Ni BHEOCAIN



1977 No. 4117p

THE HIGH COURT

BETWEEN/

MAIRE INIONN NI BHEOLAIN

PLAINTIFF

AND

THE CITY OF DUBLIN VOCATIONAL EDUCATION COMMITTEE
IRELAND AND THE ATTORNEY GENERAL
AND (BY ORDER) THE MINISTER FOR EDUCATION

DEFENDANTS

Judgment of Miss Justice Carroll delivered the 31st day of January 1986

This action was commenced on the 25th August, 1977. It concerns the suspension of the Plaintiff from office as Assistant Head of the Department of Display and Interior Design in the College of Marketing, Parnell Square, from the 2nd May, 1977 by resolution of the City of Dublin Vocational Education Committee ("VEC") on the 29th April, 1977 pursuant to Section 7 (1) of the Vocational Education (Amendment) Act 1944. On the same day, the 25th August, 1977, the Minister for Education ordered an inquiry pursuant to Section 8 of the same Act. The date of the inquiry was subsequently fixed for the 10th October, 1977. On the 7th October the Plaintiff had not been informed of the grounds for her suspension and at her request the inquiry was adjourned sine die. The case came on for hearing in November, 1982, the claim for damages being left over by consent. The Plaintiff failed in her claim that Section 7 of the 1944 Act was unconstitutional and in her claim that the VEC acted

contrary to the principles of natural justice and constitutional justice in passing the resolution to suspend her without notice and without giving her a chance to make representations and that her suspension was void. She succeeded in her claim that the VEC were in breach of constitutional and natural justice by failing to furnish her after suspension with details of the specific acts and reasons on which the suspension was based and that the VEC were in breach of statutory duty under Section 7(2) in failing to give reasons to the Minister for the suspension. Judgment was given on the 28th January, 1983.

On the 3rd February, 1983 the Solicitors for the VEC wrote to the Plaintiff's Solicitors confirming that they were to write setting out what further information the Plaintiff suggested she was entitled to before the inquiry was reactivated and stating that it was their understanding that the reactivation of the inquiry was solely a matter for the Plaintiff.

The Plaintiff's Solicitors replied on the 4th February setting out under eleven headings the documents and material which they required in order to be in a position to prepare their case for the inquiry as follows:

1. Documents requested in their letter of the 3rd May, 1977.
2. Documents requested in their letter of the 12th May, 1977.
3. Names and addresses of all pupils in the Design Department of the College of Marketing from September, 1972 to date of suspension.
4. Names and addresses of all teachers permanent, temporary and part-time in the Design Department from September, 1972 to date of suspension.
5. Names and addresses of all members of the Committee of

the Vocational Education Committee at the time of suspension.

6. Names and addresses of all members of the Staff Relations Group of the VEC.

7. Minutes of all meetings of the Staff Relations Group at which the Plaintiff's position was discussed.

8. Minutes of the meeting of the VEC Committee dated the 29th April, 1977.

9. Copies of all documents, reports and memoranda which had or would be in the future furnished to the Minister for Education.

10. Copies of all reports of whatever nature which it was intended to place before the inquiry.

11. Copies of all correspondence and representations made by the TUI on behalf of the Plaintiff.

The letter concluded by stating that strictly speaking the reactivation of the inquiry was a matter for the Minister but the Plaintiff would co-operate in progressing the inquiry as speedily as possible on receipt of the information.

The Solicitors for the VEC replied on the 11th February, 1983 acknowledging receipt and stating that when the VEC had an opportunity of considering it and being advised, they would be in touch again. They pointed out that a great deal of the information sought was clearly already available to the Plaintiff as a result of the Court hearing.

By letter dated the 24th February, 1983 the Solicitors for the VEC replied in detail. They answered items 1, 2, 9 and 10.

As to items numbers 3, 4, 5, 6, 7, 8 and 11, they replied that none of them appeared to be a matter of which the Plaintiff was entitled to be informed by the VEC under the Vocational

Education (Amendment) Act, 1944 or on any basis specified in the judgment.

In regard to item 7, they reminded them that the relevant extracts from the minutes had already been put in evidence at the trial but if they wished to make any representations to the contrary they would give them full consideration.

The Plaintiff's Solicitor entered into correspondence relating to the salary scales and superannuation with different parties which was relevant to the Plaintiff's claim for damages but which was irrelevant to the inquiry into conduct.

On the 19th September, 1983 the Plaintiff's Solicitor wrote to the Solicitors for the VEC saying that no reply had been received to the questions in the letter of the 4th February, 1983 (except number 8). This was not in fact correct. On the same date, the 19th September, 1983, the Plaintiff's Solicitor sent a second letter with a detailed claim for damages saying Counsel would apply on the first available date in October.

The Solicitors for the VEC replied on the 28th September, 1983 referring to both letters and saying they believed they had answered all the queries raised. No reply was received. The Solicitors for the VEC sent a reminder on the 27th October, 1983.

The Solicitor for the Plaintiff replied on the 9th November, 1983 to the effect that the matter was in for mention in Court on the 14th November, 1983.

The claim for damages came on for hearing on the 20th December, 1983. As the quantum of damages depended on whether the suspension was justified or not, I did not consider it possible to assess damages at that stage unless the Plaintiff waived her right to an inquiry and the matter was dealt with on the basis that the suspension was justified. As the Plaintiff would not agree to this, the Plaintiff's application was refused.

On appeal to the Supreme Court against that Order, the Supreme Court ordered on the 16th April, 1984 that the Minister for Education be joined as a Defendant and that the case be remitted to the High Court for the trial of an issue without pleadings whether the resumption of an inquiry by Order of the Minister dated the 25th August, 1977 is now legal and proper. The appeal against the Order of the 20th December, 1983 was adjourned pending determination of the issue by the High Court.

While there are no pleadings, the case made by Counsel for the Plaintiff was put on the following basis:

- that it would be impossible to have a fair hearing now as there would be an interval of nine years
- that once the names and addresses of all pupils and teachers were refused it was impossible to take part, as without them it was impossible to have a fair hearing
- that in normal proceedings the Plaintiff would get this information but in this case she is dependent on the inquiry, and the inquiry has no power to order it
- that fair procedures are guaranteed under the Constitution, and they cannot be implemented in this case.
- that even if she were now given the names of the students and teachers to prepare for the inquiry, it would be physically impossible to do so and impose a financial burden as she cannot apply for Legal Aid.

The Plaintiff's Solicitor gave evidence dealing with the course of events following the judgment in January, 1983 and in particular with the correspondence. In relation to the letter of the 4th February, 1983, she said that the request for the list of all the pupils in the Design Department from September, 1972 to May, 1977 was made because lots of rows took place in front of the class. There were rows about students moving things

and some of them had taken sides. In relation to the teachers, she said there were a lot of temporary teachers there and as far as they knew they were gone. When asked whether there were any particular witnesses, she said there was a Mr. Healy who died two months before. Also she said she was given names by the Plaintiff but she had no home addresses.

In cross-examination she agreed they never wrote to the VEC asking for the addresses of particular witnesses. She said she asked for the names and addresses of students and teachers over five years. She agreed that this would probably run into hundreds. When asked if she ever gave to the VEC the names of persons she said was essential or made any effort to find them, she said no, she assumed she would get the list of names. When referred to the reply of the 24th February, 1983 saying that the information was not relevant, she said they did not accept that. When asked why they did not write to the Minister to convene the inquiry, she said it was for the Minister to convene it.

The case made by the VEC was that the Plaintiff is fully conversant with the basis of her suspension and this information was available after the action concluded. All matters of complaint were given in evidence in the action and she is fully aware of them.

Mr. Patrick Dowling, a Civil Servant in the Department of Education, who gave evidence on behalf of the Minister, said that from February 1983 the Minister was desirous of holding an inquiry. The judgment became available in June, 1983. There was a need to clarify what was in the decision, particularly having regard to their understanding that the Plaintiff sought an adjournment of the inquiry. In September, 1983 they became aware that the Plaintiff's Solicitor had issued notification of

further action. Early in December, 1983 they decided to ask the nominated officer to proceed with the inquiry and issued a directive that the inquiry should be convened. At the same time the claim for damages came before the Court and it was considered it would not be appropriate for the Minister to have the inquiry recommenced as the matter was still before the Court. They considered it to be sub judice and so did not proceed although fully ready to proceed. The advice they had was that if the case was before the Court, it was inappropriate to proceed. As the inquiry was put into limbo there was no communication with the parties.

Where an inquiry was to be held he said the first step was an Order by the Minister nominating a person to hold the inquiry. This person would then seek a list of witnesses from the parties. The communication had to come from the inquiring officer. The Minister did not enter into it.

The powers of an inquiring officer are contained in Sections 105, 106 and 107 of the Vocational Education Act,1930 (the "1930 Act"). In particular, Section 106 empowers the inquiring officer to summon witnesses to attend at a place not more than 30 miles from their residence and to give evidence or produce documents. Section 107 empowers him to take evidenc on oath.

It seems clear to me that the inquiry can legally be held once the Minister has made an Order and appointed an inquiring officer. However, I have taken the issue to mean in substance whether there can now be a hearing in accordance with natural justice following fair procedures.

Natural justice requires that the Plaintiff should know in time and with sufficient degree of detail the allegations ma e

against her on which her suspension was based to enable her to meet the case against her. To my mind this has been done. The Plaintiff has been aware since the hearing of the action what these allegations were. She has all the documentation, including relevant extracts from minutes as these were gone into in detail at the hearing. She has what would not normally be available to a person facing an inquiry under Section 8, namely, a transcript of the evidence given in the High Court by the witnesses from the VEC relating to the suspension. If ever anyone knew in detail in advance the case going to be made against them at an inquiry, it must be the Plaintiff in this case. That leaves only the question of whether fair procedures can be applied.

One of the Plaintiff's complaints is that failure to give her the list of students and teachers rendered it impossible for her to take part in the inquiry. None of the other matters which were mentioned in the letter of the 4th February, 1983 were raised before me by Counsel. In any event, with regard to 5,6 and 11, I fail to see how the names and addresses of the members of the VEC and of the Staff Relations Committee or the representations made by the Plaintiff's Union to the VEC can have any relevance in an inquiry into the Plaintiff's behaviour.

I indicated a course of action in my judgment in this case concerning the furnishing of information at page 43:-

> "Commonsense dictates that the VEC as Prosecutor in the inquiry should furnish to the person suspended particulars of the acts complained of and the facts on which the suspension is grounded. Any request for copies of documents or for further or better particulars, should be made directly to the VEC. Failure to produce or answer

them satisfactorily can be dealt with at the inquiry. If the requirements of natural justice require them to be given, the inquiry cannot proceed until the question has been resolved."

I would particularly stress that in my opinion failure to supply documents or information is a matter to be dealt with by the inquiring officer at the inquiry. This is what the Plaintiff could have done in 1977. If she had attended on the 10th October, 1977 and claimed (as was the case then) that she had not been given particulars of the acts complained of and facts on which the suspension was grounded, and therefore was not in a position to meet the case against her, the matter could have been resolved at that stage.

If the inquiring officer had insisted on proceeding, the Plaintiff could have applied for an Order of Certiorari which in the circumstances would undoubtedly have been granted.

If (as I hope would have been the case) the inquiring officer agreed with her submission, he could in the absence of such particulars and relevant documents being furnished within a stated time, have summoned pursuant to his powers under Section 106 of the 1930 Act any necessary witness from the VEC to establish the grounds of complaint and produce all relevant documents. He could then adjourn the inquiry to enable the Plaintiff to prepare her case and re-commence the substantive inquiry after a reasonable interval.

In the event the Plaintiff chose to pursue her constitutional action for a declaration that her suspension was void, in which she did not succeed. At the conclusion of the case she still had to face an inquiry. However, at that stage she did have all the information and documentation on which the

suspension was grounded. What she sought in addition, in the letter of the 4th of February, 1983, was information in the nature of particulars, some of which were answered, and some of which were not answered on the grounds that they were not relevant. If this had been a case in the civil courts, the Plaintiff on receiving that reply, would have been entitled to bring a motion for further and better particulars, which the Court would either grant or refuse. Since this was an inquiry, it would be for the inquiring officer to decide whether or not she was entitled to the information sought and use his powers under the 1930 Act to obtain the information for her.

My view is that while she might have been entitled to the addresses of named witnesses which were peculiarly within the knowledge of the VEC, I can see no way in which she would have succeeded in imposing the extraordinary burden on the VEC of producing a list of hundreds of names and addresses of students and teachers over a 5 year period starting in 1972. However, it is the view of the inquiring officer which is relevant. Whatever view he might take, he would be able to use his powers under the 1930 Act to obtain whatever information he considered the Plaintiff was entitled to have before defending the allegations made against her. Therefore in my opinion there is no absence of fair procedures in this regard.

As to the lapse of time, I have no evidence as to the reason why it took 5 years for the case to come on for hearing, therefore as far as I am aware, no blame attaches to any party in respect thereof, except to say that by initiating the action the Plaintiff put herself in the position in which she now finds herself, viz. of having to face an inquiry having been unsuccessful in impugning the suspension. However, no point

was made about the lapse of time from 1977 to 1983 and Counsel for the Plaintiff said the Plaintiff was willing to take part in an inquiry in February, 1983. That being so, in my opinion it is entirely due to the Plaintiff that such an inquiry has not taken place. Following the letter of the 4th of February 1983 and reply dated the 24th of February 1983 the only steps which were taken on her behalf in the matter, of which I have evidence, were to ascertain salary scales and superannuation. In Septembe 1983 the claim for damages was reactivated and it seems to me that once that was done, there was no interest in or intention o taking part in an inquiry.

In my opinion the attitude taken by the Plaintiff that it was a matter for the Minister to reactivate the inquiry, is not justified. The inquiry was originally adjourned sine die at the request of the Plaintiff and no communication was received from her since then. The Minister was not a party to the action. While aware of the result of the case, that judgment did not become available to her until June, which I presume was the tim taken for the judgment to be circulated. In September the Minister was aware the Plaintiff was pursuing her claim for damages in the Courts but there was still no communication from the Plaintiff. In December the Minister decided to reactivate the inquiry but this coincided with the claim for damages comin on for hearing so that the inquiry in fact did not proceed further.

There is nothing on those facts or in that time scale which would lead me to believe that any blame attaches to the Ministe for failing to reactivate the inquiry before December, 1983. Therefore since no blame attaches to the Minister (or to the VEC) and the delay in my opinion is of the Plaintiff's making,

it would be unjust from botn Defendants' point of view if no inquiry were held. I assume the result of not holding an inquiry would be to preclude the VEC from claiming that the suspension was justified.

The Plaintiff's complaint that one of her witnesses is dead and that she suffers from financial hardship are complaints that are common to many litigants, whether as Plaintiff or Defendant. Neither is in my opinion a valid ground for holding that it would not be legal or proper for the inquiry now to take place.

Since the requirements of natural justice have been fulfilled since the hearing of the action in November, 1982, and since the implementation of fair procedures is possible under the powers given to an inquiring officer under the 1930 Act and since the delay in reactivating the inquiry was not due to the fault of the Minister or the VEC, but was due to the Plaintiff, in my opinion it cannot now be said that the resumption of an inquiry would be illegal and improper.

Nella Carroll.

Approved. 7-2-86.

THE HIGH COURT

1977 No. 4117P

BETWEEN:

MAIRE INIONN NI BHEOLAIN

Plaintiff

and

CITY OF DUBLIN VOCATIONAL EDUCATION COMMITTEE, IRELAND AND THE ATTORNEY GENERAL

Defendants

Counsel for the Plaintiff:

Brian McCraoken, S.C., James O'Driscoll, S.C., and William McKechni

Counsel for the City of Dublin Vocational Education Committee:

Gerard Lardner, S.C., Fergus Flood, S.C., and Eamon de Valera

Counsel for Ireland and the Attorney General:

Kenneth Mills, S.C., and Kevin Haugh

Cases Cited:

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Colling .v. The County Cork Vocational Education Committee & ors. (Murphy, J., delivered the 27th May 1982)

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