

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 402/04

In the matter between:

MOSES DLAMINI

APPLICANT

and

THE TEACHING SERVICE COMMISSION

1st RESPONDENT

THE ATTORNEY GENERAL

2nd RESPONDENT

CORAM

N. NKONYANE: ACTING JUDGE

DAN MANGO : MEMBER

GILBERT NDZINISA: MEMBER

FOR THE APPLICANT: MR. V. DLAMINI

FOR THE RESPONDENT: MR. T. DLAMINI

RULING ON POINT OF LAW 01.09.05

The applicant brought an application for the determination of an unresolved dispute before this court.

The applicant in its papers states that he was dismissed from the teaching profession with effect from 27 January 2004 by the 1st respondent after he was found guilty of misconduct.

The applicant was accused of having love relationships with the pupils of the school where he was teaching. He was called to a disciplinary hearing and he was found guilty by the chairman.

The applicant wants this court to make an order re-instating him to his position.

The grounds upon which he relies for his application are contained in paragraph 10 of the application. These grounds appear as follows, inter alia:

"10.1 The Chairman wanted to re-open a case on which he had already acquitted the applicant.

10.2 The Chairman also refused to have applicant inspect the letters written by the witnesses under count 3.

10.3 First Respondent's disciplinary tribunal admitted inadmissible evidence and/or statements about the character of the Applicant when that was not the issue for determination. The Chairman did not protect the Applicant, but seemed to be amused by the opening remarks of the then deputy Head teacher.

10.4 The First Respondent failed to apply her mind to the facts of the case, but were only hell-bent on drawing inference convenient to then (sic) as long Applicant was found guilty.

10.5 The First Respondent denied Applicant the opportunity to call the boy who was a crucial defence witness especially because even the First Respondent's witnesses in their written statements before the actual hearing had made mention of him having allegedly facilitating Applicant's meeting with the girl...

10.8 The Chairman of the First Respondent's tribunal restricted the applicant from conducting his defence in that he would interfere when Applicant was cross-examining witnesses and uttered statements that showed that he had already formed an opinion that the Applicant was guilty even before all the evidence was presented ...

10.11 The Chairman denied the Applicant an opportunity to cross-examine a vital witness in the case, that is the girl who implicated him as having an affair with her.

10.12 Further the conduct of the panel clearly showed that they formed an opinion not only even before the girl testified but also before the Applicant attempted to his case (sic).

10.13 The Chairman and his panel denied the Applicant the opportunity to present his case and call his witnesses after the girl had testified, by stating that whatever Applicant said after her answer was useless because the girl admitted the existence of a relationship with Applicant. In the premises the Applicant's dismissal was both unfair and unreasonable in the circumstances and Applicant claims the following..."

The applicant's papers were clearly not elegantly drafted.

On behalf of the respondent's a point of law was raised that the grounds relied upon by the applicant for the order of re-instatement that he seeks were grounds for review.

It was argued that this court has no power to review irregular proceedings of statutory bodies.

The court was referred to the case of FUTHI P. DLAMINI AND OTHERS VS. TEACHING SERVICE COMMISSION, THE SCHOOL MANAGER, THE HEADTEACHER/ NKILJI SECONDARY SCHOOL, THE ATTORNEY GENERAL AND REGISTRAR OF THE INDUSTRIAL COURT OF APPEAL COURT OF APPEAL CASE NO. 12/2002.

In that case the Industrial Court of Appeal held that the Industrial Court has no power to review decisions of other statutory bodies, as it is also a creature of statute.

Although in the present case the applicant has not specifically stated in its papers that it wants the disciplinary proceedings of the 1st respondent to be reviewed and set aside on grounds of the patent irregularities, it is clear that the grounds upon which he challenges his dismissal are grounds for review.

His complaint is that he did not have a fair hearing taking into account the way that the chairman conducted the hearing.

In order for this court to make a ruling that the dismissal was unfair, it must make a finding on the irregularity or impropriety in the manner that the chairman conducted the disciplinary hearing. That can be done by way of review. Taking into account the above observations the court will uphold the point of law raised with no order as to costs. That will be the order that the court makes.

The application is therefore dismissed. The members agree.

N. NKONYANE

ACTING JUDGE- INDUSTRIAL COURT