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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO. M77 of 1997

IN THE MATTER of the HUMAN EMPLOYMENT AND RESOURCE TRAINING ACT

and

IN THE MATTER OF THE EDUCATION ACT

and

IN THE MATTER OF LETTER OF THE RESPONDENT DATED THE 3rd DAY OF JUNE, 1997 PURPORTING TO TERMINATE THE SERVICES OF THE APPLICANT.

REGINA

vs

THE EXECUTIVE DIRECTOR OF THE HEART TRUST/NATIONAL TRAINING AGENCY, EX PARTE VERLEY FOSTER.

CORAM: THE HONOURABLE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE COOKE
THE HONOURABLE MR. JUSTICE GRANVILLE JAMES

Mrs. Pamela Benka-Coker Q.C. instructed by Mr. Carlton Williams for Applicant.

Mr. Dennis Morrison Q.C. and Miss Nerine Small instructed by Dunn, Cox, Orrett and Ashenheim for Defendant.

Heard: February 16 and 17, 1998

JUDGMENT DELIVERED BY COOKE J.

The applicant is a highly qualified trained teacher whose experience both in educational insitutions and the business world cannot be denied. On or about 9th September, 1992 he accepted

employment as the principal at the Vocational Training Development Institute (V.T.D.I.). The offer of employment was from the Heart Trust/National Training Agency. He assumed his duties as of the 1st October 1992. It would seem that by December 1993, the anticipated cordial working relationship was not being realized. The situation became worse rather than better. There were meetings. There were the exchange of memoranda as both sides set out their increasingly widening positions. By May 1997, the time had come to part company. Efforts were made to soften what now appeared to be the inevitable - that the applicant would no longer be the principal of V.T.D.I. Terms could not be agreed. So by letter of 3rd June 1997 the services of the applicant was terminated by Heart Trust/ National Training Agency. We have considered it unnecessary, to set out the differences between the parties as these will not help in resolving the issues before the court.

The applicant now seeks to have the decision, to terminate his services, quashed. The main ground is that:

> The Respondent acted ultra vires the Education Act in purporting to terminate the services of the Applicant without following the procedure laid down in that Act. The Vocational Training Development Institute (V.T.D.I.), Gordon Town Road of which the Applicant was Director/Principal being an aided educational institution within the intendment of the Act.

The Applicant contends that V.T.D.I. is subject to the Education Regulations 1980 made pursuant to the Education Act. As such, the procedure set out in the Regulations, in

particular sections 55, 56 and 57 were not followed. Hence the illegality. These sections mentioned, set out the procedural steps to be taken before a teacher can be dismissed. Section 55 deals with disciplinary offences. Section 56 enjoins the board of a public educational institution to refer complaints received by it in writing of disciplinary misconduct to its personnel committee if the board is of the view that "disciplinary action ought to be taken against the teacher." Section 57 sets out the procedure to be followed by the personnel committee and the scope of their recommendations. Quite plainly in this case these regulations played no part. Were they relevant? The Education Act and the Regulations governs every public educational institution. The applicant has submitted that V.T.D.I. is a public educational institution within the meaning of the Education Act. Now in section 2 of this act it is stated that:

> "public educational institution means any educational institution which is maintained by the Minister and includes any aided educational institution."

Also in this same section an

> "aided educational institution" means any educational institution which the Minister assists in maintaining."

"The Minister" here is the Minister of Education. In our view to maintain or to assist in maintaining must relate

to the funding of the institution. There is no evidence that V.T.D.I. is in anyway at all funded by the Minister. At this point, perhaps a short historical excursion would not be inappropriate. In his affidavit Quince Francis the Chief Technical Director of V.T.D.I. stated:

> Par. 3-The V.T.D.I. was estabished in or about 1972 for the purpose of training vocational instructors for skills training programmes outside the context of the formal school system. Then it was funded by the United Nations and operated under the aegis of the Ministry of Labour. In 1991 it was transferred to the H.E.A.R.T. Trust/NTA under the Human Employment and Resource Training Act. At that time all persons employed by the institutions as civil servants were all paid off and re-hired by H.E.A.R.T. Trust/NTA.
>
> Par. 4-That the institution is funded exclusively by the H.E.A.R.T. Trust .....

These statements by Quince Francis have not been controverted.

In a number of places throughout The Human Employment and Resource Training Act there is reference to "the Minister". It is not stated precisely to which particular "Minister" there is this reference. For example

Section 6 reads:

> "The Minister, may, after consultation with the Chairman, give to the Board such direction of a general character as to the policy to be followed by the Board in the performance of its functions as appear to the Minister to be necessary and the Board shall give effect thereto."

Here there could be an inclination to say that since this section is concerned with policy in an educational institution then the "Minister" is the Minister of Education. However, even if this is so, the fact that the Minister of Education is empowered to give policy directions would not by itself make the V.T.D.I. a public education institution. One final comment on this aspect of the case. By section 9(10) of the Education Act it is provided that:

> "Every public educational institution shall be administered
>
> (a) by a Board of Management.....

There is no evidence that V.T.D.I. had any such Board of Management as prescribed. Further, there is absolutely no evidence that the applicant had any relationship with the Ministry of Education. It is our conclusion that V.T.D.I. is not a public educational institution. Therefore neither the Education Act nor the Regulations made pursuant thereto

is relevant. Accordingly the applicant's submission in this regard fails.

The offer of employment to the applicant was set out in a letter dated September 9, 1992. The applicant indicated his acceptance of the terms and conditions contained therein. As to this there is no dispute. We will at this stage set out in full the relevant part which is:-

> "Should your employment continue on completion of the probationary period one month's notice in writing will be reacquired for its termination. The Heart Trust/NTA reserves the right to pay salary in lieu of Notice and where this obtains, payment will be made in accordance with the Employment (Termination and Redundancy Payments) Act.

There is no complaint that there is any breach in what we have just quoted. However, it is submitted that in these circumstances where copious charges have been levelled against the applicant he should be given an opportunity to be heard in spite of existence of the letter of employment. In effect there has been a breach of natural justice. In determining if there is worth in this submission the question to be answered is what is the legal nexus as between the applicant and his employer? It has not been suggested, nor could it be, that

it is otherwise than that of master and servant. There are no statutory or other restrictions which touches or concerns the nature of the contractual nexus which existed. We will unhesitatingly content ourselves by adopting the enunciation of the Law as stated by Lord Reid in **Ridge Baldwin [1964] A.C. 40 at p. 65** where in his judgment he said:

> **"The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does this in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence: it depends on whether the facts emerging at the trial prove breach of contract."**

So there it is. The employer was under no legal obligation to give the applicant any hearing at all. We conclude that this submission is without worth.

For the reasons given we dismiss this motion. There will be costs to the respondent to be agreed or taxed.