

THE SUPREME COURT

No. 174 of 1982

BETWEEN :

PATRICK COLLINS

Plaintiff/Appellant

and

CORK COUNTY VOCATIONAL EDUCATION
 COMMITTEE AND BY ORDER THE MINISTER
 FOR EDUCATION, THE MINISTER FOR THE
 ENVIRONMENT, THE MINISTER FOR FINANCE,
 THE ATTORNEY GENERAL, IRELAND, CORK
 COUNTY COUNCIL AND ROBERT BUCKLEY

Defendants/ RespondentsJudgment delivered on the 18th day of March 1983 byFinlay P. (nem. die)

This is an appeal brought by the Appellant against
 the dismissal by the High Court of his action against
 the Respondents which was brought by plenary summons.

The proceedings were commenced by a summons issued
 on the 23rd March 1978 naming as a sole Defendant,
 Cork County Vocational Education Committee. The claim
 therein was for a declaration that the resolution of
 the Defendants made on the 20th October 1977 and
 purporting to suspend the Appellant from the performance
 of the duties of his office under Section 7 of the
 Vocational Education (Amendment) Act, 1944 is null



O'HIGGINS C.J.

FINLAY P.

HEDDERMAN J.

and void and there was also included a claim for damages for breach of contract. A statement of claim in those proceedings was filed on the 23rd May 1978 and a defence delivered on the 10th May 1979. The Appellant was at that time represented by Solicitor and Counsel.

By Order of the High Court of the 29th June 1981 upon a Motion made by the Appellant in person, liberty was given to add the remaining Defendants as co-Defendants and the Appellant was given liberty to amend his statement of claim and from that time onwards the Appellant appeared in person both in the High Court and on the appeal before this Court.

Trial of the action was heard before Mr. Justice Murphy in the High Court on ten days in March and April 1982 concluding on the 21st April 1982. The learned Trial Judge reserved judgment and on the 27th May 1982 in a lengthy and comprehensive judgment dismissed the Appellant's claim.

The Appellant has been a teacher attached to the

Cork County Vocational Education Committee since 1939 and from 1956 was the Headmaster of the Mitchelstown Vocational Educational School. At a meeting of the Cork County Vocational Education Committee (hereinafter referred to as the Vocational Committee) held on the 20th October 1977, it was unanimously resolved "that Mr. Patrick Collins should be suspended under Section 7 of the Vocational Education (Amendment) Act, 1944 from the performance of the duties of his office, such suspension to take effect immediately". The making of this order was notified to the Appellant by letter of the same date sent to him and as and from the 21st of October 1977 he has ceased in accordance with that order to carry out the duties of Headmaster of Mitchelstown School. Though, upon amendment, the statement of claim originally filed in the action was very greatly extended by the Appellant himself, fundamentally, his entire cause of action is one seeking an order setting aside this purported suspension of him from his duties and claiming damages against the

various Defendants for the loss which he has undoubtedly suffered by reason of such suspension.

Against the order of Mr. Justice Murphy dated the 27th May 1982, the Appellant filed a Notice of Appeal which is lengthy and which contains many matters which might strictly be considered not to be so much grounds of appeal as submissions in support of the appeal.

Upon the hearing before this Court, the Appellant's grounds may thus be identified as presented by him.

1. The purported order of suspension was invalid by reason of the fact that it was based upon the investigation and recommendations of two sub-Committees of the Vocational Committee known respectively as the Joint Consultative Committee and the Staff sub-Committee both of which were illegal by reason of the fact that they were not approved sub-Committees for the purposes of Section 6 of the Vocational Education (Amendment) Act, 1947.
2. That the Vocational Committee as constituted at the time of the resolution to suspend the Appellant and for a considerable material time before that date

d
im
hoo.
ght

was itself illegal and invalid by reason of including amongst its membership a person who was a teacher holding office under the Vocational Committee.

3. That the steps taken by the Vocational Committee to reach a decision to suspend the Appellant were contrary to natural justice and constituted unfair procedures.
4. That one of the grounds purported to have been advanced by the Vocational Committee for the suspension of the Appellant was his refusal to comply with a direction to hold meetings in the school and to cooperate with the Board of Management appointed as a sub-Committee to the school and that the Board of Management so appointed was illegal by reason of the existence on it of a teacher and also by reason of the fact that it was not approved under Section 6 of the 1947 Act and that to ask him to cooperate in meetings with the staff of the school was to force him in breach of a Constitutional right to an association he did not desire.

5. That the failure of the Minister for Education to hold an enquiry into the causes of his suspension, as soon as conveniently maybe after the suspension was notified to him, invalidated the suspension.

In the course of his submissions on the hearing of this appeal, the Appellant made many complaints with regard to the conduct of the Vocational Committee and of the Teachers Union of Ireland and of individual members of both the Committee and of the Union in regard to his time in Mitchelstown Vocational School prior to October 1977. As can be readily understood, he probably felt that he was entitled in this Court to some form of re-hearing of the complaints which had been so carefully examined by the learned Trial Judge. This appeal is, of course, not an appeal by way of re-hearing but can only lie against errors in law made by the learned Trial Judge or against findings of fact made by him and not warranted on the evidence.

With regard to the latter general category of complaint, I am quite satisfied that all the material

facts found by the learned Trial Judge are well supported on the evidence which was adduced before him and I am equally satisfied that the inferences made by him from the facts so found are valid inferences and indeed conclusions with which I fully agree.

There remain, therefore, for consideration the questions of law which I have outlined.

Alleged illegality of sub-Committees

By virtue of the provisions of Section 21 (1) of the Vocational Education Act, 1930 a Vocational Education Committee may from time to time appoint such and so many sub-Committees as it thinks proper for the exercise or performance of any of its powers, duties and functions which in its opinion can be better or more conveniently exercised or performed by a sub-Committee. The only restriction on this power contained in Section 21 is that contained in sub-Section 4 which provides that a sub-Committee appointed shall not consist of more than 12 members but which provides that it may at the discretion of the Committee consist

exclusively of persons who are members of the Committee or partly of persons who are and partly of persons who are not members of such Committee.

This general power of appointment of sub-Committees for the purpose of carrying out the functions of a Vocational Education Committee remains unrepealed and unamended in the legislation dealing with Vocational Education Committees.

Section 6 of the Act of 1947 is clearly and exclusively concerned with certain financial arrangements and in particular with the authority of Vocational Education Committees to pay out of their funds travelling expenses to members engaged in sub-Committees. It is for that purpose and for that purpose only I am satisfied that a Vocational Education Committee must obtain the approval of the Minister to the appointment of each individual sub-Committee and it is for the purposes of Section 6 of the Act of 1947 which deals exclusively with this question of the payment of travelling expenses that the sub-Committee which has

been ratified by the Minister becomes an approved sub-Committee. A sub-Committee however appointed by a Vocational Education Committee without the authority of the Minister remains a legal and valid exercise by the Vocational Education Committee of its powers and has full legal capacity to perform the functions deputed to it.

The evidence in this case indicated that none of the sub-Committee concerned had, prior to their institution or indeed to the performance of their function, received the authority of the Minister for Education. Evidence was given of a retrospective authority granted long after the events with which this case is concerned and after the institution of these proceedings. It is not necessary on the true interpretation of the provisions of the Vocational Education Acts of 1930 and 1947 for this Court to decide whether such ratification or approval could be retrospective or not and I expressly reserve my view on that question. On the main question

as to the legality of these sub-Committees however I am satisfied that the learned Trial Judge was perfectly correct in his judgment.

Alleged illegality of the Constitution of the Vocational Education Committee

I am satisfied that the decision in law made by the learned Trial Judge on this issue is also correct.

In his judgment he has traced with care and accuracy the history of the statutory provisions applicable to disqualification of members of Vocational Education Committees and it is unnecessary for me to repeat that historical analysis which I fully accept.

It is sufficient to point out that the ultimate result was as follows. Prior to the passing of the Local Government (Petitions and Disqualifications) Act, 1974 a teacher attached to a school maintained by a Vocational Education Committee was disqualified from being a member of that Committee by virtue of the provisions of Section 70 of the Local Government Act, 1925 as applied by Section 26 of the Vocational

Education Act, 1930.

By virtue of the Act of 1974 and of the Local Government (Petitions and Disqualifications) Act, 1974 (Section 25) (No. 3) Order, 1974 that disqualification was removed.

The Appellant's contention on this issue finally became that notwithstanding the removal expressly by the statutory provisions which I have quoted of disqualification for a teacher who was an officer of the Vocational Education Committee from being a member of the Committee that he was still disqualified by reason of the fact that he was a person having a contractual relationship with the Committee arising solely from his holding of the office of teacher. Notwithstanding the provisions of the Act and Order of 1974 by virtue of the provisions of Article 12 (iv)(e) of the Schedule to the Local Government Application of Enactments Order 1898 and Section 2 of the Vocational Education (Amendment) Act, 1944 a person is disqualified from being elected or appointed or being a member of

a Vocational Education Committee if he is concerned by himself or his partner in any bargain or contract entered into with such committee or participates by himself or his partner in the profit of any such bargain or contract or any work done under the authority of such committee.

I am quite satisfied as was correctly found by the learned Trial Judge that the disqualification arising under this Article and Section and the disqualification for the holder of an office of teacher under the Committee originally arising under Article 12 (iv)(d) of the Order of 1898 are mutually exclusive in the sense and to the extent that by reason of a single relationship between an individual and the Committee he cannot fall within the provisions of both these grounds for disqualification. The correctness of this view fundamentally arises from the provisions of the Article itself and is strongly and completely confirmed by the reference in the disqualification upon which

the Appellant now relies to involvement "by himself or his partner" which would be wholly inapplicable to the holder of the office of teacher.

I am therefore satisfied that this ground of appeal also fails.

Alleged want of natural justice in reaching decision to suspend

The evidence in the transcript and the findings of the learned Trial Judge indicate that certainly from 1976 relations between the Appellant and other members of the staff at the Mitchelstown School steadily deteriorated and became a serious cause of disruption to the smooth and efficient running of the school. It is irrelevant for the issues which fall to be decided in this case to seek to apportion blame between the various parties concerned for that deterioration of relationship.

Eventually, after a full report by the sub-Committee appointed by the Vocational Committee, the Chief Executive Officer, Mr. Buckley, wrote to the Appellant on the 30th March 1977 enclosing a copy of the Report

and asking that its recommendations would be implemented. In particular and specifically the Appellant was requested to ensure that the holding of regular meetings with senior staff members recommended at No. 6 in that Report should be initiated immediately after the Easter recess and that notification of the date fixed for that meeting should be given to the Vocational Committee so that either the CEO or the Educational Officer could attend the meetings at least in the initial period.

In short, the Appellant's reply to that was to query the legality of the sub-Committee; to reject the right of the Vocational Committee to give him any such direction and to threaten the institution of proceedings.

Despite further requests made to the Appellant to hold such meetings, none were held and it was quite clear that the Appellant was refusing and consistently refusing to comply with the request or directions of the Vocational Committee.

Eventually, on the 7th October 1977 the Chief Executive Officer wrote to the Appellant by registered post issuing to him "a strict order" that he was to carry out the holding of the meeting with senior staff officers, directing that such meeting should be held on the 13th October and stating a number of matters which were to be included in the agenda for the meeting. The letter concluded with a direction by the Vocational Education Committee that the Appellant should be warned that if he refused to cooperate with the Vocational Committee, its staff, sub-Committee and C.E.O. in this matter and in other matters that the Committee would take whatever action it deemed appropriate without further notice and that such action should it become necessary may be the exercise by the Vocational Committee of the ultimate powers in such cases conferred on it by the Act of 1930 and its amendments.

The Appellant accepted before this Court that he understood as was obvious the meaning of the threat contained at the conclusion of the letter to be a threat of suspension though he did state that he did

not believe that the Vocational Committee would implement it.

The response of the Appellant to that direction and strict order was to refuse to comply with it. There then followed the resolution and suspension to which I have already referred in this judgment.

The conditions of service pertaining to the post of Headmaster which office the Appellant held in Mitchelstown School included inter alia the duty "to comply with every lawful order and advice of the Committee and the Chief Executive Officer". As I have already indicated in this judgment, it is clear that the order to attend this meeting was a lawful order emanating from the Committee and the Chief Executive Officer. It was not an order suddenly made in isolation but it followed a period of over six months in which advice, requests and recommendations of the Committee to the same intent had been made to the Appellant and ignored or rejected by him. The

letter of the 7th October 1977 contained the clearest warning of the possibility of the disciplinary action of suspension in the event of the Appellant's refusal to comply with the direction contained in it.

On these facts fully and amply set out in the judgment of the learned Trial Judge which I endorse and briefly summarise here, I am quite satisfied that there was no want of natural justice nor any absence of fair procedure in the activities of the Vocational Committee leading up to their resolution and decision to suspend the Appellant. A consideration of the correspondence between the parties over a lengthy period prior to October of 1977 would indicate to me that requests and even directions and orders were courteously made having regard to the seniority and importance of the position of the Appellant and that the recommendations and requests themselves were not only lawful but in my view on the facts reasonable as well. This ground of appeal must also therefore fail.

Alleged illegality of the Meeting directed in October 1977 and contention that a request to hold such a meeting against his will infringed the Appellant's Constitutional right of free association

I have already dealt with the legality of the sub-Committees and of the Vocational Committee itself and it is unnecessary to repeat these matters concerning this ground of appeal.

I am quite satisfied that there is nothing in the submission made by the Appellant that he had a Constitutional right not to hold a meeting with the senior members of his staff on the basis that was forcing him into an association against his will and that on that grounds he was entitled to reject the order of the Vocational Committee. Acceptance of an office arising either as a statutory office or an office in a company or other administrative organisation and acceptance of employment necessarily and daily involves compliance with orders or requests by the superior of the officer or employee concerned to meet with, liaise with and deal with colleagues

employed in the same organisation. There can be no substance at all in a suggestion that such part of the duties of a person's profession or employment is in any way an infringement or a restriction of their Constitutional right of freedom of association. This ground must therefore also fail.

Alleged invalidity of the order of suspension
by reason of the failure of the Minister to
hold an enquiry

The power exercised by the Vocational Committee in this case is that contained in Section 7(1) of the Vocational Education (Amendment) Act, 1944 and is to "suspend such holder from the performance of the duties of such office while such alleged failure, misconduct or unfitness is being enquired into and the disciplinary action (if any) to be taken in regard thereto is being determined and such enquiry shall be held as soon as conveniently maybe after the date of the suspension". I agree with the decision of the learned Trial Judge that whereas under this Section either the Minister or the Vocational Committee may direct the suspension that only the Minister can

hold the subsequent enquiry and determine the disciplinary action, if any, to be taken in regard to the alleged failure, misconduct or unfitness.

Sub-Section 2 of Section 7 provides a duty on the Vocational Education Committee whenever it suspends a person forthwith to report the suspension and the reasons thereof to the Minister. Section 8 of the Act of 1944 deals with the powers of the Minister to remove the holder of an office from his office. Having set out the statutory grounds for such a removal it provides at sub-Section 2

"where the Minister is satisfied as a result of a local enquiry that any of the statutory grounds for removal from office exists as regards the holder of an office the Minister may by order remove such holder from such office".

By sub-paragraph 3 it provides as follows

"where the Minister is satisfied that the holder of an office has failed to perform satisfactorily the duties of such office and is of opinion that he is unfit to hold such

office the Minister may (a) send by registered post to such holder at the principal office of the Vocational Education Committee under which he holds such office a notice stating the said opinion and (b) on the day on which he send the notice send by registered post a copy thereof to the said Vocational Education Committee and if the Minister after the expiration of 14 days from the day on which he send the notice and the copy thereof and after considerations of the representations (if any) made to him by such holder or the Vocational Education Committee remains of the said opinion he may by order remove such holder from such office".

By virtue of the provisions of Section 105 (1) of the Vocational Education Act, 1930 it is provided as follows -

"The Minister may at any time cause an enquiry (in this Act referred to as a local enquiry) to

be held in relation to the performance by a Vocational Education Committee of its duties under this Act or in relation to the performance by an officer or a servant of a Vocational Education Committee of his duties as such officer or servant (as the case may be) and for that purpose may appoint an officer of the Minister to hold such local enquiry."

The Section further provides for various procedural matters concerning the holding of such an enquiry.

I am satisfied that the combined legal effect of the provisions of these statutes which must be read together is as follows -

1. There is an obligation on a Vocational Education Committee whenever it has suspended the holder of an office from his office to report forthwith the fact of the suspension and the reasons therefor.
2. There is an obligation on the Minister upon such report being made to him to enquire into the

alleged grounds of the suspension. That obligation is to do so as soon as conveniently maybe after the date of the suspension.

3. There is not an obligation on the Minister to make that enquiry in any particular way and he may either make enquiries through his servants or agents in the ordinary way or he may exercise the powers conferred on him by Section 105 of the Act of 1930 and direct a local enquiry commonly called a sworn enquiry.
4. If the Minister as the result of either form of enquiry is satisfied that no disciplinary action is necessary or that disciplinary action less than a removal from office is necessary, he can accordingly direct.
5. If the Minister after an enquiry other than a local enquiry is of the opinion that the holder of an office has failed to perform satisfactorily the duties of such office and that he is unfit to hold such office, he may follow the procedure

provided for in Section 8 (3) of the Act of 1944.

6. Where the Minister has directed a local enquiry and is satisfied as the result of that, that any of the statutory grounds for removal from office exists as regards the holder of an office, he may by order remove him.
7. There does not appear to me to be any inhibition contained in these statutory provisions upon the holding by the Minister in the first instance after a suspension of enquiries other than a local enquiry and a further decision to hold a local enquiry.

Against those statutory provisions, the main events which occurred in this case may thus be summarised. On the 21st October 1977, the Vocational Committee wrote to the Secretary of the Department of Education informing the Minister of the suspension of the Appellant and enclosing a number of documents which, in my view, amply set out the reasons for that suspension.

On the 9th November 1977, Solicitors on behalf of the Appellant wrote to the Vocational Committee asserting that the suspension was unlawful, asking for certain information and indicating that they had been instructed to commence the necessary proceedings to obtain a declaration in the High Court setting aside the resolution. Copy of that letter was sent to the Minister for Education.

On the 6th December 1977, further documents were sent by the Vocational Committee to the Minister for Education concerning the suspension and in particular a formal resolution was sent setting out in statutory form the grounds for the suspension. In the month of January 1978, an officer of the Department of Education visited, at the direction of the Minister, the Appellant and in the words of the Appellant had a lengthy meeting with him in which he the Appellant told him his side of the story. On the evidence it would appear that the Appellant was still not satisfied to comply with the requirements and directions of the

Vocational Committee at that stage.

The plenary summons in this case was issued on the 23rd March 1978 naming as a sole defendant the Vocational Committee and served on them on the 20th April. By Order dated the 21st April 1978, the Minister for Education directed the holding of a local enquiry into the reasons for the Appellant's suspension. Solicitors acting on behalf of the Appellant wrote to the Minister on the 15th May 1978 requesting him to suspend the local enquiry. The Minister complied with this request on the 16th June 1978.

On these facts which I have summarised and which are more amply dealt with in the judgment of the learned Trial Judge, I am satisfied that there was no failure on the part of either the Vocational Committee to comply with its statutory obligations to report to the Minister after the making of the resolution of suspension nor on the part of the Minister in his obligation to

hold an enquiry as soon as conveniently may be after the notification to him of the suspension. It is quite clear that from the very commencement of the period after the making of this order of suspension, the Appellant's attitude and contention was that it was invalid and of no legal effect and he had not got any interest in nor did he at any time seek the holding of any enquiry whether by way of formal local enquiry or otherwise on the part of the Minister for Education. As soon as he had instituted his proceedings there must be a considerable doubt as to whether it would have been proper for the Minister to hold an enquiry on a matter which had become sub judice. Whether the holding of such an enquiry would have been an impropriety or not (and one can well conceive it being restrained by order of the court on the application of the Appellant) certainly it was reasonable for the Minister to comply with the request made on behalf of the Appellant.

If there had been an absolute delay in the holding of any form of enquiry between October and April, it is clear that that would not be a compliance by the Minister with his obligations under Section 7 of the Act of 1944. It seems clear that the requirements of natural justice having regard to the seriousness of an order of suspension would require rapid compliance with the obligation to hold an enquiry and to come to a decision. I am satisfied however that long before the local enquiry was ordered on the 21st April that the Minister had made the appropriate enquiries in the appropriate way having regard to the facts of this case and that he did so within a time which is reasonable. For these reasons, I am satisfied that this ground of appeal must also fail.

I, therefore, have reached the conclusion that the appeal against the order of the learned Trial Judge dismissing this action must be dismissed and that the order of the High Court must be affirmed.

lawful requests, advice and orders. Determination of this action deals only with the validity of the order for suspension and the question as to what disciplinary action, if any, should be imposed upon the Appellant remains a matter within the discretion of the Minister for Education and falls now to be decided. This Court has no function in making that decision. It seems to me, however, that if the Appellant even at this late stage could accept the authority of the Vocational Committee and the discipline which he owes to them that there must be at least a possibility that his services could be valuable in the field of Vocational Education in the future.

Approved. J. A. Finley
23/3/1983