

Holani v Kingdom of Tonga

Supreme Court, Nuku'alofa
Lewis CJ
C.1252/96

10 & 16 September, 1997

Administrative law - judicial review - leave to seek - delay
Judicial review - leave to seek - delay
Limitation - judicial review - 3 months

20 The applicant ex parte sought leave to bring proceedings for judicial review of a decision to discipline and demote him in his employment. Although judicial review was and is the appropriate course and on the face of his affidavit the applicant had an arguable case, nearly 16 months went by before he indicated any intention to seek review, and then a further 2 years elapsed.

Held, refusing the application:

1. The applicant must show good reason for extending the 3 month limitation period.
2. It was not a good reason to say that the lawyer of his choice was unavailable.
3. The delay here was fatal.
4. The length of delay will be a factor affecting the determination of what amounts to good reason in each case on its merits.

30 Rules of Court considered : S.C.R. O.27 (rr 1 & 2)

Counsel for applicant : Mr Kaufusi

Judgment

The Applicant seeks leave for Judicial Review (rsc O27 r 1 and 2). Judicial Review is unquestionably the appropriate course for the Applicant to take in this matter and on the face of the Plaintiff's Application, if leave is granted for the Review sought, then he most certainly has an arguable case. All those things must be said.

Having said that, it is clear that one hurdle stands in his way. The hurdle is that he has not acted promptly as the Rules of this court require him to do. He identifies, and it is clear from any reading of his affidavit, that the date when the grounds for the application first arose is 18 March 1994 when he was informed by the Office of the Prime Minister by letter that an Appeal, which he had lodged against an administrative decision that among other things disciplined and demoted him, had been unsuccessful.

The next formal step in the Plaintiff's process of prosecuting the Application was the sending of a letter by his then Counsel W.C. Edwards, to the Prime Minister's Office seeking to "address the decision to demote him and to suspend him with out pay" and that consequently he would not be receiving any further wage increment. That letter was sent to the Respondent on 14 July 1995, nearly 16 months after the grounds arose and even then not seeking Judicial Review but Cabinet's Review. In spite of correspondence exchanges, no decision from Cabinet has been forthcoming. Now he seeks leave to have Judicial Review.

To have leave at this point the Applicant must demonstrate that there is good reason for extending the limitation period of three months imposed by O27 R 2(2). In my opinion the delay of nearly 16 months is fatal to his Application. While it is a reason, it can never be good reason in the context of the O27 to say that a lawyer of the Applicant's choice was unavailable. He had, in Tonga, a list of competent lawyers from whom to choose. He was quite entitled to have sought leave under the Rules in person. It is not open to him now to advance his Counsel's unavailability as good reason for his failure to do that which the Rules require of him. The Rules are designed to ensure Application within a specified time so that the class against whom Review may be sought will not be disadvantaged or prejudiced.

All Applications for leave must be brought promptly and in any event within three months. Here the delay has been at least 16 months and more if a stricter view is taken. The length of delay will be a factor affecting the the determination of what amounts to 'good reason' in each case on its merits.