KURREEMUN B.P. v CENTRAL ELECTRICITY BOARD
[The Supreme Court of Mauritius]
2018 SCJ 27
SUMMARY

Facts:

This was an application for an interlocutory injunction restraining the respondent from proceeding with two disciplinary hearings against the applicant, in respect of letters of charges dated respectively 04 August 2015, and 03 August 2016. The applicant has purported to base his whole case on the authority of **CEB v. M. D. Heenaye** [1999 SCJ 258], wherein the Supreme Court, on appeal, maintained the decision of the Learned Judge in Chambers who had issued an injunction restraining and prohibiting the respondent from proceeding with a disciplinary hearing against the applicant Heenaye, on the ground that the respondent could not proceed against the applicant by way of such disciplinary hearing in the teeth of its own internal regulations which provided that no such hearing could be held before the judgment in the criminal proceedings against its employee Heenaye, which judgment had then not yet been pronounced. In the present application the reproaches made against the respondent are the respondent's failure to abide by its own internal regulations by failing to comply with section 10.4 of such regulations in that it failed to give notice to the applicant of the alleged facts reported against him and to give him an opportunity to furnish any explanation/s he might wish to give within 7 days of such notice.

Held:

The Supreme Court held that true it is that the *ratio decidendi* in the case of Heenaye was a failure of the respondent to abide by its own internal regulations. However, one has to look at the nature and effect of such regulation in an application in the nature of an injunction seeking to prohibit an employer from proceeding with what it inherently has the right and power to do, namely hold disciplinary proceedings against an employee for alleged misconduct. The Court concluded that the nature and effect of the impugned regulation breached in **Heenaye** (*supra*) was of a substantive nature, whereas in the present matter it is dealing with a procedural matter. In the former case, the employee was, as per the relevant clause 5 of the regulations, to be suspended from his functions with pay until judgment in a criminal case was pronounced. It was therefore imperative to wait for such judgment before starting disciplinary proceedings. Whereas in the present matter, a failure to notify the employee of the complaints against him and to give him an opportunity to furnish his explanation/s before the actual disciplinary proceedings is eminently of a different nature and effect. First, the employee will have an opportunity at the disciplinary hearing to give his explanations and any failure on his part to have done so earlier may not reasonably be held against him if the employer had not complied with the regulations. Secondly, section 38 (2)(a)(iv) of the Employment Rights Act 2008 entitles the employer to proceed by way of a disciplinary committee where there is *prima facie* evidence of misconduct against an employee. Thirdly, and more importantly, even assuming that the applicant were to be held to have a serious question to be tried, which does not necessarily appear to be the case here, damages would be an adequate remedy with regard to any violation of his rights or of the regulation(s) binding the respondent and the applicant. Furthermore, it would still be open for applicant to raise such preliminary objections relating to alleged non-respect or violation by the respondent of its own internal regulations before the disciplinary proceedings start on the merits. The application was set aside with costs.

Short Summary

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In the present matter, the Supreme Court held that a failure to notify the employee of the complaints against him and to give him an opportunity to furnish his explanation/s before the actual disciplinary proceedings would not entitle the employee to obtain an interlocutory injunction to restrain the employer from proceeding with disciplinary hearings against the employee, a power which is conferred on the employer by Section 38(2)(a)(iv) of the Employment Rights Act 2008. The application was set aside with costs.