

IN THE SUPREME COURT OF SEYCHELLES

SONY LABROSSE

V

THE CHAIRPERSON OF THE EMPLOYMENT TRIBUNAL

Civil Side No.146 of 2010

JUDGMENT

Burhan J

This is an application by the aforementioned petitioner for Judicial Review of the Order made by the Chairperson of the Employment Tribunal. The Supreme Court of Seychelles by virtue of Article 125(1) (c) of the Constitution of the Republic of Seychelles is empowered to exercise its powers of Supervisory Jurisdiction.

The petitioner was employed by the company Al Yatching Neptune Warriors Seychelles as a general helper. By letter dated 1st September 2009 his employment was terminated on the grounds of insubordination. Following unsuccessful mediation by the Competent Officer the petitioner filed grievance proceedings before the Employment Tribunal. The petitioner claimed unlawful dismissal and reinstatement.

The Employment Tribunal after hearing both parties made order dated 1st April 2010 as follows;

“In essence therefore the Tribunal invokes section 62(2) in finding that the termination was not justified but as it would be impractical or inconvenient to reinstate the Applicant the Tribunal orders that he be paid his legal benefits.”

Being aggrieved by the said order the petitioner seeks to move by way of Judicial Review seeking the following reliefs;

1. An order be granted for leave to proceed with this petition.
2. An order prohibiting the execution of the learned magistrate’s order of 1st April 2010
3. A writ of Certiorari quashing the decision of the Respondent dated 1st April 2010.
4. For costs.

The petitioner seeks the aforementioned reliefs based on the following grounds;

(a) the learned magistrate’s decision as made out under section 62(2) (a) of the Employment Act is flawed and judicially unfounded as section 62(2) (a) stipulates frustration of a contract of employment other than under section 58(1) (b) and makes for provision for compensation there under and therefore it confers no power on the learned magistrate to make a finding as to the justification of an alleged unlawful dismissal. Therefore the ruling of the learned magistrate is legally unfounded.

(b) Alternatively the petitioner avers that no reasonable body properly directed to the facts and the relevant law and acting reasonably could have reached such a decision.

Thereafter both the petitioner and the respondent filed submissions. It is the respondent's position that as the petitioner had been paid all his benefits upon termination and had accepted same he had effectively severed all employer employee relations with the respondent.

It should be borne in mind when a court is exercising its supervisory jurisdiction it will not be seeking to substitute its own value judgment for those of an inferior body *R v Secretary of State for the Home Department, ex parte Turgut* (2000) The Times 15th February. What is supervised is the decision making process that was involved. It is trite law that the main grounds to be considered is whether the decision making process was illegal, irrational, unreasonable, and procedurally improper like failure to follow the rules of natural justice. In an Appeal a court may look at the merits of a decision and decide whether the decision was good or bad and could go further and overturn the decision and the appellate court or body could substitute its own decision. Judicial Review can only quash the decision and remit the decision to be taken again.

Further Judicial Review could be refused where the legislature has provided a more suitable channel of challenge to a Tribunal's decision such as a right of appeal *Administrative Law 3rd Edition Michael Molan Pg109*.

The Employment Amendment Act 21 of 2008 part 4 of Schedule 6 of section 73A(2), reads as follows;

“Any person against whom judgment has been given by the Tribunal may appeal to the Supreme Court subject to the same conditions as appeals from a decision of the Magistrate’s court.”

It is apparent that the legislature has provided a more suitable channel of challenge to a Tribunal’s decision that is a right of appeal to the Supreme Court. It is apparent from the record that the order of the Tribunal was given on the 1st of April 2010. No appeal has been filed during the prescribed time and thereafter only on the 7th of October 2010 over 6 months after the order of the Tribunal has this application for Judicial Review been filed.

Therefore it is the view of this court as the law has provided for a right of appeal against the decision of the Employment Tribunal, the petitioner should have availed himself of the said remedy within the prescribed time if aggrieved by the decision of the learned Chairperson and having not done so is now precluded from making an application for Judicial Review.

The application stands dismissed with costs.

M.N BURHAN

JUDGE

Dated this 28th day of November 2012