

ST. LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 12 of 1986

BETWEEN:

THE ATTORNEY GENERAL - Defendant/Appellant
and
PETRA GIRARD
THE ST. LUCIA TEACHERS' UNION - Plaintiffs/Respondents

CIVIL APPEAL NO. 13 of 1986

BETWEEN:

THE ATTORNEY GENERAL - Defendant/Appellant
and
FLORENTINA JN PIERRE
THE ST. LUCIA TEACHERS' UNION - Plaintiffs/Respondents

Both Appeals consolidated

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: Parry Husbands, Attorney General for the Appellant
Mario Michelle for the Respondents

1987: Oct. 20,
1988: Jan. 25.

JUDGMENT

SIR LASCELLES ROBOTHAM, Chief Justice:

The plaintiffs/respondents herein namely Petra Girard and Florentina Jn Pierre were unmarried teachers on the permanent establishment of the Government of St. Lucia up to and until the 15th February, 1985, when their services were terminated in accordance with regulation 23(3) of the Teaching Service Commission regulations 1977 - S.R.O. 41/1977, (hereinafter the Regulations) which reads;-

"An unmarried teacher who becomes pregnant
shall be dismissed on a second pregnancy
if still unmarried."

The second plaintiff/respondent is a registered Trade Union representing the teachers. The defendant/appellant in each case is the Attorney General for the State of St. Lucia.

In suits 371/1985 and 372/1985, the respondents Girard and Jn Pierre brought actions which were subsequently consolidated both seeking
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declarations that:

- (1) Regulation 23(3) of the Teaching Service Commission regulations is ultra vires the St. Lucia Constitution Order 1978.
- (2) Regulation 23(3) of the said regulations is ultra vires the Teaching Service Commission Act 1970 - No. 28/1970.
- (3) That they each had been wrongfully dismissed from their employment as teachers.

The learned trial Judge refused the declarations sought in (1) and (2) above, but granted the relief sought in (3) in the following terms:-

"The declarations that the plaintiffs Petra Girard and Florentina Jn Pierre have been wrongfully dismissed from their employment as teachers contrary to Article 14(1) of the Collective Agreement is granted."

He further ordered the reinstatement of the teachers with full entitlement in salaries, from the date of dismissal to the date of reinstatement, or in the alternative that each be awarded damages assessed by him in the case of Petra Girard at \$16,040.00, and in the case of Florentina Jn Pierre at \$33,734.00.

The Collective Agreement referred to above was an agreement entered into between the Government of St. Lucia represented by Parry Husbands and Dwight Venner on the one hand, and Jean-Francois Joseph, the President of the Teachers Service Union on the other hand. Article 14(1) of that agreement, which was designed to cover the period 1st April, 1983 to 31st March, 1986, reads as follows:-

"Article 14 - Maternity Leave

- 14.1. The Employer agrees that three (3) months maternity leave with full pay shall be granted to all employees in the Permanent Establishment regardless of marital status."

It is significant to note at this stage that this agreement although placed before the Cabinet was never ratified or approved, and was never passed into law.

From this decision, the Attorney General has appealed to this Court, on the following grounds:

- "1. The learned Judge in error concluded that an executive act, that is the grant of three months maternity leave by the appellant under Article 14.1 of the Collective Agreement (Exhibit T.V. 1) overrides the exercise by the Teaching Service Commission of the power conferred by an enactment that is, Regulation 23 of the Teaching Service Commission Regulations, 1977, dismissing the respondent PETRA girard from the Teaching Service.

/The learned....

2. The learned Judge failed to recognise that the provisions relating to maternity leave as contained in Article 14.1 of the said Agreement were to be read subject to Article 3.1 of the said Agreement whereby the authority of the Teaching Service Commission for matters of discipline was acknowledged by the respondents.
3. That the order of the learned Judge violates the Saint Lucia Constitution as it seeks to require the appellant to override the decision of the Teaching Service Commission and is contrary to sections 92(12) and 93 of the said Constitution.
4. The learned Judge in error inferred that the grant of leave by the appellant under Article 14.1 of the said Agreement required a reinstatement of the respondent PETRA GIRARD into the Teaching Service thereby reading into the said Article what is not so provided.
5. That the learned Judge in error decided that there was conflict between the terms of the said Agreement and the Teaching Service Commission Regulations which required Resolution by the appellant whereas the said Article in the Agreement if so considered would be in conflict with an existing law, that is, the Teaching Service Commission Regulations and therefore void.
6. That the learned Judge erred in holding that Cabinet was bound by the act of a subordinate body, that is, the Government Negotiating Team in signing the Agreement whereas the Agreement to be binding required an act of adoption by Cabinet which had not been done.
7. Paragraphs (a) and (b) of the Judgment are inconsistent with paragraphs (c) and (d) thereof in that the learned Judge after having correctly found that the Teaching Service Commission Regulations were not ultra vires the Saint Lucia Constitution and that the said Regulations were not ultra vires the Teaching Service Commission Act, 1970 could not logically set aside (which he did in effect) the lawful exercise by the said Teaching Service Commission of the power conferred by the said Regulations dismissing the respondent PETRA GIRARD from the Teaching Service.
8. That the learned Judge erred in deciding that an enforceable contract that is the Collective Agreement existed between the appellant and the respondents whereas the respondent, that is, the Saint Lucia Teachers Union were neither capable of executing nor enforcing any such contract; or alternatively that the terms of the said Agreement were not embodied in any contract between the appellant and the respondent PETRA GIRARD.
9.
10. That the decision is against the weight of the evidence.
11. That the damages awarded are not due and/or are excessive.

/the short....

The short background to these actions being brought is that each of these ladies whilst they were still employed as teachers went into a second pregnancy, and they were granted the 3 months maternity leave provided for in Article 14.1 of the Collective Agreement. Upon the expiration of the leave in each case, they received letters from the Teaching Service Commission stating that their services were terminated in accordance with regulation 23(3) of the Teaching Service Commission Regulations. Girard's letter of dismissal was dated 10th May, 1985, and Jn Pierre's letter was dated 13th June, 1985.

Another point which must be emphasized at an early stage is that although Article 14.1 of the Collective Agreement allowed for the grant of 3 months maternity leave to unmarried teachers when pregnant, a privilege which hitherto they did not enjoy, it is singularly silent on the question of whether or not reinstatement should follow. It was contended on behalf of the respondents, that it followed as a matter of course, and there was no need to spell it out.

Further, and even of greater significance, is the provision in Article 3 of the same Collective Agreement which reads:

"Article 3:1

It is acknowledged that all rights, powers, authority, and customary functions of management are vested in the employer through the Ministry of Education; matters of appointment and discipline of members of the Teaching Service are vested in the Teaching Service Commission including inter alia the right to:

- (a) hire new employees;
- (b) promote, transfer, or retire employees;
- (c) discipline the employees for cause;
- (d) make such rules and regulations as are deemed necessary or advisable for the orderly, efficient, and safe conduct of its business, and to require employees to observe such rules and regulations."

Nothing in my opinion could be more explicit in recognizing within the bounds of the Collective Agreement the right of the Teaching Service Commission to exercise control and disciplinary measures over the members of the teaching profession. The only question therefore to be decided in this appeal, is whether Article 14(1) of this Collective Agreement, which was never ratified by the Cabinet and which was never passed in law whether by way of a statutory instrument or otherwise, could override the clear provisions of section 23(3) of the Teaching Service Commission Regulations 1977 - No. 14/1977.

It must be remembered that the old rule was that persons in Crown employment held office during the pleasure of the Crown. The march of time however, has brought about a variation to this rule and there now

/exists.....

exists in all jurisdictions statutory provisions which govern Crown employees. Judges hold office during good behaviour, and there are statutory provisions governing the Public Service, the Police Service, and indeed the Teaching Service. The Teaching Service Commission is a creature of Statute. Its establishment was brought about by the Teaching Service Commission Act 28 of 1970 (hereinafter the Act) at a time when the St. Lucia Constitution Order 1967 was in force.

With the attainment of Independence, the St. Lucia Constitution Order 1978 came into effect as from 22nd February, 1979 and the Teaching Service Commission Act 28 of 1970, being an existing law at that time, remained in full force and effect. In addition, this 1978 Constitution recognized in section 92 the existence of the Teaching Service Commission - section 93(1) reads-

"The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) and subject to the provisions of section 96 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Teaching Service Commission."

In the Act 28 of 1970, section 4(1) vests the power to appoint teachers in the Commission and also gives that body power

".....to transfer and take disciplinary action against persons holding or acting in such posts and the power to remove such persons."

The regulation making power is to be found in section 18 of the Act, and by an amendment embodied in the Teaching Service Commission (Amendment) Act 1976, subsection 18(1)(e) was added which empowered the Commission with the consent of the Minister to make regulations for "the conduct and discipline of the Teaching Service."

These regulations were duly made and came into force on 31st May, 1976. It is S.R.O. 41/1977 and is styled the Teaching Service Commission Regulations (hereinafter the regulations). It is by virtue of section 23(3) of these regulations that the respondents were dismissed.

The full force and effect of the statutory provision under which these teachers were dismissed can be more fully appreciated by quoting in full the relevant portions of section 23.

"23.(1) Suspension of unmarried Teachers

Unmarried teachers shall be suspended from the Teaching Service if pregnant; but will be allowed to resume duties immediately if marriage is contracted.

(2) Subject to the recommendation of the Manager and Principal an unmarried teacher who becomes pregnant may be allowed to resume duties three

/months.....

months following the birth of her child.

(3) An unmarried teacher who becomes pregnant shall be dismissed on a second pregnancy if still unmarried.

(4) An unmarried expectant teacher shall notify the Permanent Secretary through the principal or head teacher of the fact that she is pregnant and the Permanent Secretary shall in turn notify the Teaching Service Commission."

The Teaching Service Commission is an autonomous body and section 92(12) of the Constitution specifically states that the Commission shall in the exercise of its functions not be subject to the direction or control of any other person or authority. Section 93(1) vests in the said Commission the power to exercise disciplinary control over teachers.

It was the submission of Counsel for the respondents and I quote him verbatim:-

"The statutory regulation 23(3) is not revoked by the Collective Agreement; it merely makes 23(3) inoperative and could not give rise to disciplinary action under 23(3). Once the Court accepts that the Collective Agreement introduced a term in the contract of service of the teachers thereafter Regulation 23(3) of the Teaching Service Commission became inoperative."

It is evident that Counsel was advocating that the Collective Agreement impliedly repealed Regulation 23(3) although he avoided assiduously the use of the word "repeal". Much as he would like that to be the position, it must be remembered that a repeal by implication can only be by a later Act and even then the rule of construction is that the provisions of the later Act must be so inconsistent with or repugnant to the provisions of the earlier one that the two cannot stand together, in which case, the earlier is abrogated by the later.

The Collective Agreement relied upon was no doubt intended to lead to a subsequent amendment to section 23 of the Teaching Service Commission Regulations in the light of prevailing social conditions as it relates to teachers bearing children outside of wedlock and remaining in the classroom. It was the intention that it should have been placed before the Cabinet and the evidence before the trial Judge was that it was so placed, but was not approved. It therefore remained nothing more than an agreement having no statutory basis, and could not therefore override, take precedence over, or alter in any way the clear provisions of section 23 of the regulations as a statutory provision can only be altered or amended by another statutory instrument regularly passed into law.

In any event as I have earlier pointed out, section 14(1) of the Collective Agreement made no provision for reinstatement after a second pregnancy, and the recognition in the agreement by section 3:1 (supra) of /the disciplinary.....

the disciplinary powers possessed by the Commission over the teachers, makes any submission that the provisions of section 14 override the statutory provisions of the Teaching Service Commission Regulations, completely devoid of merit.

I find myself therefore unable to support the finding of the trial Judge that the Collective Agreement gave a right or a term of condition which could not be complained of as a ground for disciplinary action. To so hold would in effect be abrogating the provisions of section 23 of the regulations, which could only be done by means of another statutory instrument. Social and economic conditions when balanced against morality may well dictate otherwise but this is not a Court of morals, and therefore we make no pronouncement on that. One must take the law as one finds it, and I would set aside the finding of the trial Judge that the respondents had been wrongfully dismissed from their employment as teachers, contrary to Article 14(1) of the Collective Agreement.

I would allow the appeal of the Attorney General and set aside the judgment of the trial Judge, and instead, I would enter judgment for the defendant/appellant.

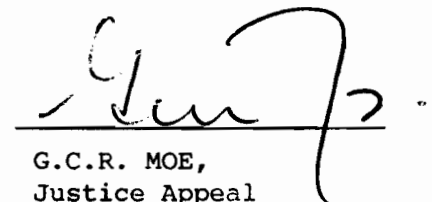
As to costs, the circumstances of the case suggest that the interests of justice will be served by making no order as to costs in this Court or in the Court below.



L.L. ROBOTHAM,
Chief Justice



E.H.A. BISHOP,
Justice of Appeal



G.C.R. MOE,
Justice Appeal