THE HIGH COURT
Record Number: 2003 No 517 JR

Between:

Mary Becker
Applicant

And

The Board of Management St. Dominick's Secondary School Cabra

Respondent

Judgment of Mr Justice Michael Peart delivered on the 14th day of April 2005:

It must be a matter of great regret that the whiff of litigation now pervades the corridors of an institution whose purpose is to assist in the nurturing and development of young minds and hearts to adulthood for the ultimate benefit of society as a whole. Hopefully the classroom itself has remained isolated from such contamination, so that the important work which takes place within it can be pursued in an atmosphere conducive to its important and worthy objectives.

The applicant has been a teacher at the respondent secondary school for the past twenty five years. There is nothing in the affidavits filed in this case to suggest that for most of that long period of teaching the relationship between the applicant and the management of the school where she teaches was other than it should be. But it appears that from about 1999 matters took a turn for the worse.

The applicant in her grounding affidavit marks the beginning of that deterioration as occurring in March 1999 after she challenged a decision by the Board of Management to promote a certain teacher at the school to the post of Assistant principal, in circumstances where such appointments were normally made on the basis of seniority, and where there were three other members of staff who were more senior than the person actually appointed. The applicant now alleges that the Chairperson of the Board of Management (who is not a teacher in the respondent school) has never forgiven her for so challenging this appointment and is now biased against her.

The applicant also states that her relationship with the Principal at the school was good up to about May 2000, but that from that date the relationship began to deteriorate. The background to that appears to have involved some investigation into a security difficulty with the server to the computer network in the school, leading in some way to allegations of harassment and bullying of another teacher made in writing to the school principal against the applicant. The applicant categorically denied the allegations which caused her much stress, and she wanted an opportunity to be heard about them so that she could answer them. She sought such an opportunity, as well as a copy of the submission containing the allegations, but she says that this was denied to her. It was instead suggested that she invoke the school's Grievance Procedure, but she regarded that as inappropriate in relation to disputes between teachers.

However, following advice from her Union and legal advisers, she in fact invoked that Grievance Procedure by letter dated 13th September 2001. She avers that none of the grievances complained of have yet been advanced beyond Stage Two of the Grievance Procedure.

The applicant also says in her affidavit that she has not been appointed to the post of Assistant Principal, inspite of four separate applications made by her for that position pursuant to the Revised Guidelines for the Implementation of the Post of Responsibility Structure in Voluntary Secondary Schools dated September 2000. She is of the view that on the basis of seniority she should have been appointed to the post. She also complains that she is being systematically excluded from the affairs of the school's IT Department which, she says, is now in the hands of the Principal, whose appointment she had challenged, and also the person who made the complaint against her of bullying and harassment to which I have referred. According to her affidavit she has also commenced proceedings in the High Court arising out of what she calls the *"Principal's continuous bullying and harassment of [her] and the Board of Management's failure to provide a safe and healthy work environment in the school."*
The next significant matter forming the background to the present application is the introduction into the school of a document dated 8th October 2002 entitled: **Professional Charter and Policy on Dignity in the Workplace"** hereinafter

referred to as "the Charter"). It appears that there was a process of consultation amongst the staff of the school prior to the implementation of this policy document. The applicant, however, states that during the consultation process she raised a number of questions seeking to clarify certain matters in the document to which she was strongly opposed. She goes on to state that despite the fact that the school Principal had asked her to furnish her questions, they were not dealt with prior to the introduction of the policy document on the 8th October 2002.

It appears that on the very day that the document was introduced, one of the teachers involved in its compilation made a written complaint of repeated harassment against the applicant under the terms of the document. The incidents of alleged harassment cover a period from November 2001 to the 8th October 2002. The applicant denies the allegations and is very surprised that they are being made, since she feels that her communications with that complainant were confined to seeking clarification as to whether her correspondence was received and dealt with by the Board of Management. She is also of the view that prior to the introduction of the policy document, it was indicated by the principal of the school that it would not operate retrospectively – in other words in respect of alleged incidents which predate the operation of the policy document.

She makes the point also in her affidavit that there is in fact no agreed procedure to resolve inter-teacher disputes in the school, and that in her view this is the reason why the principal of the school indicated that the complaints would be dealt with under Stage 2 of Charter procedures. But she goes on to state that Stage 1 of the Charter procedures has been by-passed in favour of proceeding directly to the 'formal' procedures of Stage 2, which provides as follows:

"Staff members subjected to bullying/harassment shall make a formal complaint to the Principal who will be responsible, on behalf of management, for investigating such complaints and recommending action."

In this regard the applicant states that the Principal is a person against whom the applicant had invoked three separate grievance procedures none of which had been allowed to progress, as well as the person whom the applicant believes was instrumental in thwarting her attempts to achieve the post of Assistant Principal at the school, as already referred to.

Stage 1 on the other hand is an informal procedure which envisages that it may be possible in the first instance to settle matters by some form of informal contact either personally or through a "contact person" who is recommended to use the guidelines set out in the document when dealing with the matter. At the conclusion of the Stage 1 section of the document it states the following:

"Attempts should be made to resolve the matter informally. If this is not possible the formal approach, as outlined in Stage Two may be adopted."

The applicant proceeds to make complaint that, even if it might be considered that it was permissible to proceed directly under the formal procedure of Stage Two, the respondent has failed to adhere to the procedures set forth therein. It appears that the Board of Management appointed an Investigating Committee, from whom the applicant received a letter dated 24th October 2002 informing her that the complaints would be dealt with under the Charter and requested a meeting with her to hear her response to the complaints, and said also that it would be helpful if in advance of that meeting she could respond in writing in advance of the meeting. The letter also made it clear that she could be accompanied/represented at the meeting and that she should let them know about that in advance.

The applicant states that there is no provision within the Charter for the appointment of such an Investigating Committee, and that her agreement was not sought for this Committee. Furthermore she states that the referral of these complaints to the Board of Management is outside the terms of the Charter procedures, even in Stage Two, since that part states:

"Staff members, subjected to bullying/harassment shall make formal complaint to the Principal who will be responsible, on behalf of management, for investigating such complaints and recommending action."

It then proceeds to state that it is the responsibility of the Board of Management to determine on any ultimate disciplinary action which might be appropriate. There is no other function vested in the Board of Management as such.

The applicant refers to page 14 of the Charter where at (d) it provides:

"Where a complaint is found to be substantiated the extent and nature of the bullying/harassment will determine the form of the disciplinary action to be taken. In the case of the teaching staff the JMB/ASTI agreed procedures will apply. These actions may include a verbal warning, a written warning, suspension from duties with or without pay, suspension from full duties with or without full pay, or dismissal…"

The applicant submits that the respondent has interpreted this as meaning that if the complaint is found to be substantiated then Stage 3 procedures of the JMB/ASTI procedures will apply. She submits that this means that in the present case it would be mandatory that these procedures be adopted since it is a case involving a teacher, and that this in turn would mean

that she would be entitled to an investigation by the Board of management in the absence of the Principal (except in so far as the principal might be present for the purpose of giving evidence). In my view this is not a correct interpretation of the Charter paragraph (d) set forth above. I believe that (d) is dealing only with a situation after the complaint has already been found to have been substantiated, and that any reference to the JMB/ASTI procedures would be confined to 'Disciplinary Actions' as set forth at paragraph 3.5 thereof. Indeed, the sanctions mentioned in Stage Two of the Charter mirror substantially those set forth in the JMB/ASTI document. So, I do not believe that the applicant can correctly say that the Charter Stage Two procedure entitled her to the hearing referred to in the JMB?ASTI procedures.

On the other hand, the respondent by appointing an Investigating Committee seems to have been adopting a procedure provided for in the JMB/ASTI procedures, so there is certainly some ambiguity or confusion as to exactly what procedures are being adopted by the respondent. It appears to be an amalgam of both documents. If the Investigating Committee was appointed by reference to these procedures, it ought not to have contained members of the Board of Management of the school. In other words it would be an independent Committee. This matter is not clear at all.

As far as the investigation which did in fact take place is concerned, the applicant states that she refused to rebut the allegations "on the basis of legal advice". The complaints were found to have been substantiated, and the applicant received a letter informing her of this fact and that the Board of Management considered that the complaint merited further investigation and she was asked to meet with the Board of Management under Stage 3 of the JMB/ASTI document. There was a good deal of correspondence at this time (including between solicitors representing each party) leading up to the decision of the Board of Management contained in the letter dated 29th April 2003, to which I shall return. In one of these letters dated 27th January 2003, solicitors for the respondent state "Teachers' grievances in schools must be dealt with in accordance with the agreed JMB/ASTI Grievance Procedure". This conflicts with what is contained in the initial letter dated 16th October 2002 sent by the school principal to the applicant in which it is states:

"This complaint will be investigated under Stage Two: Formal procedure, "Professional Charter and Policy on Dignity in the Workplace (St. Dominic's College, October 2002)".

The letter dated 29th April 2003 conveying to the applicant the decision of the Board of Management states also:

"As has already been explained, the procedure and policy being applied in this particular case is the 'Charter and Policy on Dignity in the Workplace' adopted by staff and management some time ago".

This letter went on to state that the Board had found the complaint to be "in general, well-founded", and that the Board considered that the appropriate sanction to be "a formal warning". It went on:

"Accordingly, on the Board's instructions, I now warn you that you should ensure that, in the future, you do not harass [the complainant] or any other member of staff and that, should you do so, further disciplinary action, up to and including dismissal, may result."

It is this decision to give the warning which the applicant wishes to challenge by way of seeking an order of certiorari.

There are first of all two replying affidavits filed on behalf of the respondent. The first is by Ms. Fitzsimons who is Chairperson of the Board of Management. This affidavit contests the relevance of much of what is contained in the applicant's grounding affidavit, as well as the factual content thereof. As often happens there are two sides to every story, and given the nature of this application and the legal submissions, it is not of any benefit to set out all that is in the replying affidavits, or come to any decided view on the facts. The other affidavit filed on behalf of the respondent is by Mary Keane who is the principal at the school. The applicant has filed two more affidavits, and there is a further affidavit filed on behalf of the respondent. Again I do not propose to set out in detail the content of these affidavits, as it is not necessary in my view.

Legal submissions:

The most important issue in this case at the outset is whether the dispute in this case can be properly the subject of judicial review proceedings at all. The respondent submits that it is not, since it is a matter of private law involving a relationship between the parties which is dependent entirely upon a contractual relationship. I shall return to that submission in due course.

The applicant's submissions:

The applicant submits that the respondent Board is susceptible to judicial review and relies on a number of factors in this

regard. Firstly, she submits that she is seeking to challenge a decision made ultra vires and arising from her contract of employment in circumstances where her salary is discharged by monies voted to the Department of Finance and in circumstances where she has an obligation pursuant to s. 22 of the Education Act, 1998 to *"have responsibility, in accordance with this Act for the instruction provided to students and contribute generally to the education and personal development of students in that school"*. In this way, it is submitted that there is a public law element to the relationship and the decision made.

She also refers in this regard to the fact that the respondent has, by s.23 of the Education Act, 1998 obligations to fulfil certain statutory functions. In addition, the applicant submits that the respondent is susceptible to judicial review by reason of its purported exercise of a jurisdiction vested in it by reason of its existence and statutory function as set forth in Part IV of the Education Act, 1998. That Part provides for the appointment of Boards of Management, the functions of such Boards. In passing it is worth noting that s. 24(3) of the Act provides:

"(3) A board shall appoint teachers and other staff, who are to be paid from monies provided by the Oireachtas, and may suspend or dismiss such teachers and staff, in accordance with procedures agreed from time to time between the Minister, the patron, recognised school management organisations and any recognised trade union and staff association representing teachers or other staff as appropriate."

It is submitted also that the terms of s. 15(2)(a) of the Act bring the matter clearly within the public law domain. That subsection provides:

"2. A board shall perform the functions conferred on it and on a school and in carrying out its functions the board shall –
(a) do so in accordance with the policies determined by the Minister from time to time."

The submission made by the applicant that the nature of her employment, namely the education of children is in the public interest and is sufficient to bring this case into the public law domain and render the decision to warn her susceptible to judicial review. Counsel refers to the fact that the Education Act, 1998 mandates that grievance procedures be put in place in relation to bullying/harassment and again that this brings the matter into the necessary category of decision. But it is worth noting that the same obligation rests on private firms and companies and indeed sole trader employers.

Counsel for the applicant has sought to rely upon the judgment of Kelly J. in **Rafferty v. Bus Eireann [1997] 2 I.R. 424**, where that learned judge held that the dispute between the plaintiff, who were employees of Bus Eireann, and who had been employees previously of Coras Iompair Eireann until the passing of the Transport (Reorganisation of Coras Iompair Eireann) Act, 1986, came within the public law domain because of a number of factors which he identifies at page 439 of his judgment, in much the same manner in which Denham J. had done in **Geoghegan v. Institute of Chartered Accountants in Ireland [1995] 3 I.R. 86.** It is relevant to refer to the fact that in Rafferty, the allegation made by the plaintiffs was that certain work practice changes introduced by the defendant company were said to contravene the statutorily provided protection of the former C.I.E employees becoming, after the passing of that Act, employees of Bus Eireann as a result of the re-organisation of C.I.E.

In **Geoghegan v. Institute of Chartered Accountants in Ireland**, Denham J., although obiter, identified a number of factors which she considered relevant to the determination of whether or not judicial review might lie. These factors were set out by as being the following:

"(1) This case relates to a major profession, important in the community, with a special connection to the judicial organ of Government in the courts in areas such as receivership, liquidation, examinership as well as having special auditing responsibilities.

(2) The original source of the powers of the Institute is the Charter: through that and legislation and the procedure to alter and amend the bye-laws, the Institute has a nexus with two branches of the Government of the State.

(3) The functions of the Institute and its members come within the public domain of the State.

(4) The method by which the contractual relationship between the Institute and the applicant was created is an important factor as it was necessary for the individual to agree in a 'form' contract to the disciplinary process to gain entrance to membership of the Institute.

(5) The consequences of the domestic tribunal's decision may be very serious for a member.

(6) The proceedings before the Disciplinary Committee must be fair and in accordance with the principles of natural justice, it must act judicially."

In Rafferty, Kelly J. identified certain factors in that case by reference to these factors identified by Denham J. in Geoghegan as follows:

"1. This case relates to a major method of public transport and to persons employed in that operation. Public transport is important to the community. Disputes concerning persons employed therein which might give rise to industrial action have consequences of hardship, particularly for members of the community who are entirely dependant upon it.

2. The original provider of the service now being given by the respondent, was the statutory corporation, C.I.E. The respondent itself owes its existence to the Act of 1986. Furthermore, it is the Act which places restrictions upon it concerning its employees through section 14.

3. The functions of the respondent and its employees come within the public domain of the State. Although a company formed by registration, I cannot ignore its statutory genesis.

4. The method by which the contractual relationship between the respondent and its employees is regulated, is subject to the statutory intervention which is contained in s. 14 of the Act of 1986.

5. The consequences of an unlawful interference with the contractual rights of the respondent's employees may be very serious for them.

The learned judge went on:

"These five considerations mirror, to a great extent, the matters identified by Denham J in Geoghegan v Institute of Chartered Accountants in Ireland [1995] 3 IR 86. In my view, they amply support the entitlement of these applicants to seek redress from this Court by means of judicial review rather than by plenary proceedings. This case does involve, in my opinion, a sufficient public law element to justify judicial review."

The applicant draws a parallel between the public interest in matters of public transport and that of state provided education, and urges that in accordance with the reasoning adopted by Kelly J. in Rafferty, the dispute in the present case should be regarded as appropriate for the purpose of judicial review.

The respondent's submissions:

As I have already stated the respondent submits that this decision is not a justiciable issue by way of judicial review. Mr Mallon has urged that the relationship between the applicant and the respondent is one which is based solely on contract, and that any disciplinary matter arising between the parties is a matter governed by the terms of that contract, and is not subject to any public law remedy.

He has referred to a number of decisions in this jurisdiction which, it is submitted, supports this submission. For example, in **Murphy v. The Turf Club [1989] I.R. 171**, Barr J. held that certiorari or prohibition will not lie against the decision of a body which derives its jurisdiction from contract or of a voluntary association or domestic tribunal deriving its jurisdiction from the consent of its members, and, having referred to the judgment of the Court of Appeal in **R v. Takeover Panel, ex p. Datafin Plc. [1987] Q.B. 815,** stated as follows:

"I have no doubt that the relationship between the applicant and the respondent derives from contract and that the statutory provisions relating to the respondent to which I have been referred by Mr de Bruir are not relevant to the issue before me. I am also satisfied that the respondent's duty to regulate the sport of horse-racing in Ireland, though having a public dimension, is not a public duty as envisaged by the Court of Appeal in Reg. v. Take-over Panel, ex p. Datafin Plc. [1987] Q.B. 815 and in purporting to revoke the applicant's training licence the respondent was not exercising a public law function. On the contrary its decision was that of a domestic tribunal exercising a regulatory function over the applicant, being an interested person who had voluntarily submitted to its jurisdiction."

He went on at p. 175 to say:

"Since the stewards' authority to suspend the plaintiff's licence derived solely from a contract between him and the defendants there was no public element in their jurisdiction as such (although the public might be affected) and therefore their decision was not reviewable by prerogative order. It followed that it was not open to the plaintiff to seek relief by way of judicial review and, conversely, that it was open to him to seek a declaration in the ordinary way."

Mr Mallon also referred to the fact that this principle had been expressly adopted by Keane J. (as he then was) in **Rajah v. Royal College of Surgeons of Ireland [1994] 1 IR 384,** as it had also been by Finlay C.J. in Beirne v. The Commissioner of An Garda Siochana [1993] I.L.R.M. 1. In adopting the principles in **Murphy v. The Turf Club,** the learned judge stated at p. 393**:**

"The jurisdiction of the Student Progress Committee and the Appeals Committee in the present case derive not from public law but from the contract which came into being when the applicant became a student in the College. The jurisdiction of the respondents is derived solely from her agreement, express or implied, to be bound by the regulations of the College, including the procedures under consideration in this case. The case is entirely distinguishable from Beirne v. The Commissioner of An Garda Siochana [1993] I.L.R.M. 1 where it was held that the functions of the Commissioner in admitting persons as trainees in the Garda Siochana were 'matters of particular and immediate public concern… directly relevant to the public question of ordering of society and the regulation of discipline within society'. No such considerations arise in the present case. The applicant is in the same position as any other third level student. The fact that the College derives its existence in law from a Charter or Act of Parliament is not a sufficient ground for bringing matters relating to the conduct and academic standing of its students within the ambit of judicial review."

Mr Mallon has also referred to the judgment of Denham J. in Geoghegan already referred to. In this regard he has submitted that while it is the case that the relationship between teacher and employer, as in the present case, has some factors comparable with the principles set out in Geoghegan, it is submitted that as far as matters concerned with the disciplining of a teacher are concerned, the relationship is not one which passes the tests set out by Denham J. in Geoghegan. He submits that the fact that a teacher performs an important function in society and that the applicant teacher is paid out of public funds is not enough to bring her claim sufficiently into the public domain for the purpose of judicial review.

This Court has also been referred to the judgments of Hederman J. in **Murtagh v. Board of Governors of St. Emer's School [1991] 1 IR. 482,** where he stated at p. 488:

"A three day suspension of a pupil from a national school either by the principal or the board of management of that school is not a matter for judicial review. It is not an adjudication on or determination of any rights, or the imposing of any liability. It is simply the application of ordinary disciplinary procedures inherent in the school authorities and granted to them by parents who have entrusted the pupil to the school.

A three day suspension for an admitted breach of discipline would be no more reviewable by the High Court that for example the ordering of a pupil as a sanction to stay in school for an extra half an hour to write out lines, or to write out lines while he is at home."

Mr Mallon also referred to the judgment of Finlay CJ in **O'Neill v. Beaumont Hospital [1990] ILRM 419** where the learned Chief Justice expressed reservations as to whether judicial review lay in respect of *"the decision by an employer provided for specifically in a contract of employment with a person who is employed by that employer".* He has also referred to the judgments of Finlay CJ, as well as those of McCarthy J. and Hederman J. in **O'Neill v. Iarnrod Eireann [1991] ILRM 129** to similar effect.

Conclusions:

There can be no doubt but that teaching is at the very core of societal development and is one of the most important functions in any democratic society. To deprive any section of society of access to effective education, is to discriminate in a very serious way against that section, and there have been examples of such discrimination as a means of oppression even in recent times. The right to an education is a right recognised constitutionally in this jurisdiction and all over the developed world. I mention these matters briefly only to point out the obvious public law element in the whole area of education in a general sense, and in the provision of schools and the employment of suitably qualified teachers to teach in those schools.

The Education Act, 1998 itself is expressed in its Preamble to be *"an Act to make provision in the interests of the common good for the education of every person in the State……and to provide generally for primary, post-primary, adult and continuing education and vocational education and training……to provide for the recognition and funding of schools and their management through Boards of Management……to provide for the role and responsibilities of principals and teachers……"*

Section 6 of the Act sets out a large number of "objects" pursuant to which the Oireachtas passed the Act, and which every person concerned in the implementation of the Act shall have regard to. All of these objects have a public element to them. Section 7 of the Act imposes certain obligations on the Minister for Education and Science such as to ensure that there is made available to each person in the State the necessary support services and a level and quantity of education appropriate to the needs and abilities of that person, as well as an obligation to determine national education policy, and to plan and co-ordinate the provision of education in "recognised schools and centres of education", as well as support services.

Part II of the Act deals with the functions of recognised schools, and the designation by the Minister of a school or a proposed school as a recognised school under the Act, and the annual funding of such schools from monies provided by the Oireachtas.

Part III makes provision for the appointment by The Minister of a Chief Inspector and other inspectors to be known as "the Inspectorate", and its functions.

Part IV deals with the establishment and membership, and indeed the dissolution in certain circumstances, of Boards of Management, as well as its functions. Section 14(2) of the Act provides that such a Board of Management shall fulfil in respect of the school the functions assigned to that school under the Act. Section 15 sets out the functions of the Board of Management and I have already set out the provisions of s. 15(2)(a) thereof.

Part V deals with the functions of the Principal and the teachers in the school. These functions are described in so far as the children at the school are concerned. Section 23(2) provides, inter alia, that the Principal shall be responsible for the day to day management of the school, "including guidance and direction of the teachers and other staff of the school, and that the Principal shall be accountable to the Board for that management, and that for the purpose of carrying out those specified functions, the Principal "shall have all such powers as are necessary or expedient in that regard, and shall carry out his or her functions in accordance with such policies as may be determined from time to time by the board and regulations made in accordance with section 33 of the Act.

There are other sections dealing with examinations, school curricula, grievance procedures in relation to parents and children (as opposed to grievance procedures in relation to teachers and their employer), teaching through the Irish language and so on.

I have set out these matters in some detail in order to highlight the extensive public nature of education. However, it is not sufficient for the applicant simply to show that the nature of the job she performs is of such importance to the advancement and development of society as a whole in order to bring her present claim within the reach of judicial review. There is a distinction to be drawn between the wider aspects of education, and the statutory provisions, such as those to which I have referred, and the narrower aspects of this particular case, such as the employer/employee relationship between her and the respondent which is based, as has been pointed out, solely on a contract of employment entered into between the parties. The decision sought to be impugned in this case, namely one to give her a written warning, is one made by her employer as part of a disciplinary procedure applicable in the school. The applicant has a grievance in relation to that decision to issue a warning letter. The merits of that dispute are not in issue in this case at this stage. What is at issue is simply whether the applicant is confined to a purely private law remedy, rather than remedy by way of judicial review. Let us suppose that she had been dismissed, and not simply warned in writing. In such a situation, would the decision to dismiss her be amenable to judicial review or must she rely on her private law remedy? The answer must be that the dispute is not amenable to judicial review, as lacking that public law element which is essential to judicial review relief.

I draw an important distinction between the various public functions of the school which are involved in the provision of education to the public, and what I might describe as the private functions of that body, such as the hiring and firing of a teacher. One could think of other private functions of a school, such as entering into a contract for the supply of food, or school books, or the building of an extension to the school, which have a similar private law element to the hiring and firing of a teacher. Disputes arising in such private contracts are to be dealt with under private law remedies, such as breach of contract, unless there is some particular public law element to the dispute.

Simply because a school may be established, and its functions and obligations set forth, in an Act of the Oireachtas, is not of itself sufficient to bring every dispute emanating from the school's activities within the reach of judicial review. Simply because s.15(2) is couched as it is, does not mean that everything which the Board, or the Principal duly appointed, does in relation to the management of the school is amenable to judicial review. There would be a range of functions or obligations on a Board of Management, which to a greater or lesser degree come within the public law domain – for example one could immediately foresee that some of the requirements of s. 9 of the Act would be clearly within the public domain, as would aspects of s. 22 and s.23. The fact that under s. 24 of the Act, a Board of Management is empowered to appoint, suspend or dismiss a teacher *"in accordance with procedures agreed from time to time between the Minister, the patron, recognised school management organisations and any recognised trade union and staff association representing teachers or other staff as appropriate",* does not take any dispute arising out of the invoking of such a disciplinary procedure, out of the private law domain applicable to such disputes in other areas of life.

In my view what is stated by Hederman J. in **Murtagh v. Board of Governors of St. Emer's School [1991] 1 IR. 482,** and which I have already quoted above is apposite, albeit that the learned judge stated it in relation to a dispute by a pupil with the school. There is no reason why it should not apply with equal vigour to circumstances in which a teacher has a grievance with his/her employer. It is a situation distinguishable from cases such as Beirne v. Commissioner of An Garda Siochana, where a public law element was identified arising from the nature of the decision under review and function of An Garda Siochana in the community.

Using the Geoghegan criteria for establishing whether there is a sufficient public law element to the dispute, fails to do so in my view.

It is worth referring to a passage from the judgment of Finlay CJ in **O'Neill v. Beaumont Hospital [1990] ILRM 419** at p. 437, to which Counsel for the applicant referred. The learned Chief Justice states:

"The second appeal which is before this Court is an appeal against the subsequent order made by Murphy J. in the High Court in which he refused an application brought by way of judicial review seeking a prohibition of the holding by the board of the hospital of a meeting which they notified their intention to hold to Mr O'Neill, for the purpose of considering whether they would grant a certificate indicating that his probationary period had been unsatisfactory, or whether they would grant a certificate indicating that it had been satisfactory and confirming and continuing his appointment as a permanent appointment. The basis for an application for judicial review concerning the decision by an employer provided for specifically in a contract of employment with a person who is employed by that employer must be doubtful, but the respondents in the High Court and in this Court, although they filed a statement of opposition or defence raising that point, have not pursued it and have conceded that it is appropriate. I do not wish to decide that fact but merely to record that it has been conceded., but I would approach the exercise of the jurisdiction which arises to the court on this application in the same manner as I would if the proceedings had been instituted by a plenary summons and statement of claim……."

These cautionary words in relation to the applicability of judicial review to a decision of the nature of the present one under consideration are appropriate, and confirm my view that this case cannot be regarded as one appropriate to relief by way of judicial review.

In view of my decision in that regard, I will not proceed to consider the other submissions made on behalf of the applicant.

I therefore refuse the application for the orders sought.