

NAAMET ABDU

v.

MAYOR OF AKKO (YOSEF GADISH) AND OTHERS

In the Supreme Court sitting as the High Court of Justice

*Olshan P., Berinson J. and Witkon J.**Administrative Law—Dismissal of senior social worker—Validity of resolution of Council—Reasons for dismissal—Collective labour agreement—Municipal Corporations Ordinance, 1934, sec. 87.*

The petitioner was the senior social worker in her particular field and had been in the service of the Akko Municipality since 1949, except for a short interval when she was abroad on a special training course. As a member of a minority group, she was mainly concerned with Arab residents. Owing to the National Insurance Law and substantial administrative changes in providing municipal assistance to needy people, she had been put on part-time work in October 1956. Her final dismissal in March 1957 was effected by the Council approving a prior resolution of the Executive Committee abolishing the post of social worker among the minorities. The petitioner sought to impeach (a) the Council's resolution on the ground that the agenda of the meeting at which it was considered did not contain any express notice of the question of her dismissal, contrary to law, but a mere reference to the proposed approval of the resolution of the Executive Committee, a copy of which had been attached; (b) the dismissal on the grounds that it had not been approved, as required, by the District Officer until after commencement of proceedings; (c) the reason for dismissal as being inaccurate and dishonest, since the Mayor had applied to the Ministry of Social Welfare for a suitable replacement. The Mayor's application to the Ministry was admitted by the respondents with the explanation that it had not been pursued owing to budgetary restrictions, although it was intended to appoint a communal, as distinct from a social worker, for which appointment the petitioner could apply. It was also admitted that the Municipality was party to a collective labour agreement under which the rule of "first in—last out" applied. In evidence it was established that the petitioner, in addition to Arabic, spoke French and English and had some knowledge of Hebrew, which would enable her to work with others than members of her own community. Since the proceedings had commenced, a question in the Knesset had elicited a reply which contradicted the submissions of the Municipality.

Held: The resolution dismissing the petitioner was invalid.

Levitsky and Aronovsky for the petitioner.

Landes for the respondents.

BERINSON J. The petitioner is the senior of the social workers of the municipality of Akko, who numbered five before her dismissal. She began working for the Municipality in 1949 and except for a period

between September, 1953 and November, 1954, when she participated as a delegate on behalf of the Ministry of Social Welfare and the Technical Assistance Administration of the United Nations in Israel in a course for social workers in England, her employment was continuous to the end of March, 1957. As a member of one of the minority groups she was occupied all the time mainly with matters affecting Arab residents—Moslems and Christians—of the old city of Akko, who constitute about one-fifth of its general population, which is now close on twenty five thousand persons.

Latterly the petitioner's work has lessened. Payments of old age pensions by the National Insurance Institute directly to those entitled have substantially reduced the number of the Arab residents of the city requiring municipal care and assistance. There have also occurred, or are about to occur, substantial organizational changes in the methods of providing municipal assistance to those requiring it among the other Arab residents. The petitioner's work was therefore reduced to half a day in October 1956, and she was finally dismissed as from the end of March of last year. On January 3, 1957, the Municipal Council approved a resolution of its Executive Committee of December 25, 1956, recommending the petitioner's dismissal in the following terms:

“Considering the prospective opening of a parents' club for minorities in the Old City and the National Insurance payments to the aged which are to begin in the next financial year, the number of social cases in the old city will be considerably reduced. We therefore decide to abolish the position of social worker for minorities, and to dismiss Naamet Abdu, with effect from March 31, 1957.”

The petitioner advances a number of arguments and complaints against the dismissal, some of which are formal legal pleas, and others which are based upon pertinent questions of fact. The first argument is that no notice was given to the members of the Municipal Council as required by law, that the question of the petitioner's dismissal would be considered at the meeting at which the dismissal resolution was passed. The ground for this argument is that the agenda set out in the notice of meeting did not expressly contain an item regarding the dismissal of the petitioner, as required by sec. 87(a) of the Municipal Corporations Ordinance, 1934. Whilst it is true that such an item is not explicitly contained in the agenda there does appear the following item: “Approval of resolutions of the Executive Committee of the 25th of December, 1956.” The minutes of the meeting of the Executive Committee were attached to the notice and the matter of the petitioner's

dismissal appears there as a separate paragraph and below it is set out the above mentioned resolution which was subsequently approved by the Municipal Council. The purpose of sec. 87 (a) of the Municipal Corporations Ordinance, 1934, was to ensure that every member of the Council should have clear and express prior knowledge that the question of the dismissal of an employee is to be decided at a meeting of the Council. This purpose was fully accomplished by the notice which was sent to all the members of the Council. It was clear to any child who looked at the notice and the documents attached thereto that the Council would be asked at that meeting to approve the dismissal of the petitioner as recommended by the Executive Committee. The law does not require more than this. No particular form for setting out the items of the agenda of the Council's meeting is provided; any form therefore which reasonably brings matters to the attention of the members is quite adequate.

The next argument is that the notice was also defective because it talks of "Approval of resolutions of the Executive Committee", whereas the Council is the body to dismiss and not merely to approve a dismissal. This is a pointless play upon words, and no more. The matter of an employee's dismissal does not come as a bolt from the blue to the meeting of the Municipal Council without preliminary investigation and examination by an appropriate body or organ of the Municipality. The preliminary investigation was made by the Executive Committee which came to the general conclusion that in the circumstances set out in detail in its resolution the petitioner should be dismissed. This recommendation was submitted for the approval of the Municipal Council, and it should be noted that according to the evidence of the Mayor and of the municipal secretary that approval was given after a discussion on the merits at the meeting of the Council. The argument is basically unsound. It is not on such flimsy grounds as these that the court will base its decision to set aside the actions of a local authority.

The final argument of this type is that the approval of the District Commissioner was not, as required by law, given to the dismissal of the petitioner. One of the requirements of sec. 87 of the Municipal Corporations Ordinance is that the Commissioner shall approve the dismissal of any municipal employee included among those appointed under secs. 85 and 86 of the Ordinance, and all agree that the petitioner is such an employee. This requirement is not a mere formality. Without the approval of the District Commissioner the dismissal is without legal effect, just as it would so be without an appropriate resolution of the Municipal Council conforming with law.

When the present petition was filed and the order nisi made, the District Commissioner's approval of the dismissal of the petitioner had not yet been given, although a full six months had elapsed since the Council had decided upon the dismissal. In this regard the plea which appeared in the petition had some solid foundation. But, as it turned out, the Commissioner in the meantime approved the dismissal. This fact, though a new one, which came into existence only after the order nisi was issued, cannot be ignored. It is now an existing fact and in as far as the matter concerns this court, it completely destroys the argument.

This concludes the formal arguments and I pass now to substantive matters.

We have seen that the sole reason given for the dismissal of the petitioner was a reduction of work in the field in which she was engaged and the abolition of her post. The petitioner, however, alleges in her petition that this reason is neither correct nor honest and to prove this has declared by affidavit that it is known to her that the Mayor applied to the appropriate senior official in the Ministry of Social Welfare and requested him to obtain for the Municipality another suitable employee from the minority groups to fill the petitioner's place. In his reply, the Mayor has confirmed that he did indeed speak to the senior official of the Ministry of Social Welfare as aforesaid but adds that after the budget for 1957/58 had been approved the matter was dropped and ceased to be of practical interest. In his evidence before us, the Mayor was examined at length on this part of his reply. The approved budget of the Municipality for the year 1957/58 was produced, showing not a commensurate reduction of social employees' basic salary but a substantial increase. The Mayor was, however, firm in his view that the relevant section of the budget does not reflect the trend of the activity of the Municipality which does not intend filling the petitioner's place at all as there is no need therefor. He explained that although the Municipality engaged an additional social worker that year, this was not out of its own budget but a special one confined to the absorption of immigrants. He also said that the Municipality intends to engage in the course of time an employee for communal work which differs from ordinary social work and he declared that if the petitioner is suitable for this new task there will be nothing to prevent her being appointed to the post, but the Municipality has no intention of filling the position which has fallen vacant on the dismissal of the petitioner.

As I have said, the petitioner was the first and most senior of the Municipality's social workers and upon her dismissal there remained

four such workers who had been engaged after her. We heard from the Mayor that by virtue of a collective labour agreement between the Central Local Government Office and the Organization of Government Officials affiliated to the General Labour Federation, which affects the Municipality of Akko and its employees, the Municipality is bound by the rule of "First in—last out" in connection with the dismissal of employees. This means that when dismissals are necessary because of lack of work, and in the absence of special circumstances requiring or justifying a departure from the rule, such dismissals will take place in inverse order of seniority. The last to be engaged is the first to be dismissed. It is not for me to approve or disapprove of this rule, or to decide how far it is binding upon the Municipality. I merely repeat what we heard from the Mayor. In consequence of what he said the question arises why the petitioner was not dealt with in this manner. Why was she the first to be discharged when all those who had been engaged after her remained in their posts? There is no answer to this question in the body of the Council's resolution, nor is it clear whether the Council ever considered this aspect of the matter. From the language of the resolution one gathers that the members of the Council thought that the abolition of the special post of social worker for the minorities entails as a matter of course the dismissal of the petitioner who then filled that post. But it is clear that such a view, if it prompted the Council to adopt the dismissal resolution, was erroneous. The evidence of Mrs. Feiga, the Director of the Social Welfare Department of the Akko Municipality, is from a professional standpoint in complete contradiction. She testified before us that any professional social worker worthy of the name—and there is no doubt that the petitioner was such—is capable of dealing with the affairs of residents who belong to different community groups. Such a worker does not have to be tied exclusively to the concerns of the community from which she herself springs. This, it appears to me, is understandable and common knowledge but has been expressly confirmed by Mrs. Feiga. Since the dismissal of the petitioner, Mrs. Feiga, who is an immigrant from Germany and does not understand Arabic, has been dealing personally with welfare matters involving members of the minority groups in the city. The petitioner knows Arabic, English, French and some Hebrew, so that she is able to get into direct contact with a large section of the residents of the city in addition to the minority groups and deal with their affairs, since many of them are immigrants from North African countries whose vernacular is Arabic or French and whose mode of life is not unfamiliar to the petitioner. If that is the case, the question again arises why it was the petitioner, though not in line for dismissal, who was singled out for dismissal out of turn and not

transferred to other suitable work within the structure of the Municipality's social services. This question has worried me persistently and I put it to the Mayor. The reply which I got from him did not satisfy me. He said that the usual social work with the older residents has diminished and that the main social work must be done among the new immigrants to ensure their absorption and settlement in the city and that the petitioner is unable to do this work. It was difficult for me to comprehend fully why he thought that she was not capable of carrying out this task from a professional point of view since everyone considers her a good qualified social worker, until Mrs. Feiga appeared and told us that according to the directives of the Ministry of Social Welfare social workers dealing with the absorption of immigrants must be Jewish. It was impossible to transfer the petitioner to this work since she belonged to the minority groups.

I must say that after having heard all the above evidence I feel that the whole truth has not been disclosed to us, and I am not convinced that the dismissal was justified.

It is not our function to pass under review the said general directive of the Ministry of Social Welfare to prefer Jewish workers to others in social work connected with the absorption of new immigrants and to judge whether it is proper and necessary from the pertinent professional standpoint. It is possible that a relevant unbiased criterion would justify this practice, but to an outsider who has not penetrated the secrets of the profession and the procedures of practical social work it appears that it is tainted with communal discrimination.

Even if we say that justifiable, practical reasons prevent every social worker from dealing successfully or with the same degree of success in providing assistance to new immigrants in their first contacts with the homeland and that consequently there is some excuse for preferring Jewish workers to others in this work, it leaves unanswered the question why it was not possible to transfer the petitioner to routine social work among the other residents in the city, Jews and Arabs alike. No one maintains that a miracle has happened in Akko, that the social problems of all the residents who are not recent immigrants have in some marvellous way disappeared or have shrunk to such an extent that not even one of the social workers who kept their position is engaged in such work.

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The least that can be said in these circumstances is that no attention at all was paid by the Council to the main factor affecting the question of dismissals. It appears from the resolution itself that members of the

Council formed the impression that the dismissal of the petitioner was inseparably linked with the abolition of the post of special social worker for the minorities which she held and that one followed the other as a matter of course. We saw above that this is not so at all. Similarly, the Municipal Council never considered the question whether the petitioner was not fit to engage in other social work, either the absorption of new immigrants or ordinary work with the other residents. And all this happened in face of the rule prescribing that dismissal of employees due to reduction of work should generally take place in the inverse order of engagement. If conditions existed for departing from this rule in the instant case, the Municipal Council should have considered them. Without affecting the dignity of the directives of the Ministry of Public Welfare, it was for the Municipal Council itself to determine whether they were indeed acceptable and that it was prepared in fact to act accordingly in every case, especially where the matter involved not the engagement of a new worker but the dismissal of a senior employee who was thereby removed from her position out of turn for the benefit of another.

After the case was heard by us and before judgment could be delivered, the petitioner applied for leave to file an additional affidavit in which she alleged that some days previously she had obtained a copy of a question put in the Knesset to the Minister of Social Welfare on November 26, 1957. The question was: What does the Minister plan to do in connection with the opening of the Social Welfare Office in the Old City of Akko and the return to work of the social worker Naamet Abdu?

And this is the answer:

“In the opinion of the Ministry of Social Welfare, Miss Naamet Abdu should have remained in her position. We informed the Akko Municipality of this and requested it to re-engage her, but the Municipality refused to accept our opinion in this matter and dismissed her. The said social worker appealed against the dismissal; the matter has reached the Supreme Court and no decision has as yet been given by the Court. The Akko Municipality contends that pending judgment it will not be able to engage another person in her place. While it is true that needy Arabs benefit from assistance within the framework of the general office, such care is not adequate in the opinion of the Ministry.

The Ministry of Social Welfare has done everything

within its power to correct this situation, but it is not possible for the Ministry to compel the Akko Municipality to restore this employee to her position.”

We invited counsel for the parties to a further hearing at which the representative of the Municipality stated that he did not object to the supplemental affidavit being put in and that everything which the Deputy Minister had said in his reply aforesaid was correct.

This reply serves to cast a shadow over and controvert the evidence of the Mayor before us; it removes all grounds for the reasons given for the dismissal. As we have seen, the official reason for the dismissal of the petitioner was the reduction of social work among the minority groups and the abolition of the post of social worker for such minorities. Before us, the Mayor insisted that a reduced budget did not enable the Municipality to continue to employ the petitioner or to engage another social worker in her place. But quite a different picture emerges from the foregoing reply, namely, that the Municipality contemplates engaging another worker *in place* of the petitioner and that the only obstacle is that this court has not yet decided her case. Further, the matter of the directives or suggestions of the Ministry of Social Welfare concerning the preference of Jewish workers to others for work connected with absorption of immigrants, which was seized upon by the Municipality to justify the absolute dismissal of the petitioner, contrary to the usual practice of the Municipality, and her not being transferred to another suitable post—all this assumes a new complexion in view of the said reply. It appears that the general directives of the Ministry of Social Welfare to local authorities in this matter do not prevent Ministry officials taking the view in this particular case that the petitioner “should have remained in her position”. They so informed the Akko Municipality but the latter refused to accept their opinion and dismissed the petitioner contrary to the view of the Ministry of Social Welfare.

Even after the dismissal, the Ministry endeavoured to persuade the Municipality to restore the petitioner to her work but, as the Deputy Minister of Social Welfare concludes his reply, “It is not possible for the Ministry to compel the Akko Municipality to restore this employee”. Hence, it was neither the demands nor directives of the Ministry of Social Welfare which led to the dismissal but something else which was not disclosed to us.

The resolution to dismiss the petitioner is consequently invalid because the reasons given therefor are neither true nor honest.

OLSHAN P. I concur.

WITKON J. I concur..I confess that at one point—after hearing the reply to the order nisi—I did not think that it lay within our power to grant the petitioner the relief she claimed. I was impressed by the evidence of the Mayor that the petitioner was dismissed solely because her post as a social worker for the minority groups had been abolished, and that it was not possible to employ her for social work with Jewish residents. If that had really been the situation, I would not necessarily have regarded the dismissal of the petitioner as “racial discrimination” because, in my opinion, the question whether it is feasible to employ an Arab social worker for work among Jews, especially among recent immigrants, is a question for experts and those experienced in the field of social work and if they answered this question in the negative, I would not have interfered. But, as explained by my colleague, Berinson J., the reply of the Deputy Minister of Social Welfare in the Knesset throws an entirely different light on the attitude of the Municipality in this matter, and I can only express my astonishment at the contradictions between this reply (the truth of which was conceded by the representative of the Municipality) and the attitude of the Mayor before us, contradictions which that representative made no effort to explain.

OLSHAN P. In view of the foregoing the order nisi is made absolute in the sense that the resolution of the Council of the Akko Municipality of January 3, 1957, concerning the dismissal of the petitioner from her work with the Municipality is hereby deemed to be a nullity and the notice of dismissal by the Mayor of Akko to the petitioner of January 23, 1957 is likewise declared to be null and void.

*Order Nisi made absolute.
Judgment given on January 30, 1958.*