Applicant remained in this undefined state for some seven (7) months when he received the letter from the 1st Respondent again on behalf of the Board advising him that his permanent appointment "with effect from September 1, 2010 had been approved pending ratification from the Ministry of Education."

[47] It is noted that the wording of this letter departed somewhat from what is actually provided in the Regulations.
The Regulation 43 (1) provide for the appointment to be subject to confirmation by the Minister.
The letter however stated a date at which the permanent appointment would take effect pending ratification. This stating of a date lends credence to the belief that whatever was to be

forthcoming from the Ministry of Education was mere formality with no effect on the fact that he was permanently employed as at September 1, 2010.

[48] However, the Regulation, to my mind makes the confirmation of the Minister a necessary pre-requisite before the appointment can be considered completed and valid.
Given its literal meaning, the Regulation suggests that the proposed appointment would need to be considered by and given the 'go ahead' by the Minister before it was effected.
No evidence was given as to what practice has developed from the actual operation of the Regulation but on its literal interpretation, I find that the confirmation by the Minister was a condition precedent to the Applicant's appointment being made permanent.

[49] The recognition of the fact that the appointment had to await the confirmation is clearly demonstrated in the letter of March 25, 2010 from the 1st Respondent and the Chairman of the 2nd Respondent.
This letter advised the Permanent Secretary of a Board of Directors meeting which had approved the recommendations for the permanent appointment of certain academic staff, including the Applicant, with effect from Apri1, 2010. It ended "Your kind approval of these appointments is greatly appreciated".

[50] Clearly there was no approval for the appointments to be effected on the 1st April 2010. There is nothing to indicate what authorized the 1st Respondent to advise the Applicant as he did in July that his appointment had been approved with effect from September 1, 2010. The failure of the receipt of the confirmation by the Minister meant the Applicant's permanent appointment remained in limbo.

[51] Having arrived at this conclusion, I turn to consider the question as to how the Applicant's appointment could properly be terminated. The problem arises from the fact that he did not to my mind fall fully in any of the categories of appointment recognized in the Regulations.
Regulation 54 governs termination of employment of teachers by notice and provides inter alia-

54 – (1)"Subject to paragraph 2, the employment of a teacher in a public educational institution may be terminated -

(a) in the case of a teacher who holds a temporary, acting or provisional appointment by one months' notice given by either the teacher or the Board, and where the employment is terminated by the Board, stating the reasons for the termination or by payment to the teacher of a sum equal to one month's salary in lieu of notice by the Board and such payment shall be accompanied by a statement by the Board of the reasons for the termination; and

(b) in any other case by three months' notice given by either the teacher or the Board or by the payment to the teacher, of a sum equal to three months' salary in lieu of notice by the Board.

(2) Where the Board of any public educational institution intends to terminate the employment of any teacher in that institution other than a teacher employed on a provisional temporary or acting basis for less than one year, the termination shall not have effect unless the procedure set out in the regulations 56 to 59 are followed.

[52] I must firstly indicate agreement with Miss. Hamilton that the letter of June 6, 2011 from the 1st Respondent advising the Applicant of his temporary employment not being extended was invalid. It was clearly not compliant with the requirement that it was the Board who terminates such employment and it also did not give a reason for such termination.

It is recognized that the Board may, if it sees fit, delegate to the principal of the institution, responsibility for certain matters – as per Regulation 89 (2) -

The matters to be delegated listed at 89 (1) (e) are limited to the appointment of "academic staff, the bursar, secretary, accountants and such other administrative and ancillary staff as are approved for the establishment of the institution".....

It also goes on to provide "the appointment and termination of appointment of such members of staff shall be in such terms and conditions as may be approved by the Minister".

This does not mean that the Board can delegate to the principal the responsibility for terminating the employment of members of staff.

[53] The fact that there was an appreciation of the invalidity of the first purported letter of dismissal is seen in the letter of the 29th of July 2011 which was now jointly signed by the 1st Respondent and the chairman for 2nd Respondent. Further there was contained therein a reason namely".....

"due the certain organization changes in the department"

It is also not without significance that it was expressly stated that "this letter supersedes our correspondence dated June 8, 2011"

This was clearly in an effort to correct and address the deficiencies in the first letter.

[54] The termination therefore was now being made in accordance with that expected when a teacher was temporarily employed.

The fact that the Applicant had been temporarily employed in excess of three terms is what is argued takes him out of the category of teachers that can be so terminated.

Certainly, prima facie, the fact that he was employed on a temporary basis for more than one year would seem to bring him into the provisions of Regulation 54 (2) – and hence termination should not have effect unless the procedure set out in Regulations 56 to 59 are followed.

[55] It, however would suggest that a teacher who had not been permanently appointed should acquire the security of tenure from such an appointment by virtue of the length of time he was temporarily employed. This to my mind points to a flaw and serious gap in the regulations which leads to a less than satisfactory state of affairs. It cannot be seen as the intention of the drafters of these regulations to afford to a teacher who has not been permanently employed the same tenure as one whose appointment has not been confirmed by the Ministry as required elsewhere in the regulation.

[56] Clearly this is the position taken by the Respondents and hence their treating the Applicant as being still temporarily employed.

Hence the method chosen to terminate his employment was in keeping with the requirement for one so employed.

Certainly there was no complaint against the Applicant which although commendable, did not work in his favour in ensuring his continued employment. The reason given by them for this

termination as expressed by the 1st Respondent, though blunt and to the point, cannot without more be seen as lacking in credibility.

The decision

[57] In all the circumstance, I find that I must decline from making the Orders sought by the Applicant.

There will be no order as to costs.