

NAMES

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FULL COURT

SUIT NO. M.106 OF 1994

CORAM: THE HON. MR. JUSTICE THEOBALDS, J.

" HON. MR. JUSTICE LANGRIN, J.

" HON. MR. JUSTICE SMITH, J.

IN THE MATTER OF AN APPLICATION BY  
CARMEN WILLIAMS TO APPLY for ORDERS  
of CERTIORARI and PROHIBITION.

AND

IN THE MATTER OF THE PURPORTED DISMISSAL  
OF THE APPLICANT as Executive Secretary  
at the Bellefield Comprehensive High School.

Mr. Donald A. Gittens for the Applicant

Mr. Lackston Robinson Asst. Attorney General instructed by the  
Director of State Proceedings for the Respondent.

Heard: November 1 & 2, 1995

ORAL JUDGMENT

LANGRIN, J.

This is an application on Motion for the following Orders:

- (A) Order of Certiorari to quash a decision made by Dr. Auma Folkes, Principal of the Bellefield Comprehensive High School as stated in letters dated August 30, 1994 that having abandoned her post she should stay away from the school and
- (B) An Order of Prohibition restraining the Board of the School, or any sub-committee or agent or servant thereof from pursuing any charges or conducting any hearing relating to the purported dismissal of the applicant.

Background:

The applicant commenced employment with the Government of Jamaica in November, 1966 at the St. Elizabeth Technical High School as a Clerical Assistant, and continued as a Steno-typist until December 1976 when she resigned. In January 1977, she was employed as Executive Secretary to the Principal, Bellefield Comprehensive High School. Her permanent appointment was approved by the Ministry

of Education in a letter dated June 16, 1986 directed to the Chairman, Bellefield Secondary School, Manchester and copied to the applicant. The appointment was effective January 1, 1978.

On the 13th June, 1994 the applicant made a written application for 35 days Vacation Leave commencing on 11th July, 1994 and concluding on the 29th August, 1994. Prior to the application, the Principal of the school had discussions with the applicant and others and informed them that they were not entitled to 35 days annual vacation leave but 21 days instead. The discussions were prompted by the Ministry of Education.

At the time of the discussions the applicant expressed disagreement, in respect of her leave entitlement.

On the 23rd June, 1994 the Principal refused the application for leave and accordingly informed the applicant both orally and in writing. The applicant returned the application for leave which was endorsed by the Principal indicating her refusal.

It is disputed by the applicant that she told the principal that 'she had her business planned and would be going anyway'.

On the 24th August, 1994 the Chairman of the Board convened a meeting comprising himself, the principal, the Bursar and the applicant. At the meeting the applicant admitted to the Chairman that she knew that leave was not approved but she went on leave because she disagreed with the position taken by the principal on the matter and moreover she was not well and the doctor had advised her to rest.

On the 30th August, 1994 when the applicant returned to work the impugned letters were handed to her by the Principal.

Representations were made on behalf of the applicant by her Attorney to the School Board and charges were preferred against the applicant. A meeting was convened by the School Board and at that meeting the Principal of the school was present.

#### Grounds for the Application

The grounds upon which the application is sought are that the said decisions purport to dismiss the applicant and accordingly they are ultra vires the statutory regulations and in breach of the principles of natural justice.

In respect of Prohibition, the scheduled hearing into the charges against the applicant is repugnant to the Public Service Regulations and there is a real likelihood of bias.

#### Submissions

Mr. Gittens on behalf of the applicant submitted that the applicant was dismissed without a hearing by letters dated 30th August, 1994, since she was not allowed to resume her position at the school on that date.

Further, the applicant having been appointed by the Ministry of Education was a member of the public service and was governed by the Public Service Regulations instead of the Education Regulations.

Because the applicant was appointed in 1978 prior to the 1980 Education Act and Regulations the applicant should have the benefit of the earlier regulation pertaining to suspension. The later regulation, he submits does not address suspension while the earlier regulation does. It is an accepted principle of statutory interpretation that a right existing at Common Law or under Statute cannot be abrogated by a later statute unless the abrogation was expressed or by necessary implication.

He finally submitted that the presence of the Principal at the meeting convened to hear the charges showed a real likelihood of bias.

Mr. Robinson on behalf of the Respondent submitted that the applicant had abandoned her post when she went on leave and the letters in question did not purport to dismiss her but only indicated that she should remain away from school until the Board could deal with the matter.

He further submitted that the applicant was appointed by the Board of the Educational Institution and her permanent appointment was approved by the Minister on June 16, 1986. She was not a member of the Public Service which is governed by the Constitution and the Public Service Regulations.

Let me now turn to the first issue:-

1. was the applicant dismissed from her post?

The principal is clearly devoid of authority to dismiss an employee of the Institution and has expressly stated in her affidavit that she had not done so. The applicant had abandoned her job, having gone on leave without any permission and in flagrant disregard of

the principal's refusal to grant the leave. Besides, the fact that a hearing of charges is in the process of being conducted against the applicant speaks eloquently to the fact that the applicant was not dismissed. In the circumstances there cannot be any legitimate expectation on the applicant's part to resume her post before an inquiry is conducted in the matter. Having left the job without permission from the authorities concerned, it is the unanimous view of the Court in exercise of our judicial discretion that the applicant should remain off the job until a hearing is heard in the matter. Such hearing should be expeditiously dealt with.

We have refrained from dealing more extensively with the facts and circumstances relating to the applicant's absence since we would like to avoid any prejudice to a fair hearing of the pending charges.

The second issue is whether the proposed hearing under the Education Regulation is repugnant to the status of the applicant?

Section 91(1) Education Regulations states:

"The establishment of any public educational institution shall include such categories and numbers of administrative and ancillary staff as the Board of that institution may be authorised to appoint on such terms and condition as the Minister may determine."

Sec.89(1): "The Board of Management is responsible to the Minister for the administration of the institution for which it has been appointed and in discharging its responsibilities the Board shall be responsible for -

- (a) .....
- (b) dealing as prescribed in these regulations with the appointment, termination of the appointment ..... suspension from duty and other personnel matters in relation to members of staff of the institution".

It is clear from the abovementioned regulations coupled with the letter dated June 16, 1986 directed to the Chairman of Bellefield Secondary School in respect of the applicant that she was a permanent employee of the school and governed by the Education Regulations. Apart from speculation - there is no evidence before us that the applicant was appointed by the Governor General. The submission that the applicant is a member of the public service and governed by the Public Service Regulations is without merit. We therefore hold that the applicant's appointment and discipline is governed by the Education

Regulations.

Turning now to the question of whether there was a real likelihood of bias due to the presence of the Principal at the meeting which was convened to hear her charges.

There is no evidence to substantiate the allegation that the Principal's presence was to influence any deliberation of the Board. It must be borne in mind that she was a witness and the actual hearing had not yet commenced. However when the hearing commences her presence at the hearing except as a witness should be discouraged.

In all the circumstances there was no illegality or breach of the Rules of Natural Justice. Further, the applicant being an employee of the Educational Institution is governed by the Education Act and Regulations.

Accordingly, the application for both orders is refused. Our judgment is unanimous. The respondent should pay the costs to be taxed, if not agreed.