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**Article**

## **The Law and Industrial Tribunals**

The recent decision to request the resignation of all members of a duly constituted panel of Industrial Tribunal chairpersons, simply because of a change in government, is beyond comprehension. Chairpersons of an Industrial Tribunal are appointed, for a three year period, to fulfil a juridical function in an impartial and competent manner, and shall endeavour to decide on disputes according to the rules of natural justice.

It is clear that currently the law denotes the Prime Minister as the official who appoints the panel of Chairpersons of this Tribunal, and the law empowers him to remove them, since he is authorised, even within three year periods of appointment, to vary the composition of the panel.

Here the question begs itself, why does a change in government prompt a Prime Minister to decide to vary the composition of the panel and demand resignations from all Chairpersons, resignations which, in principle, imply dismissals?

Definitely, if there is gross misconduct or incompetence from such Chairpersons, then the Prime Minister is justified, and obliged, to proceed and exercise the power for change that the law accords him. Now do we have evidence that this was the case for the recent dismissals? No, it does not result that misconduct or incompetence prompted or justified Government's action. In fact some members of the panel have been re-appointed – evidence of their competence and suitability.

Chairpersons of Industrial Tribunals, as they manifestly fulfill their role in a satisfactory manner, are not to be considered as Board Chairpersons, or contracted Chief Executives, of parastatal companies. The appointment of these latter could be up for change since they have a duty to follow and execute specific amended government policies. I can understand why in such government companies an incoming administration may require to operate with key people who support its new policies. But, what about Chairpersons of an autonomous juridical tribunal? Surely you do not have to be a constitutional, a law or an ethics expert to comprehend that Chairpersons of Industrial Tribunals are not to be messed about in this manner. It was erroneous to demand, from the Industrial Tribunal Chairpersons, a resignation that definitely was not called for and due. Unfortunately it was doubly erroneous on the part of those Chairpersons who complied, and handed in their resignation.

To be commended, at least one Chairperson stood his ground, and refused to voluntarily give up his post, much as he was fully conscious of the Minister's power to remove him

anyway. In so doing, this Chairperson highlighted a fundamental feature of the Law and an important principle. This Chairperson who refused to resign guaranteed his right to hold on to his case files and carry on hearing, to conclusion, all his pending cases. In other words the Minister could have removed him from the position of Chairperson for new cases but could not remove him from Chairperson of his pending cases.

This is an extremely important matter, since those Chairpersons who understood they had, or felt pressured, to voluntarily resign from their post, were, at that precise moment, giving up their right and duty to hold on to their case files and conclude their pending cases. A Chairperson who resigns effectively gives up the appointment and ceases to function. Such a Chairperson renounces the right to conclude pending cases. What was a right to conclude becomes instead a concession from the Minister. In theory and in practice we had a situation of pressure to change a judge in the course of a hearing of a case. A seriously worrying precedent that under any circumstance, should have been, and should be, avoided.

Where do we now stand on this issue? It does look like the relevant part of the “Employment and Industrial Relations Act” needs to be amended. The power of the minister to effect dismissals, under the pretext of varying the composition of the panel, must be re-defined. The security of tenure of the position of Chairperson, for the defined 3 year period, must be strengthened and protected. Otherwise the current ministerial powers of dismissal, though not on pending cases, may be misused to the detriment of the correct and independent functioning of Industrial Tribunals.

Further on this point it will not be amiss to also amend the Law and remove the authority given to the Minister to distribute duties to the Chairpersons. An autonomous and independent system of case assignment needs to be defined.

Government has now proceeded and come up with a new composition of a panel of Industrial Tribunal Chairpersons. There are no grounds, at this stage, to doubt and question the integrity, the competence and positive intentions of the new and not so new Appointees. But there definitely are grounds to criticise and object to the overall composition of the new panel, this in terms of the extraction of the chosen new Industrial Tribunal Chairpersons. In other words, out of eleven Appointees so far, six had, or have, manifestly GWU connections. This is not and does not look correct, and might not augur well for the efficient functioning of the Industrial Tribunal.

The MCESD, which by law is to be consulted on the choice of Chairpersons on the panel, is made up of other bodies than just GWU. Unions on MCESD include GRTU, UHM, CMTU and Forum. Employer bodies include MEA, Chamber of Commerce and MHRA. In terms of a desired balanced extraction of the Chairpersons, does the panel, now appointed, constitute an optimal choice?

Looks very much like a biased choice.

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