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THE HIGH COURT

1984 No. 238 S.S.

(STATE SIDE)

BETWEEN/

THE STATE (AT THE PROSECUTION OF MARY CASEY)

Prosecutor

v

THE LABOUR COURT

Respondent

Judgment of Mr. Justice O'Hanlon delivered the 15th day of May 1984

The Prosecutor seeks relief by way of certiorari to quash the determination by the Labour Court (No. 5 of 1983) of an appeal brought against a finding in her favour made by an Equality Officer in proceedings by the Prosecutor against the Board of Management of Ballindine National School, under the provisions of the Employment Equality Act, 1977. The Equality Officer found that the Prosecutor had been discriminated

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against when an appointment was made to the staff of the school, and recommended that the Board of Management should pay her a sum of £4,700 by way of compensation. On appeal to the Labour Court, that Court upheld the Board of Management's appeal and dismissed a cross-appeal brought by the Prosecutor against the amount of the original award.

Following upon that decision by the Labour Court, the Prosecutor now challenges the validity of its findings on four grounds.

Application was made on her behalf to the Labour Court to take evidence on oath, in exercise of the powers conferred on it by the provisions of Sec. 21, (3) (c) of the Employment Equality Act, 1977, applying the provisions of Sec. 21 of the Industrial Relations Act, 1946, which empower the Labour Court to examine on oath witnesses attending before it. The Court declined to exercise its statutory powers in this respect, and unsworn evidence was taken on the hearing of the appeal.

Secondly, the Prosecutor's husband, whose evidence was challenged in several respects, swore an affidavit to verify his oral testimony and the Court was asked to accept this

affidavit as part of the evidence on the hearing of the appeal but declined to do so. This refusal by the Court to take the evidence tendered in this form was put forward as a further ground for challenging the validity of its decision in relation to the appeal.

Thirdly, the Prosecutor complains that the Labour Court reversed the recommendation of the Equality Officer "without referring to, considering or taking into account express findings of the Equality Officer made at paragraph 27 of his recommendation on which the Equality Officer had reached the conclusion that there had been discrimination ... within the meaning of Section 2(a) of the 1977 Act and in a manner contrary to Section 3(1) of that Act."

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Finally, it is claimed that inferences are drawn at paragraph 18 of the Labour Court's determination which are wholly unsupported by the facts and which do not have regard to the findings of fact made by the Equality Officer and summarised at paragraph 27 of the Recommendation EE 4/83.

In support of her present application, the Prosecutor has exhibited a copy of the recommendation of the Equality Officer;

copies of submissions made to the Labour Court by the parties concerned, at the hearing of the appeal; a contemporaneous note made by a member of the Employment Equality Agency of evidence given by one of the witnesses whose evidence was taken by the Labour Court; and a copy of the affidavit sworn by her husband, which was tendered in evidence before the Labour Court but which was not accepted by that Court, following upon its decision that it would not require evidence to be given on oath during the hearing of the proceedings before it.

The Employment Equality Act, 1977, sets out in detail a long and rather complex procedure for the investigation and determination of disputes where it is alleged that persons have been discriminated against on grounds of sex or marital status or otherwise in a manner prohibited by the Act. Initially, such dispute may be referred to the Labour Court, which shall endeavour to settle it through an industrial relations officer of the Court, or may refer it to an Equality Officer for investigation and recommendation.

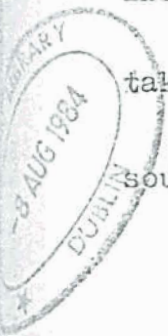
If referred to an Equality Officer, he shall investigate the dispute and issue a recommendation thereon. If no appeal



is taken against his recommendation, but the recommendation has not been implemented, then the matter can be brought before the Labour Court under Sec. 21 of the Act and the Court can make its own determination under the Act, and a failure to implement such determination may ultimately result in criminal proceedings being brought against the person in default.

Alternatively, any person dissatisfied with the recommendation made by an Equality Officer may appeal to the Labour Court, again invoking the provisions of Sec. 21 of the Act. The Labour Court, in such event, hears and determines the appeal, and when it has done so, a further appeal lies to the High Court on a point of law, under Sec. 21(4) of the Act, at the instance of any party to the dispute. No appeal has been taken on a point of law in the present case, but instead it is sought to quash the findings of the Labour Court by certiorari.

It was clearly not intended that there should be any general right of appeal to the High Court against a decision of the Labour Court in this type of proceeding. The Act contemplates that such a dispute may be investigated by an industrial relations officer of the Court, or may be referred



to an Equality Officer, with a full right of appeal from his recommendation to the Court itself, but it envisages that the determination of the Labour Court will be final unless a further appeal is taken to the High Court on a point of law.

Consequently, the High Court should not, in my opinion, embark on a re-hearing of any case which has already been heard and determined by an Equality Officer and by the Labour Court, but should, on an application for relief by way of certiorari, confine itself to an examination of the issue as to whether the Labour Court in making its determination, acted without jurisdiction, or in excess of jurisdiction, or without regard to the principles of natural and constitutional justice, or was induced to make its determination by fraud or perjured evidence, or has made a determination which contains an error of law apparent on the face of the record.

With regard to the complaint made that the Labour Court failed to require evidence to be given on oath, it appears to me that the Industrial Relations Act, 1946, Sec. 21, as applied by the Employment Equality Act, 1977, Sec. 21 (3) (c), confers a discretion on the Court to regulate its own



procedures in this respect, and to allow testimony to be given before it on oath or as unsworn testimony as the Court thinks fit. Neither the parties nor the High Court can dictate to the Labour Court as to the manner in which it will control its own procedures, once it exercises its powers in accordance with the Statute from which, it derives its authority to act.

Accordingly, I am of opinion that the Court acted within its proper jurisdiction in declining to take evidence on oath in the Prosecutor's case, and in declining to receive in evidence an affidavit sworn by her husband. I do not think the Labour Court should allow itself to be deterred by considerations of difficulty or inconvenience from taking evidence on oath where it would otherwise be proper or desirable to do so, but

I do not regard the matters alleged in Paragraph 16 of the Prosecutor's affidavit as being sufficient to indicate an abdication by the Court of its jurisdiction in this respect.

I think this is the high water mark of the Prosecutor's case in her application for relief by way of certiorari. It appears to me that the other grounds relied on are in reality an effort to re-open findings of fact made by the Labour Court

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after a three-day hearing of the Prosecutor's case. It is contended that the Court failed to give due weight to findings of fact which had already been made by the Equality Officer, and failed to indicate the grounds upon which it diverged from the conclusions which he had reached, but in all these respects the Court must be presumed to have acted conscientiously in the exercise of its proper jurisdiction and I have no reason to believe that the Court had no evidence or no sufficient evidence on which it could have based its decision. All matters concerning the credibility of witnesses and the weight to be attached to their evidence were essentially within the province of the Court itself and the scope for challenging its findings by application for certiorari is strictly limited in the manner referred to previously in this judgment.

For these reasons I am unable to accede to the present application for a conditional order of certiorari.

*R J O'Hanlon*

R.J. O'Hanlon.

15th May, 1984.

