

Case Name	ROCHES v WADE
Topic	Discrimination - sex - dismissal of teacher for becoming pregnant unjustified
Category	EQUALITY - discrimination (sex);
Tribunal	Supreme Court
Country	Belize (Americas)
Case Date	30 Apr 2004
Judge(s)	Conteh CJ

R, was employed as a teacher at a Roman Catholic School but was dismissed by a letter sent from the local management board which stated that, 'In view of the fact that you are not complying with the contract you made with the Toledo Catholic Schools Management to live according to Jesus' teaching on marriage and sex, this management is hereby informing you that you will be released from your duties as a teacher in this management effective 31 August 2003.' R alleged that the letter was prompted by the fact that she had become pregnant some months earlier whilst unmarried and had sought to discuss maternity leave with her employer. After the management authority refused to reinstate at the behest of the Chief Education Officer ('the Officer'), R launched proceedings **against** W as the representative of the management authority, seeking reinstatement of her job or compensation and claiming that her dismissal amounted to sex **discrimination** contrary to her fundamental right to equality under s 16(2)1 of the Constitution since a male teacher would not be dismissed for fathering children out of wedlock. She also claimed that the refusal of W to reinstate her after being required to do so by the Officer was both illegal contrary to s 162 of the Education Act ('the Act') and breached her right to work under s 15(1)3 of the Constitution. W denied that R was dismissed since the letter referred to releasing her from her duties. Alternatively, W maintained that the Roman Catholic Church ('the Church') was not a public body but a private corporation based in part on the right of religious communities under s 11(3)4 of the Constitution to establish and maintain their own places of education and, as such, was a private employer in relation to R whose contract she had breached not by becoming pregnant but by not 'living according to Jesus' teaching on marriage and sex.' The contract bore R's printed name but not her signature and she denied being a party to it. W also claimed that there was no **discrimination** since it would have treated a male teacher in the same manner.

In finding that R's constitutional rights had been violated and awarding her damages, but not reinstatement, it was held that:

- (1) For all practical purposes R was dismissed from her post. Section 16 of the Act provides for management authorities to appoint, transfer, release, suspend or dismiss teachers without any distinction and, whilst different legal and practical consequences may flow depending upon the decision, where somebody, as here, is not free to return to their employment they are effectively dismissed. Furthermore the evidence points to the fact that she did not sign the contract. However, even assuming the contract is valid it still must be determined whether the Church, on whose behalf W is sued, is a public body for the purposes of s 16 of the Constitution and, if so, was R's dismissal discriminatory.
- (2) The Church is the largest Christian denomination in the country and formally constituted into a corporation over 100 years ago. In addition to its spiritual mission its role, position and contributions in the field of education cannot be underestimated. It had provided the backdrop and engine for educational advances and there is a publicly acknowledged partnership between it and the Government as recognised by s 3(1)5 of the Act, together with Part IV dealing with the Establishment and Management of Schools and Part V dealing with Grant-in-Aid (dicta of Lord Bingham in Bishop of Roman Catholic Diocese of Port Louis & Ors v Tengur & Ors (2004) UKPC 9 applied).
- (3) This partnership is reflected in the fact that R was employed at a grant-in-aid school which received public funds although run and managed by the Church. Every such school must conform to the statutory regime laid down by ss 22 and 23 of the Act and Rules 103, 104 and 108 of the Education Rules ('the Rules') made under it. In this respect it is clear that the Church is a managing authority for the purposes of ss 14(1)6, 157 and 16 of the Act and Rule 92(1)8 of the Rules.
- (4) Therefore in light of these arrangements the Church is clearly an entity that is amenable to the prohibition on **discrimination** contained in s 16(3)9 of the Constitution. This is not affected by s 11(3) of the Constitution since this deals with the maintenance of education establishments by religious bodies at their own expense regardless of whether they receive funds from the state or not. This religious freedom should not be construed as granting immunity from **discrimination** suits pursued under s 16 (Alonzo v Development Finance Corporation 1 Bz. LR (1984) 82 distinguished; Bishop of Roman Catholic Diocese of Port Louis & Ors v Tengur & Ors (2004) UKPC 9, Sumayah Mohamed v Moraine & Anor (1995) 49 WIR 371, Eldridge & Ors v Attorney General of British Columbia & Anor (1998) 1 LRC 351 and Regina (A and Ors) v Partnerships in Care Ltd (2002) 1 WLR 2610 applied).
- (5) It is clear that R was dismissed because of her pregnancy and not for any other reason. Furthermore, whilst

the Church may be able to demonstrate that it has a policy of releasing both male and female teachers on account of pregnancy this will clearly impact more on **women** because of their sex. A male teacher can easily conceal a pregnancy from his employer whilst obviously a female cannot. In this respect the policy is inherently and, in fact, capable of affording different treatment to female teachers on account of their gender. Indeed, unmarried female teachers are the prime if not the exclusive targets of such a policy and R, as one, was the victim of **discrimination**. Bearing in mind the need for compliance with international norms, such **discrimination** is also contrary to the obligations of the state under the **Convention on the Elimination of All Forms of Discrimination Against Women**¹⁰, in particular Article 11(2)(a)¹¹ protecting **against** unfair dismissal due to pregnancy or marital status (dicta of Arnand CJ in Apparel Export Promotion Council v Chopra (2002) 1 LRC 563 at 577 applied). (6) The dismissal, even if based on moral grounds in line with the teachings of the Church, was not carried out in accordance with Rule 93(2) of the Rules laying down the proper procedure for disciplinary action in grant-in-aid schools. Instead R was summarily dismissed which cannot be correct. Consequently, the Church violated R's right to work as protected by s 15(1) of the Constitution (Flynn v Sister Mary Anna Power & Ors (1985) 1 EHC1 (1985) IR 648 and Re Caldwell & Anor (1985) 15 DLR (4th) 1 distinguished).

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Citations Action No 132