JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 29/2003

BEFORE: **THE HON MR JUSTICE BINGHAM, J.A.**
THE HON MR JUSTICE SMITH, J.A.
THE HON MR JUSTICE K. HARRISON, J.A.

BETWEEN:	**EASTON WILBERFORCE GRANT**	**APPLICANT/APPELLANT**
AND	**THE TEACHERS' APPEAL TRIBUNAL**	
AND	**THE ATTORNEY GENERAL**	**RESPONDENTS**

The applicant appeared on his own behalf

Katherine Francis and Michael Deans of the Attorney General's Chambers instructed by the Director of State Proceedings for the respondent

May 25, 26, 27, 2004 and February 1, 2005

BINGHAM, J.A:

The appellant in this matter challenges a decision of Cooke, J. (as he then was) made in the Judicial Review Court refusing an application made for an order of certiorari to remove into the Supreme Court and to quash a decision made by the Teachers' Appeal Tribunal upholding the dismissal of the appellant from his job as a teacher at the Montego Bay Community College.

The history of the matter

This is best summarized in the written judgment of the learned judge delivered in the Supreme Court on October 29 2001.

The appellant is a trained graduate teacher holding a M.Sc. degree in Economics from the Kiev Institute of Economics in Ukraine. Between September 1992 and June 1999, he was employed at the Montego Bay Community College. His employment was terminated subsequent to disciplinary proceedings which were instituted against him by the Board of Management of the College. These proceedings resulted from a written complaint made to the Board, and copied to the appellant by the Principal, Dr Lorna Nembhard. As a consequence, the Board laid charges of lack of discipline, unprofessional conduct, and neglect of duty against the appellant. This was communicated to him prior to a hearing before the Personnel Committee appointed by the Board.

On October 7, 1998 the Personnel Committee met and a hearing was conducted. The applicant (the appellant) participated fully in this hearing, but the Committee did not come to any findings. The Chairman of the Board, Dr Simon Clarke, subsequently informed the appellant that he would be advised when the findings of the Personnel Committee were known.

Following the hearing it was realized that no valid board of management was in existence when the hearing was conducted. There

was no record of the Personnel Committee making any findings or communicating its recommendation to the Board of Management as is required by section 57(5) of the Education Regulations 1980 (The "Regulations"). A newly constituted Board was then appointed in December 1998.

By letter dated March 17, 1999 the Chairman of the newly constituted Board, Dr Simon Clarke, wrote to the appellant informing him that the enquiry held on October 7, 1998 in relation to the complaint made against him by Dr Lorna Nembhard would have to be reinitiated due to the fact that the tenure of the previous Board had expired prior to that hearing. A new Board was now appointed and he would be informed of the new hearing date as soon as this was fixed.

The appellant was later informed by letter dated April 12, 1999 of the new hearing date. This letter from the Chairman Dr Simon Clarke setting out the substance of the complaint, the nature of the charges, and the possible consequences of same, is now reproduced.

> "April 12, 1999
>
> Mr Easton Grant
> Lecturer
> Montego Bay Community College
> P.O. Box 626
> Montego Bay #2
> St James

Dear Mr Grant

The Board of Management is in receipt of correspondence from the Principal, Dr Lorna Nembhard, charging you with lack of discipline, unprofessional conduct, and neglect of your duty, the nature of which she has outlined to you in correspondence dated September 8, 1998, September 10, 1998 and September 16, 1998. Copies of these documents have been forwarded to the Board. Dr. Nembhard has also stated that you have publicly made certain serious allegations which she has outlined to you in her letters of September 8, 1998 and September 10, 1998 and she is requesting you to prove these by specific examples. The Personnel Committee of the Board of Management find it necessary to conduct an enquiry into this matter.

You are hereby invited to attend a meeting of the Personnel Committee of the Board of Management on April 30, 1999 at 10:00 a.m. in the conference room at the College.

Please be advised that under the Education Act, 1980, if these charges are proven, the committee may recommend:

i) that you are to be admonished or censured; or

ii) in the case of charges relating to a second or subsequent breach of discipline, that subject to the approval of the Minister, a sum not exceeding fifty dollars be deducted from your salary; or

iii) that you be demoted if you hold a post of special responsibility; or

iv) that your appointment as a teacher with this institution be terminated.

> The Act also states that "The Board shall act on the recommendation as received from the Personnel Committee, or as varied or agreed at the discretion of the Board."
> Please also note that you have the right to have a friend or your attorney appear and make representation on your behalf to the Committee at the hearing. If you intend to be represented by an attorney-at-law, you are required to give written notice of such intention to the Chairman or Secretary of the Board not less than seven days before the day of the hearing.
>
> A photo static copy of Regulation 55 to 62 and 85 of the Education Act, 1980, is attached for your information.
>
> Yours sincerely
> Dr Simon Clarke
> Chairman
> Board of Management."

The new hearing before the Personnel Committee of the Board took place on May 20, 1999. At the hearing Dr Lorna Nembhard put forward the substance of her complaint. The appellant was then called upon by the Chairman to respond. The minutes of the hearing revealed the following dialogue:

> "At this point the Chairman invited Mr Easton Grant to respond to the charges and to present his side of the case. Mr Grant openly refused to respond to the allegations and the charges laid against him. He went on to verbally accuse the Chairman and vice Chairman of being incompetent to carry out the procedures of the meeting. He further accused them of being biased and lacking in integrity. He then stormed out of the meeting, in spite of the Chairman's repeated statements to him that he had the right

to use the opportunity of the Personnel Committee hearing to defend himself."

Following this response from the appellant, the findings of the Personnel Committee and its proposed recommendation to the Board of Management were as follows:

"The findings of the Committee are as follows:

Unprofessional Conduct – Proved

This action was displayed by Mr Grant by his abusive aggressive behaviour towards the Principal in the General Staff meeting of 7th September 1998, when he made numerous and persistent outbursts in the meeting despite efforts made by the Principal for him to desist. This action undermined the authority of the Principal (see JTA Code of Ethics Principle 2i, iv,v and vi and Principle 5cii) in the presence of some 39 members of staff, including new members of staff. His open defiance of the authority of the principal and his persistent insubordination and humiliation of the principal, continued to be displayed when he openly declared, in the staff meeting, that he had no intention to meet with the principal to discuss the poor examination performance of the students he was responsible for.

Neglect of Duty – Proved

This was displayed by Mr Grant, when he refused to meet with the Principal and his head of department (as required by the Board and in compliance with the Ministry of Education Circular) to discuss possible measures for the improvement of examination results in those subjects that fell below the fifty percent (50%) level.

Insubordination – Proved

This was displayed by Mr Grant when he refused to attend meetings, called by the Principal. Proof of this is outlined in his letter to the Principal dated 4 September 1999. Despite two memos written to him by the Principal requesting him to meet with herself and the Head of Department, he made it clearly known in the presence of others that he had no intention to meet with anyone. And in fact has not attended any such meeting to this day.

It is to be pointed out that although requested to do so in writing, Mr Grant has not provided to the Board proof of his allegation that the Principal had collected money and had made unilateral decisions about expenditure.

Penalty

The Personnel Committee is recommending to the Board of Management that based on the findings and having examined the approved minutes of the Staff Meeting of 7 September 1998, and based on the conduct of Mr. Grant at the hearing held on 20 May 1999, when he openly attacked the integrity and competency of the Board in general and of the Chairman and Vice Chairman, in particular, that his services as a lecturer of the Montego Bay Community College be ***terminated*** in the best interest of the institution

Simon A Clarke
Chairman."

The Board of Management accepted the recommendation of the Personnel Committee that the appellant's services be terminated and notified him of its decision. The appellant then lodged an appeal against

his dismissal to the Teachers' Appeal Tribunal. The grounds of appeal were:

> "1. That an Enquiry was conducted on October 7, 1998 and May 20, 1999. The Enquiry of October 7, 1998 was not concluded on the basis that the Board was not properly constituted.
>
> That on May 20, 1999 the enquiry was constituted by the same persons, there was no indication that the panel was properly constituted; there was no disclosure on the part of the Board of Enquiry.
>
> 2. That a fair and impartial hearing was not conducted and the Board acted arbitrarily.
>
> 3. That the decision reached was not based on the merits of the case, as Mr. Easton Grant was prevented from defending himself due to the absence of prove (sic) of a properly constituted Board of Enquiry.
>
> 4. Board of Enquiry breached the principles of natural justice.
>
> 5. The Appellant reserves the right to submit further Grounds of Appeal."

This appeal was heard on 30th June, 2001. At the hearing the applicant (appellant) was represented by an attorney-at-law, Ms. Kerri-Gaye Brown. The appeal was not successful. The appellant then sought by way of a Motion before the Supreme Court, an order of Certiorari to quash the decision of the Teacher's Appeal Tribunal upholding his dismissal from his post at the Montego Bay Community College. He relied on the following grounds of complaint:

"3(1)

(i) That the Teachers Appeals Tribunal erred in law when it accepted charges, statements, complaints and testimonies, based on what had been said in the staff meeting which took place at Montego Bay Community College on September 7, 1998. On that date the college was not administered by a Board of Management as required by Regulation 41. The life of the previous Board had expired several months before, and a new one had not yet been nominated.

(ii) That the Teacher's Appeal Tribunal erred in law when it did not reinstate the Applicant under Regulation 54, in light of the evidence that Regulations 56 and 57 had been breached.

Apart from the fact that the old complaint was not submitted anew to the new Board under Regulation 56, there was no preliminary consideration by the Personnel Committee before the May 20 enquiry, neither were the possible penalties communicated to the Applicant as required by Regulation 57 (1) b (iii).

(iii) That the said decision upheld a violation of the Applicant's constitutional right to freedom of expression guaranteed in section 3 of the Jamaican Constitution. The Applicant was victimized for expressing his opinions.

(iv) That the said decision breached vital principles of Natural Justice. For example, the Tribunal allowed persons who had revealed in public that they were against the Applicant to sit in judgment of the Applicant on May 20, 1999. Secondly, the Tribunal used a double standard when it accepted the September 7, 1998 meeting at the college but rejected the October 7, 1998 meeting although there was

no legally valid Board at the institution on any of those two dates.

(v) That the Tribunal revealed several traits of insobriety:

Firstly the tribunal members were not very attentive during the Appeal hearing on June 30, 2000. They asked at some intervals for repetitions but mostly, they appeared either lost or disinterested. Secondly, the report which came from that body is punctuated with errors, some of which are very serious indeed. The report for example was not dated.

Thirdly, the Tribunal's ruling revealing its very illogical approach. It cancelled the October 7, 1998 meeting but not the September 7, 1998 meeting, although there was no Board at the college on either of those two dates. Fourthly, none of the grounds of Appeal was addressed by the Tribunal.

Fifthly, the Tribunal's ruling has nothing to do with any evidence presented."

The applicant (appellant) represented himself at the hearing in the Judicial Review Court. His application for the order of Certiorari was refused. It was from this refusal that he obtained leave from this Court to pursue an appeal to the Court out of time.

Over a period of three days this Court heard arguments from the appellant and from Ms. Katherine Francis on behalf of the respondents. At the end of these arguments we reserved our decision.

Before us the appellant sought to set aside the judgment on what were in effect two substantive grounds. Firstly, that the learned trial judge

failed to properly exercise his discretion by his refusal to grant the (sic) writ (order) and secondly, that the learned trial judge acted improperly and was biased. It may be mentioned that the question of bias was being raised for the first time in these proceedings. In advancing his arguments the appellant relied on the following matters:

Ground 1

i. That the complaint was never submitted fully in writing as soon as possible to a properly constituted Board of Management.

ii. That there was never any preliminary consideration of the complaint by the Personnel Committee in keeping with the provisions of Regulation 57(1). This created the condition for ambushing him.

iii. That the appellants side of the complaint was not heard pursuant to Regulation 57 (4)(a).

He contended that at the May 20, 1999 enquiry "everything that he said was ignored by the Personnel Committee which produced a false report to the Board of Management."

Ground 2

He submitted that the learned trial judge disregarded vital principles of natural justice. In this regard he relied on the following submissions:

(i) that the rule of fairness was not followed in the May 20, 1999 enquiry in that the Personnel Committee which conducted the enquiry was comprised of the said persons who had heard the matter in another enquiry on October 7, 1998 and even recommended a penalty.

(ii) the family of the trial judge was closely associated with the Board Chairman who had fired the appellant and this implies possible prejudice against him.

Grounds 3 and 4

The substance of these two grounds was that the appellant was prevented by the judge from properly presenting his case. This resulted from incompetence, lack of integrity and bias on his part. These attitudes on the part of the judge compromised the delivery of a high standard of justice found in the Mission Statement of the Courts of Jamaica.

Ground 5

Before us the appellant stated that this ground was no longer being pursued.

In responding, the learned counsel for the respondents in outlining her submission, referred to the nature of the remedy being sought by the appellant viz an Order of Certiorari. This was a discretionary remedy obtained through the process of judicial review which allows for a reconsideration of the decision making process and not the decision itself. Counsel argued that even where the case is one where judicial review will lie, the Court is not bound to grant it as the jurisdiction to make any of the orders available is discretionary.

Learned Counsel for the respondents submitted that an appellate court will not lightly interfere with the exercise of the discretion of a judge exercised in the Court below. Counsel relied in support on the dictum of

Sir Vincent Floissac C.J. in ***Dufour v. Helenair Corporation*** [1996] 52 WIR 188. The learned Chief Justice there explained that an appeal against a judgment given by a trial judge in the exercise of a judicial discretion will not be allowed unless an appellate court is satisfied:

> "(i) that in exercising his or her judicial discretion, the judge erred in principle either in failing to take into account or giving too little or too much weight to relevant factors and considerations; and
>
> (ii) that, as a result of the error or degree of error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."

Counsel submitted that in the instant case it was clear that the learned trial judge had properly and correctly exercised his discretion in refusing the relief sought. Addressing the grounds of appeal the appellant referred to ground 1 and complained "that the learned trial judge erred in law in finding that the disciplinary procedure mentioned in Regulation 54(2) was not flawed." Learned counsel for the respondent argued that this Regulation of the Education Regulations 1980 lays down that where the appointment of a teacher is to be terminated the procedure outlined in Regulations 56 – 59 must be followed.

In this regard the appellant sought to rely on the matters raised in the submissions previously set out by him to which reference was made at

the outset of this judgment. Regulation 57 is at the very core of many of the appellant's arguments and it is therefore necessary to set it out seriatim:

> "(1) The Personnel Committee shall consider the complaint referred to it under regulation 56 and –
>
> (a) ...
>
> (b) if it finds that a hearing should be held, notify the complainant in writing of the date, time and place of the hearing and give written notice within a period of not less than fourteen days before such date to the person complained against of –
>
> (i) the charge or charges in respect of which the hearing is proposed to be held;
>
> (ii) the date, time and place of the hearing;
>
> (iii) the penalties that may be imposed under the Regulations if the charges are proven against such person; and
>
> (iv) the right of the person complained against and a friend or his attorney to appear and make representations to the committee at the hearing.
>
> (2) A person complained against who intends to be represented at the hearing by an attorney-at-law, shall give written notice of such intention to the chairman or secretary of the Board, not less than seven days before the date of the hearing, and the Board shall inform the complainant.

(3) If a person complained against fails to appear at the hearing and the committee is satisfied that notice of the hearing was given to that person in accordance with paragraph (1) (b), the Committee may, if it sees fit, conduct the hearing in the absence of that person.

(4) At the hearing –

(a) both parties shall be heard and be given opportunity to make representations;

(b) any party may call witnesses and produce documents in support of his case;

(c) the committee may, at the instance of any party or, if it sees fit, order that any documents in the possession of the other party be produced for the information of the committee;

(d) notes shall be taken of such representations as may be made or such evidence as may be given;

(5) The personnel committee shall report in writing to the Board not later than fourteen days after the date of the enquiry –

(a) that the allegations against the teacher have not been proved; or

(b) that the charges against the teacher have been proved and may recommend -

(i) that he be admonished or censured; or

(ii) in the case of charges relating to a second or subsequent breach of discipline, that, subject to the approval of the Minister, a sum not exceeding fifty dollars be deducted from his salary; or

(iii) that he be demoted if he holds a post of special responsibility; or

(iv) that his appointment as a teacher with that public educational institution be terminated, and the Board shall act on the recommendation as received from the personnel committee, or as varied and agreed at the discretion of the Board.

(6) The Board shall, within fourteen days after it has received the report of the personnel committee, give written notice containing details of its decision to the Minister and the teacher."

Learned counsel for the respondents submitted that the Principal's complaint was submitted in writing to the first meeting of the properly constituted Board of Management held on March 9, 1999. This followed its appointment in December 1998. It could not be reasonably argued therefore that the complaint was not dealt with "as soon as possible as contended by the appellant." It was at this meeting that the decision to reinitiate an investigation into the complaint against the appellant was taken by the Board. Equally so was the position with the aborted Board when the complaint was made to it in September 1998. It sought to act with dispatch by referring the complaint to the "Personnel Committee" who convened a hearing in October 1999 to enquire into the matter.

Counsel referred to the judgment of the learned trial judge and the manner in which he dealt with this issue. He said:

> "The complaint in ground 3(ii) is that Dr. Lorna Nembhard should have written anew to the then properly constituted Board and thereafter the requisite procedure as outlined in Regulation 57 be followed. ... In respect of the second hearing the applicant was told that the enquiry would be 'reinitiated' (see letter of March 17, 1999). It is therefore certain that the applicant was in no way prejudiced. The assertion that Dr. Lorna Nembhard had to write the Board anew is without merit as such a proposition would mean that the properly constituted Board is precluded from dealing with correspondence addressed to it before its tenure came into being."

The respondent contends therefore that at all material times the Board acted in accordance with Regulation 56 of the Regulations which states:

> "Where the Board of a public educational institution receives a complaint in writing that the conduct of a teacher employed to the Board is of such that disciplinary action ought to be taken against the teacher, it shall as soon as possible refer the matter to its personnel committee for consideration pursuant to Regulation 85."

It was the appellant's contention that the Personnel Committee failed to give "preliminary consideration" of the complaint in accordance with Regulation 57(1). The Respondents argued that this was totally devoid of merit. Counsel referred to the manner in which the learned judge addressed this issue. He said:

> "... Further under this ground it was said that there was 'no preliminary consideration by the personnel committee before the May 20 enquiry.' The preliminary consideration of which he speaks is to be found at Regulation 57(1)(a). ... It would seem that the applicant demands that a formal record of the consideration of the complaint should be in

> evidence. I do not agree. The fact that the applicant was summoned indicates that there was a 'preliminary consideration'."

The applicant also complained that at the enquiry he was not given an opportunity to be heard in accordance with Regulation 57(1)(a). Counsel argued that this complaint is without foundation. The Report of the Personnel Committee to the Board of Management in referring to conduct of the enquiry states that:

> "At this point the Chairman invited Mr. Easton Grant to respond to the charges and to present his side of the case. Mr. Grant openly refused to respond to the allegations and charges laid against him. He went on to verbally accuse the Chairman and the vice Chairman of being incompetent to carry out the procedure of the meeting, in spite of the Chairman's repeated statements to him that he had the right to use the opportunity of the Personnel Committee hearing to defend himself."

As to the appellant's complaint about a false report being produced by the Personnel Committee, counsel for the respondent argued that this was being raised for the first time in this appeal. Moreover the appellant had produced no evidence which supports it.

Counsel also submitted that the appellant's complaint was focused on events prior to the hearing before the Teachers' Appeal Tribunal. In the event that this Court was to find that there were breaches of natural justice occurring at that time, or any failings on the part of the Personnel Committee or the Board to act in accordance with the Regulations, the respondents contend that any such failings would be cured by the

> evidence. I do not agree. The fact that the applicant was summoned indicates that there was a 'preliminary consideration'."

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subsequent hearing before the Teachers' Appeal Tribunal. Before exercising its discretionary power, and concluding that a rule of natural justice had been breached this Court ought to consider what occurred not only at the proceedings before the Personnel Committee but also at the hearing before the Teachers' Appeal Tribunal where the whole matter was reviewed and the appellant was represented by an attorney-at-law. Counsel cited in support ***Calvin Carr*** [1980] A.C. 574 which decision was adopted and followed by the Full Court of the Supreme Court of Jamaica in ***Ziadie v. Jamaica Racing Commission*** [1981] 18 J.L.R. 131 at page 137.

Ground 2 complained "that the learned trial judge disregarded vital principles of natural justice." The appellant in developing this complaint has contended that:

> (i) The rules of fairness were not followed in the May 20, 1999 enquiry. The Personnel Committee which conducted the enquiry, was comprised of the said persons who had fully heard the matter in another enquiry on October 7, 1998 and even recommended a penalty.
>
> (ii) The rules of fairness were not followed in the meeting of the Board of Management when the decision was taken to terminate his employment.
>
> (iii) The family of the trial judge was closely associated with the Board Chairman who had fired the appellant and this implies possible prejudice against the appellant.

In dealing with this ground of complaint, learned counsel for the respondents submitted that the learned trial judge properly directed himself on the law and did not breach the principles of natural justice. In addressing this issue he correctly held at pages 13 – 14 of the judgment (187-188 of the Record of Appeal) that:

> "The composition of the personnel committee at the first hearing was identical to that of the second hearing. With the assistance of the court the issue was raised as to whether this was fair to the applicant. The letter of March 17, 1999 to the applicant informed him 'that the enquiry therefore, had to be suspended pending the appointment of a new Board.' Further 'The new Board has now been formally appointed and consequently the inquiry can be reinitiated.'
>
> Those two statements extracted from that letter could give the impression that the hearing of the personnel committee May 20, 1999 was a continuation of that of October 7, 1998. However, this is not so. What took place at the second hearing was an entirely new hearing despite the fact the substance of the allegations against the applicant were the same. There was no finding in respect of the first hearing. At that time there was no personnel committee in place. Having realized the mistake a new hearing was convened. Here the applicant was given every opportunity to respond to the charges. He refused to be persuaded so to do. In these particular circumstances the fact that the composition of the personnel committee was identical did not make the second hearing unfair. In **Ridge v. *Baldwin*** Lord Reid said [1964] A.C. at p. 79:
>
> I do not doubt that if an officer or body realizes that it has acted hastily and reconsiders the whole matter afresh, after affording the

> person affected a proper opportunity to present his case, then the later decision will be valid. An example is ***De Nertenil v. Knaggs*** [1918] A.C. 557."

In the result apart from the facts in the matter under review being distinguishable the behaviour of the appellant was such as to have prompted the learned judge to remark that:

> "Before departing from this application, perhaps I should add that the remedy of certiorari is discretionary. In this matter the behaviour of the applicant was so unmeritorious, that even if there had been a failing in any aspect of the proceedings I doubt that I would grant the relief sought. See ***R. v. Secretary of State for Home Department*** ex parte ***Hosenbull*** [1977] 1 W.L.R. 766."

Learned counsel for the respondents also contended that for the appellant to mount a successful challenge to the conduct of the proceedings, and the decision of the Board of Management to terminate his employment as a teacher, he would have to establish that the decision was so unreasonable that, given his conduct no Board properly directing itself in law would come to such a decision. Given the considerations taken into account by the members of the Board, their decision to terminate cannot be described as unreasonable.

Grounds 3 and 4 which were dealt with together complained that:

> 3. The Learned trial judge did not listen to all the grounds of the application.
>
> 4. The Learned Judge was incompetent and biased.

In developing his arguments the appellant submitted that the learned judge by "refusing to listen to these grounds robbed the appellant of a full opportunity to represent his case and subtracts points from the integrity of his ruling."

Learned counsel for the respondent submitted that an examination of the reasons for judgment reveals that this allegation was without merit. Counsel contended that it was clear that the learned judge carefully considered all the facts in the matter. He was at pains to do so. This is evidenced by the fact that the first eleven pages of the judgment were taken up with a setting out of the facts of the case. Counsel argued that the learned trial judge applied his mind to all the grounds stated in the appellant's Notice of Motion as well as his statement in support of the application. Given the period that the hearing lasted viz two days, the appellant was provided with a full opportunity to be heard. The learned judge in ensuring that justice was done to the appellant drew reference to the following matter:

> "The composition of the personnel committee at the first hearing was identical to that of the second hearing. With the assistance of the court the issue was raised as to whether this was fair to the applicant." (Emphasis supplied)

On the issue of incompetence and bias alleged by the appellant on the part of the learned judge, the allegation of bias was raised for the first time before this Court. The Court invited comments from the learned

judge and these were given. It was being contended by the appellant that the Chairman of the Board had close ties with the trial judge's family, thus raising the issue as to whether the learned judge was obliged to disqualify himself from hearing the matter.

Learned counsel for the respondents submitted that on the issue of an automatic disqualification, this process was discouraged by Lord Goff of Chieveley in ***R. v. Gough*** [1993] 2 All E.R. 725. In determining whether bias existed the House of Lords in ***R v. Gough*** held that:

> "Except where a person acting in a judicial capacity had a direct pecuniary interest in the outcome of the proceeding, when the court would assume bias and automatically disqualify him from adjudication, the test to be applied in all cases of apparent bias, whether concerned with justices, members of other inferior tribunals, jurors or arbitrators, was whether, having regard to the relevant circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question in the sense that he might unfairly regard or have unfairly regarded with favour or disfavour the case of a party to the issue under consideration by him."

After examining all the authorities Lord Goff reformulated the real danger test. He rejected the need to distinguish between judges and juries and formulated the following test to be applied where bias is alleged. At pages 737(i) to 738(a) he said:

> "Having ascertained the relevant circumstances, the court should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might

> unfairly regard (or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration by him."

Given the fact that the allegations of bias surfaced for the first time in these proceedings there was no valid claim that it affected in any way the outcome of the proceedings before the learned trial judge. There was in effect no real likelihood or possibility of bias to have affected in any manner the decision arrived at by the learned judge. This ground therefore fails.

Conclusion

The decision of the Board of Management of the College acting on the advice of the Personnel Committee sought to dispense with the services of the appellant. This followed on the conduct of the appellant at an enquiry held to investigate a complaint made against him by the Principal Dr. Lorna Nembhard. When called upon by the Chairman to answer the complaint, the appellant's response was to disregard the Chairman's request and to hurl unfounded accusations at the Chairman and the members of the Personnel Committee. No doubt cognizant of the serious predicament which by his own actions he had brought on himself, his conduct in so acting, distasteful as it was, may have seemed to him to have been his only course. An important goal of any educational institution having as its main objective the proper training and nurturing of young minds, must be the maintenance of order and

discipline not only among the students who are the beneficiaries of such training but even more so among those fixed with the responsibility for guiding and directing them along the correct path if the eventual success hoped for is to be attained. This role of the teacher must always be carried out with decorum and a sense of responsibility to cause those who are placed in their care to have confidence in the level of guidance and leadership displayed as to regard them as worthy of emulation. In this case given the facts leading up to his dismissal, the conduct displayed by the appellant, if left unchecked was of such a nature as would have sullied the reputation and good name of the Institution that he had been privileged to be a part of.

In the end in my opinion, given the facts in this matter, this appeal is totally devoid of any merit and ought to be dismissed.

On the question of costs, as learned counsel for the respondent has indicated, there is no application being made for costs to be awarded to the respondent. Accordingly there is no order made as to the costs of these proceedings.

SMITH, J.A.

I have had the opportunity of reading in draft the judgments of Bingham, J.A. and K. Harrison, J.A., I agree with their reasoning and conclusion. There is nothing I can usefully add.

HARRISON, K., J.A.

I agree with the reasons and conclusions arrived at by Bingham, J.A. and add only a few words of my own.

This appeal concerns the dismissal of an application for a writ of certiorari to quash a decision made by the Teachers Appeals Tribunal upholding a decision to dismiss the appellant from his job as a lecturer at Montego Bay Community College.

The issues before this court, concern whether the learned trial judge failed to exercise his discretion when he refused to grant the writ of certiorari and secondly, whether the learned trial judge acted improperly and was biased.

It is my view that the learned trial judge was quite correct in holding that the procedure prescribed by the Education Regulation 1980, was followed. The appellant's contention that he was not given an opportunity to be heard is unfounded. There is clearly no rational basis in arguments he presented that the Board's action was unfair as the composition of the Personnel Committee at the first meeting was identical to that of the second hearing. The evidence on the other hand reveals that the enquiry was initiated after a new Board was formally appointed. The fact that the same persons considered the matter did not result in a denial of the appellant's right to a fair hearing. In ***Ridge v Baldwin*** [1964] A.C. 79 Lord Reid stated:

> "I do not doubt that if an officer or body realizes that it has acted hastily and reconsiders the whole matter afresh, after affording the person affected a proper opportunity to present his case, then the latter decision will be valid."

The appellant was in fact afforded an opportunity to present his case at the meeting of the Personnel Committee on May 20, 1999 but he openly refused to respond to the charges and walked out of the meeting before it was adjourned. I am of the opinion therefore, that the actions of the Personnel Committee accorded with the requirements under the relevant Regulations.

I find no merit in the complaint that the learned trial judge was incompetent and biased. The learned judge dealt with the issues properly and was at pains in ensuring that the appellant was afforded a fair hearing. On the facts presented, there was no real danger that the learned trial judge was unable to adjudicate fairly in the matter before him. The test for bias is one of a real danger of bias and not a mere probability of bias: see ***R v Gough*** [1993] 2 All E.R. 725.

In my view, there is really no merit in this appeal and it ought to be dismissed.

ORDER

BINGHAM, J.A.

Appeal dismissed. Order of the Judicial Review Court affirmed.

No order as to costs.