

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Application for Judicial Review 01 of 2017

IN THE MATTER of an application by
VENKATESHWAR NARAYAN for leave
to apply for Judicial Review (Ord. 53 r.3)

AND IN THE MATTER of decision dated
11th day of November 2016, made, given by
the Fiji National University.

BETWEEN : **VENKATESHWAR NARAYAN**

APPLICANT

AND : **FIJI NATIONAL UNIVERSITY**

RESPONDENT

Counsel : **Mr. R. Sharma for the Applicant**
Mr. B. Singh for the Respondent
Date of Hearing : **16th June, 2017**
Date of Judgment : **31st July, 2017**

JUDGMENT

INTRODUCTION

1. This is an application seeking leave for Judicial Review against the Respondent regarding termination of employment of the Applicant, who was under a contract of employment with the Respondent. The Applicant was employed with the Respondent in the Department of Economics and Finance as an Assistant Lecturer from 30th August, 2015 for a 5 year period. His employment was terminated on 11th November, 2016. The said summary dismissal was communicated to the Applicant by a letter dated 9th November, 2016 for '*Gross Misconduct*' and the details of the said gross misconduct was also stated in the said letter. The Applicant had admitted the facts of the alleged misconduct which

relate to conflict of interest. The said letter of summary dismissal further stated that before a decision for termination was made the response by the Applicant for the specific allegation of misconduct was reviewed.

ANALYSIS

2. The Applicant was employed by the Defendant as an Assistant Lecturer under a contract of employment for 5 years and clause 15 of the said contract provides modes of termination and states that Respondent retains the right of summary dismissal inter alia for;

'15.2.1 where a worker is guilty of gross misconduct'

3. The Applicant was notified about the misconduct and was also given an opportunity to respond and having considered his response he was terminated, in terms of the letter of termination dated 9th November, 2016.
4. The counsel for the Respondent had raised a Preliminary Objection that this matter lack of 'public law element', since it was purely a master and servant relationship.
5. He had submitted Court of Appeal decision of *Palani v Fiji Electricity Authority* [1997] FJCA 21; Abu0028.96 (18 July 1997).
6. In *Palani* (supra) Court of Appeal held,

'Lyons J., in our view correctly, commenced by saying that judicial review did not lie in a strict master and servant relationship. In our view the law is now clear that judicial review is only available where an issue of public law is involved in master and servant cases; it does not apply where the issue is a private law obligation. It is not always easy to determine just what is comprehended by the expressions "public law" and "private law" in this area. However, since they first became commonly used judgments of the Courts have developed our understanding of what is meant. In R. v. BBC, ex parte Lavelle (1983) 1 All E.R. 241 Woolf J. at 248 said when dealing with an application for judicial review that nothing in the English rules relating to judicial review had extended the circumstances in which the

prerogative remedies of mandamus, prohibition or certiorari were available. He went on to say:

"Those remedies were not previously available to enforce private rights but were what could be described as public law remedies. They were not appropriate, and in my view remain inappropriate remedies, for enforcing breaches of ordinary obligations owed by a master to his servant. An application for judicial review has not and should not be extended to a pure employment situation."

7. I cannot see any public law element in the application seeking Judicial Review. The Applicant had admitted the alleged misconduct of marking a project that was not allegedly not accepted previously as it was plagiarized, but subsequently the same was marked by Applicant. Apart from that there was a serious conflict of interest issue relating to the said student. So there is no issue of disputed facts. What should be considered as serious misconduct is within the scope of the Respondent and accordingly Applicant was terminated. There is no public law element and he did not held any statutory position. The Applicant was an Assistant Lecturer in Respondent University and he had a 5 year contract with it. So the issue of termination due to 'gross misconduct' was done in terms of clause 15 of the Contract of Employment between the Applicant and Respondent.

8. In the circumstances the application for leave for Judicial Review is dismissed with cost summarily assessed at \$1,000.

FINAL ORDERS

- a. Application for Judicial Review is struck off.
- b. Cost is summarily assessed at \$1,000.

Dated at Suva this 31st day of July, 2017



Deepthi Amaratunga
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Justice Deepthi Amaratunga
High Court, Suva