Soomatee Gokool, et al. v. Permanent Secretary of the Ministry of Health and Quality of Life, et al.

[2008] UKPC 54

Country: Mauritius
Region: Africa
Year: 2008
Court: Judicial Committee of the Privy Council

Human Rights: Right to work

Facts

The appointment of employees is by virtue of s 89(1) of the Constitution, to be carried out by the Public Service Commission. On 18 May 1999, the Commission delegated the power of appointment of Health Care Assistants (HCAs) to the Permanent Secretary of the Ministry, V. On 24 September 2004 an advertisement was issued, inviting applications for HCA posts. 8,998 applicants were invited to interview with panels made up of officials of the Ministry, with each panel covering a geographical area of Mauritius. Eventually, a final list of 388 candidates was drawn up.

This was taking place against a background of political change and uncertainty. In light of this and the already public disquiet about the making of appointments immediately before the election, V consulted the Minister about whether she should proceed with the 388 HCA appointments. She was instructed to go ahead and as a result letters dated 30 June 2005 went out to the successful candidates offering them posts "on a purely temporary month-to-month basis and terminable by one monthâ€™s notice on either side." After six months in service training, they would then be considered for permanent appointments.

Another appointment exercise for the recruitment of health workers was under way prior to the election. This led to public controversy with accusations that appointments were being used as electoral bribery. Discrepancies in candidate lists were made evident to V and she highlighted these to the Minister and again strongly advised that the selection process for General Workers and Hospital Servants be cancelled. She obtained agreement and the cancellation process commenced.

The appointment letters sent out to the HCAs created controversy as there were a large proportion of appointees from the Minister of Healthâ€™s constituency. V thought that if left unaddressed, it would lead to a loss of public confidence in the Health Serviceâ€™s selection process. On 7 July she obtained the power to terminate the appointments from the Public Service Commission, in line with s 89(2) of the Constitution. V sent a letter to the successful candidates informing them that the offer of employment "[was] being withdrawn." Later, another letter was sent to the candidates stating the employment was on the basis of "a purely temporary month-to-month basis and liable to termination by one monthâ€™s notice on either side" and that "employment offered has been terminated...and one monthâ€™s salary in lieu of notice of termination will be paid to you."

G, along with other successful candidates sought leave to apply for judicial review of Vâ€™s decision. They opposed the decision on a number of grounds:

1.Â They argued that the decision to terminate the HCAsâ€™ employment was in reality not a decision made by the Permanent Secretary, but was a politically driven decision on part of the incoming government. The Minister was not a public officer within the meaning of s 111 and s 112 of the Constitution and the power of termination could not validly be delegated to him â€“ thus the exercise of delegated power carried out by Minister was invalid.

2.Â The decision, if made by V alone, was invalid for being irrational and taken in a procedurally unfair manner. The situation could have been handled differently.

3.Â The termination was unlawful on the ground that it was carried out in breach of the Public Service Commission Regulations which applied to their appointment and employment. Firstly, the disciplining process

laid down in Part IV of the Regulations was not observed. Secondly, it was submitted in the alternative that this was not a case of disciplinary action, it was not covered by the Regulations and required instructions to be obtained from the Commission, in accordance with the requirements of Regulation 51.

4.Â The decision to terminate their appointment deprived them of the legitimate expectation that they would be permitted to commence work as HCAs and the opportunity of obtaining a permanent post with the Ministry.

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

In dismissing the appeal on the basis that the application was not well founded, it was held that:

(1)Â It was clear that the decision was in fact taken by V. Even though she informed the Secretary to the Cabinet of her intention and obtained approval from the incoming Minister, it does not mean that the decision was not taken by her. This was an understandable and natural course for her to take.

(2)Â The fact that the process of terminating appointments could have been handled better does not necessarily mean they were irrational. The decision of establishing a decision to be unreasonable is heavy in the Wednesbury sense and the appellants have not discharged it. The decision was within the range of responses which a reasonable decision maker would have made in those circumstances.

(3)Â With regards to Part IV of the Regulations not being observed, this Part does not apply to the case as the respondents did not have any evidence of any wrongdoings on their part and did not seek to attribute any to them. Secondly, regarding the requirements of Regulation 51, the delegation to V made pursuant of s 89(2) of the Constitution was sufficient to entrust the power of appointment to the Permanent Secretary. This point accordingly failed.

(4)Â Finally, in response to the legitimate expectations argument, it was questionable whether they should have had such an expectation, in view of the statement of the appointment letter which read that employment was liable to termination by one monthâ€™s notice. Even if they could be said to have such an expectation, it would not be possible for them to establish a case.

(5)Â The basis of the jurisdiction is abuse of power and unfairness to the citizen on part of a public authority (R v North and East Devon Health Authority, ex parte Coughlan [1999] EWCA Civ 1871 considered). On this basis, it has been held that two factors show there have not been an abuse of power: One is whether the claimant has relied on the promise or representation, in particular whether he has thereby suffered any detriment. The second is when the authority changes its policy on sufficient public grounds. If there is an overriding public interest behind its change of policy, it will not be an abuse of power.

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Decision Excerpts

"16. The appellants attacked the decision under review on a number of grounds, but the main thrust was a challenge to the validity of the respondents' case that the decision to terminate the HCAs' employment was taken by the Permanent Secretary, as she averred.Â They suggested that it was not in reality a decision made by her, but a politically driven decision on the part of the incoming government, which distrusted the allegiance of those appointed.Â It accordingly was not taken by the Permanent Secretary as the public officer to whom the Public Service Commission had delegated the power of termination.Â The Minister was not a public officer within the meaning of sections 111 and 112 of the Constitution and the power of termination could not validly be delegated to him.Â In consequence, it was claimed, the exercise of the delegated power, having been carried out in reality by the Minister, was invalid.

17. Their Lordships do not accept this submission.Â In their opinion the evidence satisfactorily establishes that the decision was taken, as she avers, by Mrs Veerapen.Â They do not agree that it was unlikely, as Mr Guthrie QC, counsel for the appellants, suggested, that she would take the decision herself in the interregnum between governments.Â On the contrary, the evidence establishes that she went to the Public

Service Commission to obtain a delegation of the power to terminate the appointments, and must have been very clearly conscious that the power and responsibility to make the decision rested upon her.Â . . ."

"18. The second major plank of the appellants' case was that the decision, if truly made by Mrs Veerapen, was invalid as being irrational and taken in a procedurally unfair manner.Â Mr Guthrie suggested in argument a number of steps which the Permanent Secretary could have taken when faced with the situation which had arisen by 7 July 2005.Â . . .Â In hindsight it is not difficult to make such criticisms of the course adopted and even without hindsight it is possible to conclude that the process of terminating the appointments could have been handled differently and perhaps better.Â But that does not necessarily mean that they were irrational.Â The burden of establishing that a decision was unreasonable in the Wednesbury sense is notoriously heavy and their Lordships do not consider that the appellants have discharged it.Â In their view the decision was within the range of responses which a reasonable decision-maker might have made in the circumstances.Â The situation required speedy action, as Mrs Veerapen has demonstrated in her evidence, and it was obviously impracticable to take some of the steps suggested by the appellants.Â The individual cases could not be investigated in a short time and it was necessary both to terminate the appointments and to restore public confidence in the integrity of the Ministry and its appointing process.Â The Ministry did not then have evidence which might have tended to establish culpable behaviour on the part of any individual candidate, so it was not a necessary ingredient of a fair process to give the candidates an opportunity to make representations before the appointments were terminated.Â Their Lordships accordingly reject this head of argument."