



**THE COURT OF APPEAL**

**Court of Appeal Record No.: 2022/264**

**High Court Record No.: 2021/103JR**

**Neutral Citation No.: [2025] IECA 3**

**Whelan J.  
Faherty J.  
Binchy J.**

**BETWEEN/**

**DEIRDRE MORGAN**

**APPELLANT**

**- AND -**

**MINISTER FOR EDUCATION**

**FIRST NAMED RESPONDENT**

**- AND -**

**KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD**

**SECOND NAMED RESPONDENT**

**- AND -**

**BETWEEN/**

**DEIRDRE MORGAN**

**APPELLANT**

**- AND -**

**MINISTER FOR EDUCATION**

**FIRST NAMED RESPONDENT**

**- AND -**

**KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD**

**SECOND NAMED RESPONDENT/NOTICE PARTY**

**JUDGMENT of Mr. Justice Binchy delivered on the 14<sup>th</sup> day of January 2025**

**1.** This judgment concerns two appeals brought by the appellant from decisions made by the High Court (Ferriter J.) in each case refusing the appellant leave to apply for judicial review. In each case the respondents had, pursuant to previous orders of the High Court, been put on notice of the applications and in each case attended and opposed the application moved by the appellant.

**2.** In brief, the background to the proceedings is that the appellant had been employed as a teacher by Wicklow VEC which, pursuant to the Education and Training Boards Act, 2013,

subsequently came within the remit of the second named respondent (in each case), namely Kildare and Wicklow Education and Training Board (“KWETB”). In March 2013, following an investigation into certain conduct of the appellant, which it is not necessary to discuss here, the appellant was suspended by KWETB. Following upon her suspension, an inquiry was established in accordance with the provisions of s. 105 of the Vocational Education Act, 1930. On 15<sup>th</sup> June 2015, following consideration of the final report of the Inquiry Officer, the then Minister for Education made a decision to remove the appellant from office. That decision was communicated to the appellant by letter dated 23<sup>rd</sup> June 2015. The appellant was legally represented through all stages of the process, and made no challenge to the decision of the Minister at the time, whether by way of judicial review, plenary proceedings for wrongful dismissal or an application to the Employment Appeals Tribunal under the Unfair Dismissals Act, 1977.

3. However, the appellant has subsequently launched what can only be described as a barrage of complaints under various statutory procedures and litigation in which, *inter alia*, she repeatedly purports to challenge not just the validity of her dismissal, but also the fact of her dismissal. This judgment is one of three being delivered simultaneously by this Court relating to a total of six proceedings issued by the appellant that are connected in one way or another to her dismissal, the other two judgments being delivered by Whelan J. and Faherty J.

**Application No. 2020/787JR (Appeal No. 2022/263)**

4. This application was initiated by the appellant by an undated notice of motion that was stamped on 26<sup>th</sup> November 2020, pursuant to which she seeks an order of “*mandamus or combination of orders to cause the Minister for Education and Skills to provide her with a lawful, fair and just opportunity, to reply to the submission made in January 2015 by Kildare*

*& Wicklow Education and Training Board (KWETB) to a non statutory ministerial inquiry, a copy of which has only recently been shared by her... and received by me on 7<sup>th</sup> August 2020.*” When the application came before Meenan J. on 23<sup>rd</sup> November 2020, he directed that the respondents be placed on notice of the same, and the respondents duly appeared and made submissions.

5. In her grounding affidavit sworn on 29<sup>th</sup> October 2020, the appellant refers to a submission made by KWETB in January 2015 to the Inspector appointed by the Minister, in connection with the inquiry established by the Minister to which I have referred above. The appellant avers that she had never seen that submission before 7<sup>th</sup> August 2020. She further avers that she made Freedom of Information (“FOI”) requests to the Department during 2017 seeking a copy of the submission, and that she again requested a copy of the submission under a General Data Protection Regulation (“GDPR”) request made in November 2019. She avers that it was the duty of the Inspector to give her a copy of the submission in January 2015 and she then proceeds to give an indication as to what she might have said in reply to that submission.

6. In her draft statement of grounds, the appellant refers to the refusal by the Minister to reply to her request of 21<sup>st</sup> September 2020 seeking a fair and lawful opportunity to reply to this submission made by KWETB to the Minister in January 2015. She says that the submission made to the Minister was prejudicial to her and that it is unfair that she did not have a meaningful opportunity to reply. The reliefs sought in the statement of grounds are:

- (1) *“An order of certiorari quashing the order of the Minister for Education dated 15<sup>th</sup> June 2015.*
- (2) *An order of certiorari quashing the inquiry of the Minister for Education commenced in August 2014.*

(3) *A declaration by way of judicial review that the inquiry of the Minister and the order that has come out of it are unfair”.*

7. In a replying affidavit sworn on 10<sup>th</sup> June 2021, Ms. Clare Butler, Principal Officer of the first named respondent refers to the establishment of the Ministerial Inquiry in February 2014. She avers that following consideration of the final report of the Inquiry Officer, a Ministerial decision was made on 15<sup>th</sup> June 2015, under s. 8(2) of the Vocational Education (Amendment) Act, 1944, to remove the appellant from office. Ms. Butler avers that the decision was communicated to the appellant by letter dated 23<sup>rd</sup> June 2015. A copy of the report of the inquiry into her fitness to hold office was enclosed with the said letter with appendices thereto. Ms. Butler draws attention to the reference in the report of the Inspector in two places to the submission of KWETB of 26<sup>th</sup> January 2015. In the section headed “*Final Conclusions*” it is stated that:-

*“This report is based on the evidence provided to me in written submissions from both parties i.e. submission of KWETB (26<sup>th</sup> September 2014), submission of Sherwin O’Riordan [solicitors for the appellant] (15<sup>th</sup> December 2014), and response of KWETB (26<sup>th</sup> January 2015).”*

8. Ms. Butler avers that at all times the appellant was legally represented throughout the process of the investigation and made no challenge to the same at any time. However, she then goes on to describe how the appellant belatedly made a complaint to the Workplace Relations Commission (“WRC”) contesting her removal. This complaint was dismissed as being out of time. The appellant appealed that decision to the Labour Court, and that appeal was also dismissed.

9. Ms. Butler then proceeds to describe the various other complaints made by the appellant over the years arising, directly or indirectly, out of her dismissal, and the progress and outcomes of those complaints, including the other proceedings with which this judgment

is concerned i.e. proceedings bearing Record No. 2021/103JR. At para. 20 of her affidavit, Ms. Butler avers that while the KWETB submissions of January 2015 were not sent to the appellant at the time of the inquiry, this was because no findings were made in reliance on those submissions, and, she avers, *“All findings were based upon the prior submissions received from the KWETB on 26<sup>th</sup> September 2014 and the submissions of the [appellant’s] solicitors on her behalf in reply thereto, dated 15<sup>th</sup> December 2014.”* Ms. Butler further avers:-

*“It is the case, however, that the January 2015 submissions were referenced in the Final Report of the Inquiry Officer and were in fact provided to the [appellant] on 15<sup>th</sup> June 2017, pursuant to a Freedom of Information request by her.”*

**10.** Ms. Butler exhibits an email sent to the appellant by a Mr. Joe MacCarrick on behalf of the first named respondent on 15<sup>th</sup> June 2017, attaching the submissions. However, the appellant denies having received this email and exhibits an email sent on 4<sup>th</sup> July 2017 to another person in the Department, a Mr. Paul Haynes who apparently had sent to the appellant other documentation requested by her pursuant to FOI legislation. In this correspondence, the appellant says that she did not receive any records relating to the statutory inquiry in the documentation provided by Mr. Haynes pursuant to her FOI request. She also exhibits an email from Mr. Haynes of 6<sup>th</sup> July 2017, in reply to her email of 4<sup>th</sup> July 2017, in which Mr. Haynes says that he had understood that Mr. MacCarrick had provided her with access to all available documents. Mr. Haynes states that he will bring the matter to Mr. MacCarrick’s attention, but at the time Mr. MacCarrick was on holidays. It appears that the matter had rested until the appellant wrote again to another person in the office of the first named respondent, a Mr. Stephen McGrath, in August 2020 and (according to the appellant) it was only then that she received the submissions.

## **Judgment of the High Court**

11. In a brief judgment delivered on 1<sup>st</sup> June 2022, Ferriter J. held at para. 5:-

*“I am satisfied that this application for leave to apply for judicial review is an abuse of process. It is an improper attempt by the applicant to seek to litigate once again the question of her removal from her position as an art teacher with the VEC, which removal occurred on 15 June 2020 (sic) following the inquiry which the appellant seeks in these proceedings to quash. Her removal from her teaching position has been the subject of final and binding determinations by the Labour Court, as explained in a separate judgment delivered by me today on foot of Isaac Wunder order and strike out order applications brought by the Minister and KWETB in these, and related, proceedings. It is not permissible for the applicant to seek to re-litigate that matter through yet another set of proceedings.”*

12. The reference to dismissal as occurring on 15<sup>th</sup> June 2020 is clearly an error and was intended to be 15<sup>th</sup> June 2015. Ferriter J. then went on to say that, in any case, the application is “*hopelessly out of time*” noting that the appellant was on notice from 8<sup>th</sup> May 2015 of the fact that the KWETB had provided a submission to the inquiry in question in January 2015, since the submission was specifically referred to in the report of the Inspector of 8<sup>th</sup> May 2015. Obviously the reference to the appellant being on notice from 8<sup>th</sup> May 2015 is an error. That is the date of the Inspector’s report which was sent to the appellant on 23<sup>rd</sup> June 2015. Ferriter J. also places reliance upon the averment of Ms. Butler that the appellant was actually provided with a copy of the submission in response to her FOI request, on 15<sup>th</sup> June 2017. However, he does not refer to the appellant’s denial that she received the submission at that time.

13. In summary therefore it may be said that the High Court judge dismissed the application for three reasons:

1. The proceedings are an abuse of process, being an attempt to relitigate a matter that has already been the subject of final and binding determinations;
2. The appellant was aware of the KWETB submissions of January 2015, from the time that she received the decision of the first named respondent to terminate her employment, in June 2015, and;
3. The appellant was provided with a copy of the submissions in response to her request under the Freedom of Information Act, 2014, in June 2017.

### **Grounds of Appeal**

#### **Submissions of Appellant**

**14.** In her notice of appeal, the appellant says that she is not seeking an order of *certiorari* to quash the Ministerial order removing her from office, notwithstanding that that is the first relief sought in the statement of grounds. The appellant refers to para. 14 of her grounding affidavit wherein she states that “*I have not sought to quash the Ministerial order because I believe it is chaotic, irrational and not actually possible for anyone to implement the order*”. However, in the following sentence of the same paragraph she states:-

*“However, I also say that I first notified the Minister's Department on 13th August 2020 that I was likely to seek a judicial review of the Ministerial Inquiry including the removal from office issue. As nobody has reverted to me on this matter in almost three months I say that no objection has come forth from the Minister or her Department to a judicial review of the order to remove me from office.”*

**15.** The appellant claims that the High Court judge is “*mistaken*” in thinking that her purported removal from office was the subject of a final and binding determination of the Labour Court in 2018, because that court’s determination was limited to the matter of “*reasonable cause*” to extend the time limit to make a complaint. Moreover, she says that



even if her removal from office was the subject of a final order, the new information received by her in August 2020 is grounds to reopen the matter. The appellant also says that she did not receive the email from Mr. MacCarrick relied upon by the first named respondent. She refers to the email correspondence exchanged in 2017.

**16.** The first named respondent says that it is plain from the decision of the Labour Court that it engaged fully with the appellant's stated reasons for being out of time, and the court was satisfied that these reasons did not constitute reasonable cause for her failure to present her complaint to the WRC within time. The first named respondent relies on the fact that the appellant was on notice from the report of the Inspector of 8<sup>th</sup> May 2015 that the KWETB had made a submission in January 2015. The first named respondent also relies upon the provision of the submissions to the appellant, in response to her Freedom of Information Act request, on 15<sup>th</sup> June 2017. However, it is also submitted that even if the appellant did not receive a copy of the submissions sent by Mr. MacCarrick in 2017, this does not matter, because it is clear that the appellant must have known about the existence of those submissions from June 2015, and so therefore the trial judge was correct to conclude, one way or another, that her application is hopelessly out of time.

**17.** Moreover, it is submitted that it is unclear precisely what issue the appellant seeks to have decided by these proceedings. In its respondent's notice, the first named respondent says that insofar as the appellant has created confusion about the reliefs that she is seeking, she cannot benefit from that confusion. It is submitted that the proceedings can only be construed as an attempt to relitigate the dismissal of the appellant. Furthermore, no reasons at all have been provided by the appellant for her delay in seeking the relief sought.

**Decision on Application No. 2020/787JR**

18. However, the appellant chooses to characterise the application, it can only meaningfully be understood, as the High Court judge held, as a further attempt to challenge the decision of the first named respondent to dismiss her from employment which was made in June 2015. Even if one were to disregard the relief referred to in para. 1 of the statement of grounds (and, to be clear, I do not think that this should be disregarded), in her notice of motion the appellant has phrased the relief that she seeks as being “*an order of mandamus, or combination of orders to cause the Minister for Education & Skills to provide her with a lawful, fair and just opportunity, to reply to the submission made in January 2015....*” For such an order to have any meaning, it could only be within the context of a review of the decision of the first named respondent to dismiss her from employment. That decision was made on 15<sup>th</sup> June 2015, and communicated to the appellant on 23<sup>rd</sup> June 2015. Accordingly, the time for challenging that decision by way of judicial review expired on 23<sup>rd</sup> September 2015. The application is, therefore, as the High Court judge held, “*hopelessly out of time*”.

19. There are of course procedures available to extend time for such applications. The applicant has advanced no such application. Even if she had however, she would have an uphill battle, since it is apparent that the decision of the first named respondent of 15<sup>th</sup> June 2015 made reference to the submissions made by the KWETB, and that being so, the appellant should have sought sight of those submissions in a timely manner, if she apprehended that they influenced the decision of the first named respondent. On her own case, she did not seek sight of the same until 2017, and while she denies having received the attachment to the email of Mr. MacCarrick of 15<sup>th</sup> June 2017, this dispute (as to whether she did or not) is immaterial in circumstances where the existence of the submissions was clearly signalled in the Inspector’s report to the first named respondent which was provided to her at the time of her dismissal.

20. For these reasons I would dismiss this appeal.

**Application No. 2021/103JR (Appeal No. 2022 264)**

21. By this application the appellant seeks leave to issue proceedings by way of judicial review for the following reliefs:

1. An order of *certiorari* quashing the determination of the Minister for Education and Skills made under s. 70 of the Education and Training Board Teachers Superannuation Scheme 2015 (S.I. No. 292/2015) received [by the appellant] on 18<sup>th</sup> November 2020 (the “Determination”).
2. An order to prevent “*green victimisation*” from occurring, and;
3. Any other order that the High Court judge deems appropriate in the circumstances.

22. As with application No. 2020/787 JR, when the application came before Meenan J. on 8<sup>th</sup> March 2021, he directed that the respondents be placed on notice of the same, and the respondents duly appeared and made submissions.

23. The Determination was a decision made by the first named respondent upon a review (requested by the appellant) of a decision previously made by KWETB whereby it had refused the appellant’s application for payment of an injury gratuity pursuant to article 23 of the Education and Training Board Teachers Superannuation Scheme 2015 (S.I. 292/2015) (the “Scheme”). The Determination affirmed the decision of the KWETB, although it is expressly stated to be “*not binding upon any person*”.

24. Article 23 of the Scheme provides:-

“23. (1) *Where a member is injured—*

- (a) *in the actual discharge of his or her duty, and*
- (b) *without his or her own default, and*

(c) *by some injury attributable solely to the nature of his or her duty, the Board may grant to him or her... such gratuity or allowance in money for life or for a limited period as the Board may consider reasonable and as may be sanctioned by the Minister either generally or in any particular case.*”

25. In her affidavit grounding her application for leave sworn on 12<sup>th</sup> February 2021, the appellant avers that her injury occurred in Clonmel Street, Dublin 2 on 7<sup>th</sup> February 2012 “*at the Equality Tribunal under the Employment Equality Act*” which I understand to refer to a hearing before the Equality Tribunal of an earlier complaint advanced by the appellant against her employer. The appellant avers that she had a mental breakdown during the course of this hearing which she appears to blame on certain representations made by her employer to the Equality Tribunal.

26. In her statement of grounds, the appellant claimed that the decision-making process leading to the Determination was devoid of natural justice and fair procedures, and claims that the Determination was based on six points of information that had never been put to her before by any other person. The appellant also claims that she could have refuted those six points of information, had she been given an opportunity to do so.

27. The appellant again raises the issue of her dismissal, stating in para. 3:-

*“The retirement that has been imposed is unwanted. It impedes me in my goal to recover from the injury and return to teaching. The Minister and KWETB have known since August 2017 that I sought access to the injury allowance/gratuity only on a temporary basis to give me the opportunity to get treatment and recover from the injury. They know that I have proof of the child sexual abuse denial and cover up and that I am too injured to be able to deal with content of this nature without treatment.”*

28. In an amended statement of grounds delivered in April 2021, the appellant seeks a series of declaratory reliefs that are incoherent and have no relevance to the specific issue of

the refusal of the benefit for which she applied. There is no need to set them out or even summarise them here.

**29.** In a replying affidavit sworn on behalf of the first named respondent on 10<sup>th</sup> June 2021, Ms. Butler refers to the application made by the appellant for payment of an injury gratuity pursuant to article 23 of the Scheme. Ms. Butler exhibits the appellant's letter of application dated 2<sup>nd</sup> August 2017.

**30.** In this letter, the appellant describes how, in 2009, she was a teacher coping with "*grievances of gender based discrimination, harassment and victimisation*". She describes how she was under the care of her GP and had reasonably good health in the circumstances. She describes how she was referred by KWETB to an occupational health specialist for assessment, and describes how the stress that she has experienced worsened rather than improved. She says that as a consequence of being removed from office in 2015 she was unable to afford certain medication that had been prescribed for her by the HSE. She then proceeded to apply for payment of a pension under article 23 of the Scheme, and in her application she said that access to the pension scheme would enable her to afford medical treatment and improve her health and quality of life. There is no mention at all of having suffered a mental breakdown at the Equality Tribunal in 2012. It is apparent that in her letter of application, the appellant does not identify any injury sustained in the course of the discharge of her duties.

**31.** By a letter dated 6<sup>th</sup> January 2020, which is exhibited in the papers, the appellant's application was refused by KWETB on the grounds that she did not meet the criteria set forth in article 23 of the Scheme. The same letter points out that, as the appellant did not meet the criteria for payment of a gratuity under article 23, she had been advised to make an application for payment of a pension on the grounds of retirement on ill-health grounds. The

letter continues to say that the appellant subsequently made such an application, and that the application was successful, albeit following an appeal.

32. By letter dated 24<sup>th</sup> January 2020, the appellant appealed the decision of 6<sup>th</sup> January 2020 to the first named respondent, pursuant to article 70 of the Scheme. The decision of the first named respondent on this appeal, i.e. the Determination, was communicated to the appellant by letter dated 16<sup>th</sup> November 2020.

33. The Determination summarises the processes followed by KWETB in its consideration of the appellant's application. It summarises in six bullet points the reasons given by the KWETB for refusing the application. It notes that KWETB has no record of the appellant ever having suffered an injury in the workplace and that the appellant had not raised the matter until 2017. It states that the first named respondent is satisfied that KWETB had followed the correct procedures and that it had no evidence to "*support the exercise of [their] discretion in this matter.*"

### **Decision of the High Court**

34. The High Court judge dismissed the application for leave for three reasons. Firstly, he considered that the proceedings represented "*yet another step in the applicant's long-running campaign of legally vexatious complaints and proceedings against the Minister and KWETB stemming from her refusal to accept that she was lawfully removed from her teaching position in June 2015.*" In arriving at this conclusion, the judge had regard in particular to the various declaratory reliefs sought by the appellant.

35. Secondly, he held that the question of her entitlement to an injury gratuity has already been finally and conclusively determined against the appellant in other proceedings. Those proceedings were initiated by the appellant by way of complaint to the WRC. She had complained, *inter alia*, that she had been victimised and discriminated against by the

KWETB in its refusal to grant her application for payment of the gratuity. The Adjudication Officer (“AO”) of the WRC found that the appellant did not meet the requirements for payment of the gratuity, and that there had been no discrimination on the part of KWETB in refusing the appellant’s application, as the appellant had claimed. On appeal, the Labour Court agreed with the conclusions of the AO and found the appeal to be misconceived. Separately, the Labour Court noted that the appellant had completed the forms for the granting of an ill-health retirement pension which was ultimately granted to her.

**36.** The decision of the Labour Court was, in turn, appealed by the appellant to the High Court, on a point of law only. In a judgment also handed down on 1<sup>st</sup> June 2022, Ferriter J. dismissed the appeal, stating that he was satisfied that the conclusions of the Labour Court were unimpeachable. The appellant also appealed from that decision to this Court, and in a judgment also handed down today by Faherty J., with which Whelan J. and I have expressed our agreement, that appeal has been dismissed.

**37.** The third reason given by Ferriter J. for rejecting this application for leave is that he was satisfied that the appellant had not established any arguable grounds in relation to the lawfulness of the Minister’s decision of 16<sup>th</sup> November 2020. He held that it was clear that the Board was entitled as a matter of law to determine that the appellant did not meet the criteria for the award of the injury gratuity, noting that the appellant in her own grounding affidavit had stated that her injury occurred on 7<sup>th</sup> February 2012 in Clonmel Street, Dublin at a hearing of the Equality Tribunal. Accordingly, it was plain that the appellant had not alleged that she had sustained any injury in the course of the performance of her teaching duties, which, pursuant to article 23 of the Scheme, is a pre-requisite for eligibility for the gratuity.

**38.** The judge also noted that the decision of the first named respondent is expressly stated to be a non-binding one. He further noted that the appellant had lodged a complaint in

relation to this decision with the Financial Services and Pensions Ombudsman pursuant to the Pensions Act, 1990.

### **Notice of Appeal and Submissions**

**39.** There are 11 grounds of appeal set forth in the notice of appeal. Only one of these grounds has any relevance to the appellant's application. That is ground No. 5 by which the appellant claims that the decision of the first named respondent to refuse her application for payment of the gratuity was made in the absence of fair procedures. Specifically, the appellant maintains that no evidence was given to contradict her assertion that the first named respondent had made the Determination relying upon a submission sought from KWETB without affording the appellant the opportunity to respond to that submission. This ground of appeal is repeated in appeal ground No. 7. For its part, the respondent denies that these are valid grounds of appeal but does not respond specifically to the point made by the appellant that the Determination was made in breach of fair procedures, insofar as the appellant claims that she was not afforded an opportunity to respond to the submission made by KWETB to the first named respondent, before she made the Determination.

**40.** In her oral submissions to this Court, the appellant submitted that the High Court judge failed to recognise the unfairness of the decision made by the first named respondent. She agreed that the injury that she claims that she suffered was a mental health injury which she alleges occurred at a hearing before the Equality Tribunal that took place at Clonmel Street, Dublin, in February 2012. Upon being questioned as to how she maintained that the Equality Tribunal offices at Clonmel Street could be considered to be the workplace for the purpose of article 23 of the Scheme, the appellant said that in her workplace duties, she had no fixed place of work, so she could objectively choose the location of her workplace. She



maintained that she is in a workplace whenever she pursues her claims against the respondents, including in the courtroom.

41. The respondents submitted that it is very difficult to identify any cause of action in the appellant's pleadings or submissions, and that the grounds of appeal are incomprehensible.

42. Counsel for the first named respondent pointed to the fact that the appellant in her own grounding affidavit averred that her injury occurred on 7<sup>th</sup> February 2012 at Clonmel Street, Dublin as she confirmed in her oral submissions to this Court. That being so, it is clear that the appellant is not alleging that she sustained any injury during the performance of her teaching duties, as required by article 23 of the Scheme. It was submitted that the appellant had not raised any *bona fide* arguable grounds as to any legal error committed by the first named respondent in her review of the decision of the KWETB, and the High Court judge was correct to so conclude.

### **Decision**

43. This application concerns the process leading to the Determination, which is a decision of the first named respondent to affirm a previous decision of the second named respondent to refuse an application made by the appellant for payment of an injury gratuity pursuant to article 23 of the Scheme. It is clear from article 23 of the Scheme that that benefit, which is in any case discretionary, is only payable where the injury alleged to have been sustained was sustained by a claimant in the course of the claimant's teaching duties.

44. It is also clear from the appellant's affidavit grounding this application and from her submissions to this Court that she claimed to have suffered an injury, not in the course of her teaching duties, but in the course of presenting a claim to the Equality Tribunal sitting at Clonmel Street, Dublin on 7<sup>th</sup> February 2012. Manifestly, if such an injury occurred, it could

not have been in the course of her teaching duties. For this reason alone the appellant fails to get over the threshold of an arguable case, *per G v. DPP* [1994] 1 IR 374.

45. Even if, therefore, there is any basis for the appellant's assertion that the first named respondent failed to comply with fair procedures by not affording the appellant the opportunity to respond to submissions made by the KWETB, this could have had no practical consequence for the appellant because, taking her case at its height, it is clear that the circumstances upon which she relies do not meet the criteria set out in article 23 of the Scheme. No submissions the appellant might have made could have altered this basic fact.

46. Moreover, the High Court judge was also correct in his observation that the question as to whether or not the appellant had any entitlement to an injury gratuity under the Scheme had already been determined against the appellant in other proceedings that she had brought following an adverse decision by the Labour Court in this regard, namely the proceedings under High Court Record No. 2020/38 MCA.

47. Finally, I agree with the High Court judge that insofar as the appellant seeks a range of declarations (which, as I have said above, are incoherent) that are completely unrelated to the Determination, the proceedings are an abuse of process, and that they are, as the judge held, "*yet another step in the [appellant's] long-running campaign of legally vexatious complaints against [the respondents]....*"

48. In my view the High Court judge was absolutely correct to dismiss the application for the reasons that he did. Accordingly, I would dismiss this appeal.

49. Whelan and Faherty JJ. have indicated their concurrence with this judgment.