



AN CHÚIRT UACHTARACH

THE SUPREME COURT

S: AP: IE: 2020: 000044

Clarke C.J.

O'Donnell J.

MacMenamin J.

Dunne J.

Charleton J.

Between/

Patrick J. Kelly

Applicant/Appellant

-and-

**The Minister for Agriculture, Fisheries and Food, the Minister for Finance, the
Government of Ireland, Ireland and the Attorney General**

Respondents

Ruling of the Court on Costs, delivered on the 4th day of October, 2021.

1. The substance of this protracted litigation was concluded by the judgment of this Court on 30th March, 2021 ([2021] IESC 23, Unreported, Supreme Court, O'Donnell, McKechnie,

MacMenamin, Charleton and Dunne JJ., 30th March, 2021), and the subsequent order of 15th April, 2021, ([2021] IESC 28, Unreported, Supreme Court, 15th April, 2021) in which this Court made a limited declaration that the decision of the Government of 30th September, 2009, to dismiss the applicant/appellant was tainted by objective bias. The Court also ordered that the appellant recover 50% of his costs, and directed a further hearing on the question of what, if any, further orders should be made consequent upon the judgment of the Court.

2. Written submissions were exchanged by the parties and the issue listed for oral argument on 22nd June, 2021. The positions of the respective parties were starkly opposed. The applicant/appellant maintained that he was entitled to an order of *certiorari* quashing his dismissal with a consequence that he would be deemed to have lawfully occupied the office of Harbour Master of Killybegs between the date of dismissal in September 2009, and the date of deemed retirement in 2016, and to recover pension thereafter. If necessary, the applicant/appellant sought an order from this Court directing payment of arrears of salary and pension, and continuing payment of the pension calculated on the basis of service until 2016.
3. The respondents, for their part, maintained that the Court should make no further order at all and in particular, the Court should refrain from making an order of *certiorari*. However, if the Court considered such an order should be made, then the matter should be remitted to the Government to make a decision with effect from the date of 30th September, 2009, as that is the date of the purported dismissal.
4. The Court delivered its decision on 15th September, 2021 ([2020] IESC 62, Unreported, Supreme Court, (O'Donnell J, Clarke CJ and Dunne concurring ; Charleton J concurring in part and Mac Menamin Jdissenting ., 15th September, 2021). The majority of the Court found that the applicant/appellant was entitled to an order of *certiorari* quashing the

Government decision, but refused to make any consequential order and, in particular, to make any order that the applicant/appellant was entitled to arrears of salary or pension or any ongoing pension. The effect of this was that the applicant/appellant was to be treated as having left the civil service on 30th September, 2009, but without being dismissed. Observations were also made on an issue raised and discussed by the parties as to the applicant/appellant's entitlement to a pension calculated by reference to service until September, 2009.

5. The parties have now addressed the question of costs. The appellant seeks the same order as that which applied in the main proceedings — that is, 50% of the costs, although the applicant/appellant accepts that he is not entitled to recover the costs of an affidavit which was excluded by the case management judge. The respondent contends that no order for costs should be made.
6. The basic rule, now set out in statute, is that the costs follow the event. It is apparent here, however, that neither side can be said to have succeeded entirely. To that extent, if viewed in isolation, it might be said that no order for costs for either party might be appropriate in such circumstances. However, the proceedings and hearing of 22nd June, 2021, must be seen against the background of the entire proceedings and their outcome. The applicant succeeded in part on his claim, resulting in the decision of the Court and the awarding of costs in his favour, albeit limited to 50%. The decision of the Court gave rise to a complex issue which necessitated a further hearing. The applicant secured something of value in that further hearing. The submissions and argument in relation to the question of consequential orders and relief cannot be said to be entirely separate and distinct from the original hearing, nor indeed the facts giving rise to the necessity for the proceedings.
7. In those circumstances, the Court considered that the entire proceedings should be viewed as one, and that the logic which led the Court to award 50% of the costs of the substantive

proceedings has not been displaced. Accordingly, the Court considered it appropriate that the appellant recover 50% of his costs, noting, however, that the appellant does not seek to recover the costs of the affidavit sought to be filed during case management.