

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 363
[2021/103JR.]

BETWEEN

DEIRDRE MORGAN

APPLICANT

AND

MINISTER FOR EDUCATION AND SKILLS

RESPONDENT

AND

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

NOTICE PARTY

JUDGMENT of Mr. Justice Cian Ferriter delivered on the 1st day of June 2022

1. This is an application for leave to apply by way of judicial review for an order of *certiorari* “quashing the determination of the Minister for Education and Skills made under section 70 of statutory instrument number 292 of 2015 Education and Training Board Teachers Superannuation Scheme received by me on 18 November 2020”. S.I. 292 of 2015 relates to a superannuation scheme for teachers employed by Education and Training Boards (the “Scheme”). Article 70 of the S.I. provides for a form of appeal to the Minister from a determination in relation to a complaint or dispute lodged under the Internal Disputes Resolution procedure operated by the Department of Education and Skills relating, *inter alia*, to benefits claimed under the Scheme.
2. While this is an application for leave to reply for judicial review, the respondent (“the Minister”) and the notice party (“KWETB”) were both in fact on notice of the application, as the application was the subject of case management along with other High Court proceedings involving the applicant and the Minister and KWETB. A replying affidavit of Claire Butler dated 29 June 2021 was filed on behalf of the Minister. For the sake of good order, I formally put the Minister on notice of the leave application at the hearing before me to allow her counsel make submissions on the application. I heard from the applicant and counsel for the Minister at the leave application hearing.

3. The issues sought to be raised in these proceedings arise from the applicant's removal from her position as an art teacher with KWETB. The background to the matter is comprehensively summarised in a separate judgment delivered by me today in respect of *Isaac Wunder* order and strike out order applications brought by the Minister and KWETB in related proceedings (being High Court proceedings record no. 2020/123 MCA and 2020/787 JR). As explained in that judgment the question of the applicant's entitlement to a pension has been the subject of final and binding determinations by the Labour Court and this Court.
4. In short, the applicant has been in receipt of an ill-health retirement pension under the Scheme. She was refused an injury gratuity on the basis that she had not met the requirements for same, in particular, that she had not been injured in the course of her work.
5. I am satisfied that these proceedings while ostensibly seeking to challenge a particular (non-binding) decision in an internal review process in relation to the applicant's pension entitlements, are in fact an improper attempt to seek to re-open the circumstances of the applicant's removal from her teaching position in June 2015. This is clear from the terms of an amended statement of grounds delivered by the applicant following a case management hearing before the High Court in respect of this and a series of other High Court proceedings brought by the applicant against the Minister and the Board.
6. In that amended statement of grounds, in the "reliefs sought" section, the applicant seeks the following reliefs:

"Relief

1)

A declaration that the failure by the Minister for Education, to address the actual matters I put before her for consideration under Section 70 of Statutory Instrument No 292 of 2015, and in particular the requests for her office to cease the conducts that I specified in my appeal as needing to be ceased, is not reasonable.

2)

A declaration that the written determination produced by the Minister is unbalanced. That it constitutes a disproportionate and unreasonable interference with the right to life and good name. With one hand, the Minister has created a new material that is not relevant and which is illness inducing for me to have to deal with, and with the other hand the Minister is brushing away my actual appeal grounds. In particular, my requests for the Minister to cease the specified conduct that has caused the appeal to be made under Section 70 of Statutory Instrument No 292 of 2015, knowing the risk of life or limb, as may happen to me or others.

3)

A declaration supporting and encouraging the Respondents as the National and Regional Education Authorities to do the mandatory duty entrusted to them. "The State shall endeavour to ensure that the strength and health of workers, men and woman, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength."

4)

A declaration that should the Respondents cease to make unwanted, fraudulent and/or negligent misrepresentations of a sexual nature concerning me as a teacher, in association with my students whose childhoods I protect from their unbalanced ways, then the Respondents would become more life affirming and good-name affirming in accordance with our constitution. That not only teacher 41877 Morgan, but every other person affected by these particular fraudulent or negligent misrepresentations of a sexual nature now and into the future, would benefit from this unwanted conduct being ceased forthwith.

5)

An injunction or a prohibition or a declaration to effect that KWETB as respondent, and the Minister as "person affected", cease the unwanted verbal conduct by way of their using verbal written documents and verbal oral arguments including particular ones of a sexual nature, that fail to comply with the orders of the Equality Officer under Section 82(1)(e) the Employment Equality Act 1998.

6)

An order of Certiorari quashing the written determination produced under Section 70 of SI No 292 of 2015 for being unfair. Not giving me the opportunity to see fraudulent and negligent non relevant misrepresentations being made against me, on which the Minister based her decision to retire me.

7)

A declaration acknowledging the safeguarding office of the Archdiocese of Dublin for its competence, and for having positive attitude in safeguarding the tender age of my students.”

7. The “background facts” section of the amended statement of grounds makes various vexatious allegations against the Minister relating to alleged cover-up of child sex abuse.
8. I am quite satisfied that these proceedings are in that rare category of proceedings brought for an improper purpose. They represent yet another step in the applicant’s long-running campaign of legally vexatious complaints and proceedings against the Minister and KWETB stemming from her refusal to accept that she was lawfully removed from her teaching position in June 2015.
9. The question of the applicant’s lack of entitlement to an injury gratuity has already been finally and conclusively determined against the applicant in proceedings brought against the Minister which were the subject of decisions against the applicant by an adjudication officer of the WRC, the Labour Court and by this court in a judgment delivered separately by me today in proceedings High Court record no. 2020/38 MCA.
10. In any event, I am satisfied that no arguable grounds have been raised in relation to the lawfulness of the Minister’s decision of 16 November 2020. It is clear that the Board was perfectly entitled as a matter of law to determine that the applicant did not meet the criteria for the award of an injury gratuity under the Scheme and the Minister was entitled to uphold that view. The applicant in her own affidavit verifying the application states that “*my injury occurred on 7th February 2012 in Clonmel Street in Dublin at the Equality Tribunal under the Employment Equality Act.*” She does not allege, therefore, that any injury occurred to her during the performance of her teaching duties. The applicant has not raised any *bona fide* arguable grounds as to any legal error committed

by the Minister in her review of the Board's decision. This is quite apart from the fact that the determination is a non-binding one.

11. I further note that the applicant has lodged a complaint in relation to the matter to the Pension Ombudsman under the Pensions Act 1990. It is difficult to see how there can be any *bona fide* grounds for this complaint given the false premise of the applicant's whole pension claim complaint i.e. that she has been wrongly denied any injury gratuity. As has already been conclusively determined, she has no entitlement to such a gratuity.
12. In the circumstances, I refuse the applicant leave to apply for judicial review in these proceedings.