[2017] IEHC 261

THE HIGH COURT

2017 No. 279 JR

BETWEEN

OLGA BENNETT AND MAIREAD MARRON

Applicants

– and –

THE MINISTER FOR JUSTICE AND EQUALITY

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 5th May, 2017.

I: Background

1. Back in the 1990s, the applicants were each appointed, pursuant to s.2 of the Censorship of Films (Amendment) Act 1992 and on open-ended contracts that included a provision for dismissal on one month's notice, to the office of Assistant Censor to the Official Censor of Films. (The office of Assistant Censor to the Official Censor of Films has since been transformed by s.71 of the Civil Law (Miscellaneous Provisions) Act 2008 into the office of Assistant Classifier to the Director of Film Classification at the Irish Film Classification Office (the 'IFCO')). From the date of their appointment to April, 2016, it appears that the applicants were treated as self-employed persons, though the applicants contend that when one has due regard to their material terms and conditions, they have never been, in truth, *bona fide* self-employed persons engaged in business on their own account; this, they maintain, was at all material times obvious to the Minister. In this last respect, the applicants point to the fact that they were notified by the Minister in January, 2016 that from sometime thereafter they would receive "*remuneration payments…under the PAYE system*". The first such deductions occurred on 12th April, 2016. The applicants maintain that the fact that they have since the said date been paid "*under the PAYE system*" puts beyond doubt the issue that they are employees and not self-employed persons.

2. By letter of 17th August, 2016, the Minister informed the applicants that the contracts of all Assistant Classifiers would cease as of 31st March, 2017. That letter indicated that this was part of a plan whereby the Minister would establish, via the Public Appointments Service, a panel of suitably qualified persons for the position of Assistant Classifier. The letter further indicated that when this scheme of action was first settled upon by the Minister in October, 2014, it was not proposed that either of the two applicants would be required to submit expressions of interest to be considered for the panel. But, the letter continued:

> *"[T]he legal position of Assistant Clarifiers has now been clarified. The Department has been advised that all Assistant Clarifiers should be treated in a similar manner in this matter, regardless of their type of contract[1]….Accordingly, I must advise you that should you wish to be considered for inclusion on the new panel, you will have to submit an expression of interest….I would like to take this opportunity to thank you for your many years of service….Your dedication and contribution…have been greatly valued."*
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> [1] Much was made at the hearing of the within application by counsel for the applicants of the averment of a civil servant at the Department of Justice in certain affidavit evidence, when amplifying upon the position adopted by the Minister, that the reason for the termination "*is not that they* [the applicants] *be treated the same as fixed-term contract holders, rather that all Assistant Classifiers be treated in the same manner*". Counsel protested that having read the text a number of times he still was at a loss to know what distinction it was sought to draw. It seems to the court that the civil servant in question is merely averring that the Minister has never taken the position that Assistant Classifiers on open-ended contracts should be treated the same as Assistant Classifiers on fixed-term contracts; rather her approach has been that all Assistant Classifiers should be on the same form of contract. In the result, the same end is achieved in that all Assistant Classifiers will now be on fixed-term contracts; however, that does not render nugatory or senseless the distinction that the relevant civil servant avers to in this regard.

3. Not surprisingly perhaps, the applicants did not feel greatly valued after reading the letter of 17th August and consulted with a solicitor. By letter of 30th November, 2016, their solicitor raised various concerns with the Minister as to the legality of how she was proceeding. This letter met with the response, albeit somewhat belatedly, on 3rd March, 2017, that, *inter alia*, (1) the Minister was not considered to have acted unlawfully, (2) the applicable contracts for service expressly stated themselves to be terminable on one month's notice, and (3) pursuant to the decision of the Employment Appeals Tribunal in *Keith v. Department of Justice and Equality* UD163/2014, an Assistant Classifier was an 'office holder' (which would have the effect that the employees did not enjoy the Protection of Employees (Fixed Term Work) Act 2003).

4. In the period between the two letters, the applicants participated in the process of applying to be appointed to to-be-established panel. Despite having 23 and 21 years' experience respectively, they were unsuccessful at interview and received a letter advising them of this on 13th March last. However, by what the applicants maintain is more than chance coincidence (though the Minister denies any wrongdoing), the two (of the three) Assistant Classifiers who, previous to being dismissed, had been on fixed-term contracts, were successful at interview. This had the result that all Assistant Classifiers were now on fixed-term contracts and no Assistant Classifiers were on open-ended contracts.

II: An Aside on Equity

5. There was some dispute at the hearing as to whether the assertions made by the applicants as to the integrity of the dismissal and interview process had the result that when they come to court, as they now do, seeking (equitable) injunctive relief, they fall to be treated as persons in breach of the equitable maxims that 'he who seeks equity must do equity' and 'he who comes to equity must come with clean hands'.

6. As to the former maxim ('he who seeks equity must do equity'), there is no breach of same at this time. As Professor Biehler notes in *Equity and the Law of Trusts in Ireland* (6th ed.), 19, "[T]*he maxim that 'he who seeks equity must do equity' is concerned with… likely future conduct*". The only relevance of that maxim in the context of the within application is the usual (though not invariable) requirement as to an undertaking in damages, if injunctive relief issues, and the applicants (not uncourageously) have each indicated their respective willingness to give such an undertaking.

7. As to the latter maxim, ('he who comes to equity must come with clean hands'), it has been clear since at least the time of the decision of the Supreme Court in *Curust Financial Services Ltd. v. Loewe-Lack-Werk Otto Loewe GmbH & Co KG* [1993] ILRM 723 that 'clean hands' need not be spotless hands; to borrow from the phraseology of the judgment of Finlay C.J. in Curust, at 731, "*this phrase must of necessity involve an element of turpitude*". The *Oxford Online Dictionary* defines "*turpitude*" as meaning "*depraved or wicked behaviour or character*" and there is nothing in the aspersions made by the applicants as regards the process whereby they were dismissed and have not been re-engaged that could be described as 'depraved or wicked behaviour', albeit that those aspersions could perhaps be criticised as resting on supposition, rather than demonstrable facts. But even allowing for the just-mentioned possible criticism, the court's impression of the argument made for the Minister in this regard is that it is, with every respect, somewhat over-stated. It is difficult to see how the applicants could bring the case they are seeking to bring without alleging that they have been the victims of what might colloquially be described as a 'stitch-up' and, in essence, they have done no more than that. If in making this case the applicants or their representatives have sometimes deployed somewhat (though not especially) emotive wording, that is unsurprising in a case infused, at least on the part of the applicants, with a certain natural and understandable emotion. Bold assertions and intemperate language do not invariably yield a breach of equitable principle. In the context of the within application, more would be required than presents before the court could properly conclude that the equitable principle that 'he who comes to equity must come with clean hands' could successfully be invoked.

8. It was suggested by counsel for the Minister in his submissions that any future working relationship that might exist between the applicants and, for example, the Director of IFCO might be damaged by virtue of the casting of the aspersions aforesaid, and that this was a factor of relevance by virtue of *Keenan v. Iarnród Éireann* [2010] IEHC 15. However, in this regard the court notes that: (1) there is no evidence before the court of any such difficulty arising, despite the fact that the applicants, pursuant to the undertaking given to the court by the Minister pending the determination of the within application, continue to work as classifiers; by contrast, in Keenan, as MacMenamin J. observes, at para. 12, "*The picture painted, even in the plaintiff's grounding affidavit, is one of very considerable difficulty in the relations between himself, the chairman and the chief executive*"; and (2) workplace disputes are hardly a rarity; some go to court and some are resolved via internal and/or non-judicial processes; in the course of those processes 'things get said' but once a dispute is aired and however it is resolved, people continuing to work together thereafter are required through the necessity of circumstance to interact politely and get on with their work-tasks, albeit that it may take time before workplace relationships are restored to a full semblance of normality; there is nothing in the evidence before the court to suggest that matters in the within case would depart from the usual process.

III: Key Difficulties Alleged to Present and Responses to Same

i. General.

9. Returning to the facts at hand, the court understands the applicants to contend that three key difficulties present as regards the manner in which they have been treated (there are variants on these three key points within the pleadings). Thus the applicants contend that:

> (1) if they are, as the Minister maintains, office-holders who hold office at the Minister's pleasure then she is required (post-*Garvey v. Ireland* [1981] IR 75) and has not (the applicants contend) yet proceeded (a) to furnish them with an identified reason for the termination of their office, (b) to permit them the opportunity to make representations in respect of such logic as is identified, and (c) to give those representations bona fide representation;
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> (To this, the Minister responds that: (1) under s.2(5) of the Act of 1992, she is entitled to terminate the applicants' appointments; (2) she has separately agreed to observe a one-month notice period and in fact gave seven months' notice; (3) unlike the position in Garvey, there was and is no allegation of misconduct on the part of either applicant; in fact they were invited to re-apply for their positions; (4) she has given a reason for the dismissal of all the Assistant Classifiers, the applicants included, and also the establishment of a present panel, namely that, if one returns to the letter of 17th August, 2016, that "*The Department has been advised that all Assistant Clarifiers should be treated in a similar manner in this matter, regardless of their type of contract*"; (5) the applicants have wrongly sought to contend that the Minister's rationale derives from some misconception of equality or misapplication of the Protection of Employees (Fixed-Term Work) Act 2003 (if applicable, and it is not accepted by the Minister to be applicable); (6) during the lengthy notice period, the applicants' solicitor made representations to the Minister and these were considered and responded to (albeit belatedly).
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> (2) insofar as any reason for the decision can be identified from the correspondence to date, the reason applicable is a purported requirement to treat persons on open-end contracts in the same way as persons on fixed-term contracts, a proposition for which the applicants contend there is no support in law; indeed they contend it is in breach of the law; and
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> (To this, the Minister responds that: (1) she has given a reason for the dismissal of all the Assistant Classifiers, the applicants included, and also the establishment of a present panel, namely that, if one returns to the letter of 17th August, 2016, that "*The Department has been advised that all Assistant Clarifiers should be treated in a similar manner in this matter, regardless of their type of contract*"; (2) the applicants have wrongly sought to contend that the Minister's rationale derives from some misconception of equality or mis-application of the Protection of Employees (Fixed-Term Work) Act 2003 (if applicable, and it is not accepted by the Minister to be applicable)).

(3) they enjoy a legitimate expectation from the manner in which they have previously been treated *vis-à-vis* other Assistant Classifiers (who would have been on fixed-term contracts) that the expiry of the fixed-term contracts of other Assistant Classifiers would not be used as a justification for terminating the Applicants' respective offices; indeed the Applicants claim that it was this legitimate expectation which led them in the past not to assert employment rights or to obtain assurances or revised terms in respect of the rights that they claim to possess.

(To this, the Minister responds that (1) the applicants cannot assert any legitimate expectation in the face of clear statutory provision and contractual agreements; (2) no evidence has been provided to support the notion that there was some form of representation made that would yield such a legitimate expectation (and the occurrence of any such representation is in any event denied); (3) the expiration of the fixed-term contracts of other Assistant Classifiers has nothing to do with how the applicants fell or fall to be treated in the circumstances presenting).

ii. An Aside on the Decision in Garvey.

10. Before proceeding further it is helpful to consider by way of aside an aspect of the decision of the Supreme Court in Garvey that came up for consideration in the within application. In Garvey, the eponymous Commissioner of An Garda Síochána was given two hours by the Government of the day to resign, absent which resignation he was to be treated as summarily removed from office. Commissioner Garvey refused to resign and brought an action claiming, *inter alia*, a declaration that, in exercising the power of removal aforesaid, the Government was bound to comply with the requirements of natural and constitutional justice. He was successful in the High Court and the Supreme Court, with the Supreme Court holding, *inter alia*, that the purported removal of Commissioner Garvey from his office was void as the Government had not informed the Commissioner of the reason for his dismissal and had failed to give him an opportunity to make representations in that behalf. A number of judgments issued from the majority judges; however, it is the judgment of Henchy J. that is most renowned. He observed, *inter alia*, as follows, at 101 et seq:

> *"Counsel for the Government….rests his case firmly on the submission that the Government's right under the statute to remove the plaintiff from office at any time is an executive discretion which was exercisable without giving reasons to the plaintiff and without giving him any opportunity of controverting the case for his dismissal or of having a chance of seeking to persuade the Government to change their decision. I find this submission unacceptable.*
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> *If, by maintaining an obscuring silence, a Government could render their act of dismissal impenetrable as to its reasons and unreviewable as to its method, an office-holder such as the plaintiff could have his livelihood snatched from him, his chosen career snuffed out, his pension prospects dashed and his reputation irretrievably tarnished without any hope of redress, no matter how unjustified or unfair his dismissal might be. I doubt if it would ever be contended that the statutory power of removal from office could be used validly to dismiss a person for an unconstitutional reason (for example, because of his race, creed or colour); yet, if such were to happen and if suddenness and silence were to be allowed to curtain off the dismissal from judicial scrutiny, the dismissed person, far from getting the constitutionally guaranteed protection from unjust attack, would be abandoned to the consequences of an unjust, unconstitutional and ruinous decision. Neither the Government, as the executive arm of the State, nor the Courts, as the judicial arm, can ignore the solemn guarantee in Article 40, s. 3, sub-s. 2, of the Constitution that the State shall by its law protect, as best it may, every citizen from unjust attack. That guarantee would be abandoned and abrogated if, in every case of dismissal from an office such as this, the possibility of error, unfairness and injustice were to be compounded by silence and then rendered immune from judicial inquiry by the concept of executive immunity. An office such as this, which provides its holder with his livelihood, and in which he may reasonably hope to qualify for honourable retirement, is such an integral part of what goes to make up his dignity and freedom that his removal from it should have attached to it at least the justification of a stated and examinable reason.*
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> *Having regard to the relevant constitutional provisions, I conceive the law to be that when a person holds a whole-time pensionable office (whether under statute, statutory instrument, charter, deed of trust, or otherwise) from which he may be removed at any time, the power of removal may not be exercised without first according him natural justice by giving him the reason for the proposed dismissal and by providing him with an adequate opportunity of dealing with the reason and of making a reply to it. Furthermore, if the reason given rests on an adverse findings of fact, the factual situation relied on must be disclosed to him so that he may have an opportunity of showing that it is untrue. Such requirements of natural justice are the irreducible minimum necessary to shield the office-holder against the risk of unjustifiably losing his livelihood and his pension expectations. They will not, of course, insure him against that risk, but at least they will not leave him totally unprotected against it. In the last analysis, the holder's office being such a crucial part of his life, basic fairness requires that he should not be sundered from it without first being given a meaningful opportunity of being heard, if only ad misericordiam….*
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> *[W]hile natural justice must be observed to the extent of giving a reason for the proposed dismissal, that reason need not always be a specific or particularised reason. It will usually be sufficient if it indicates in general terms the ground on which the Government propose to exercise their discretion (e.g. because of ill-health, to improve the efficiency of the Force, because the Commissioner has lost the confidence of the Government); but if the given reason is specific misconduct, the Commissioner should be accorded an opportunity of dealing adequately with the complaint.*
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> *It may be objected that a general reason will be of little or no use. I do not agree. At least it enables the Commissioner to know the area of dissatisfaction, so that he can address representations to the Government accordingly. Furthermore — and this may be crucial to his reputation — it will help him to identify the ground on which he is not being deprived of his office, and it will debar any suggestion in the future that he was cast out of office for a reason other than the declared one. His right under natural justice to address representations to the Government on the basis of the declared reason for his dismissal, far from being an empty formality, is of vital importance, for it will enable the members of the Government, after the rule of audi alteram partem has been observed, to consider fairly whether the inescapably punitive action of removal (with its attendant consequences in terms of salary, pension and reputation) should be proceeded with, or whether it would be more appropriate to deal with the situation by allowing the Commissioner to retire voluntarily, or by postponing a decision on his removal, or by taking some other action less drastic than removal.*" [Emphasis added].

11. Unlike *Garvey*, (i) the Minister has advised the applicants of the basis for her (impugned) decision (being that she wants all Assistant Classifiers to be treated in a similar manner); (ii) no allegation of misconduct has ever been made by the Minister in respect of the applicants; and (iii) she has given reason for (a) the dismissal of all the Assistant Classifiers, the applicants included, and also (b) the establishment of a present panel, namely that all Assistant Clarifiers should be treated in a similar manner regardless of their type of contract. So the requirements of natural and constitutional justice and fairness of procedures, the Minister contends, have been met.

IV: Reliefs Sought by Way of Judicial Review

12. The applicants have now commenced the within judicial review proceedings in which they seek the following reliefs: (1) a declaration that they hold the office of Assistant Classifier pursuant to s.2 of the Act of 1992; (2) insofar as such office is held at the pleasure of the Minister, a declaration that that office may only be terminated for an identified reason; (3) a declaration that the reason for a proposed termination must be communicated to the applicants; (4) a declaration that the applicants must be permitted to make representations in respect of any such reason for termination; (5) a declaration that the Minister must consider any such representations before proceeding to terminate the applicants respective offices as Assistant Classifiers; (6) a declaration that the reason for termination cannot be arbitrary or irrational or perverse; (7) a declaration that the reason for termination cannot be based upon a premise the truth of which the Minister denies; (8) a declaration that insofar as the Minister has given any reason for the proposed termination of the applicants' offices with effect from 31st March, 2017, that the reason given (that the applicants must be treated the same as persons who hold office pursuant to fixed-term contracts is arbitrary, irrational and perverse); (9) a declaration that the process adopted by the Minister in purporting to terminate the applicants' offices is unlawful in circumstances where, in the

absence of a rational or indelible reason, the applicants have been deprived of the opportunity of any or any proper process in the manner afore-described; (10) an order of *certiorari* quashing the decision of by the Minister to terminate the applicants' offices on foot of the reason referred to at (8); (11) a declaration that the Minister cannot rely upon the principle of equal treatment set out in the Protection of Employees (Fixed Term Work) Act 2003, to justify the termination of the applicants' offices; (12) a declaration that the provisions of the Act of 1992 do not require the respondent to terminate the applicants' offices contemporaneously with terminating the office of any fixed-term contract-holders; (13) a declaration that the applicants have a legitimate expectation that their office will not be terminated with reference to the fact that the office of fixed-term office holders is being terminated; (14) an injunction restraining the Minister from terminating the applicants' offices pending the determination of the within proceedings; (15) without prejudice to the foregoing, a declaration that the terms and conditions applicable to the applicants' offices within the meaning of s.2(5) of the Act of 1992 are no longer the terms and conditions set out in the contract under which the applicants were originally appointed but changed as of 12th April, 2016, at the latest, from the position, in the case of each applicant, of independent contractor to that of employee; and (16) certain ancillary reliefs.

V: Injunctive Relief Now Sought

13. By notice of motion of 28th March last, the applicants seek an interlocutory injunction, pending the determination of the judicial review application, restraining the Minister from: (1) terminating their respective offices as Assistant Classifiers appointed pursuant to s.2 of the Act of 1992; (2) depriving the applicants of the emoluments paid to them in connection with the performance of their official functions; (3) appointing any other person to the office of Assistant Classifier so as to affect materially the amount of work that the applicants are required to perform in connection with their respective offices (which order, for the avoidance of doubt, is not intended to prevent the Minister from appointing to a new panel of Assistant Classifiers the two persons who currently hold fixed-term contracts of service); (4) acting in a manner calculated or designed to reduce the amount of work that the applicants are required to perform in connection with their respective offices unless any such changes arise on foot of the normal operations of the IFCO. Certain ancillary reliefs are also sought.

VI: Standard To Be Applied to Within Application

14. A prohibitory injunction merely prohibits a party from acting. A mandatory injunction commands a party to perform one or more acts. Counsel for the Minister correctly contends that the first of the above-identified interlocutory injunctive reliefs sought is prohibitory, with the rest being "*effectively mandatory in nature*", i.e. they are expressed in a negative form but, though they purport to restrain a wrong, they would, à la the relief famously granted in *Lane v. Newdigate* (1804) 32 ER 818, compel the Minister to do certain affirmative acts. The courts have historically been slow to grant interlocutory mandatory injunctions because, to invoke the wording of Kindersley VC in *Gale v. Abbott* (1862) 10 WR 748, a "*court would not [lightly] compel a man to do so serious a thing as to undo what he had done, except at a hearing*". Whether the distinction traditionally made between mandatory and prohibitory injunctions has always been a helpful analytical tool is perhaps open to question; indeed, it might even be contended by some that it would be preferable to abandon the traditional mandatory-prohibitory dichotomy in favour of two simple principles, viz. that great caution is always to be exercised in granting any interlocutory injunction, and that such an injunction will only ever be granted after a finding that irreparable injury will likely otherwise be done to an applicant. But the court must treat with case-law as it finds it, not as some might wish it to be. In the within application, as it happens, the existing case-law appears to have occasioned some confusion, with counsel for both sides respectively relying on the same decision – that of the Supreme Court in *Okunade v. Minister for Justice* [2012] 3 I.R. 152 – to justify the application by this Court of very different standards by which to decide whether or not to grant the interlocutory injunctive relief now sought. Counsel for the applicant contends that, as the within proceedings are judicial review proceedings, *Okunade* is authority for the proposition that the applicant must merely vault the hurdle of showing an arguable case for the court to move on to consider whether the various other criteria for interlocutory injunctive relief present. Counsel for the Minister contends that because the mainstay of the injunctive relief now sought is mandatory, the historically more stringent criteria applicable to the granting of such injunctions, as referred to in *Okunade*, ought to apply, and that it is necessary for the applicants to show a *Maha Lingham*-style strong case that they are likely to succeed at the hearing of the within judicial review application.[1]

> [1] In *Maha Lingham v. HSE* [2005] IESC 89, Fennelly J., in giving an *ex tempore* judgment for the Supreme Court in a challenge to a dismissal from employment that was purported to be done on the grounds that the employment was not authorised but which the applicant contended was racially motivated. In the course of giving judgment, Fennelly J. observed, *inter alia*, that:
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> > *"[I]n substance what the plaintiff/appellant is seeking is a mandatory interlocutory injunction and it is well established that the ordinary test of a fair case to be tried is not sufficient to meet the first leg of the test for the grant of an interlocutory injunction where the injunction sought is in effect mandatory. In such a case it is necessary for the applicant to show at least that he has a strong case that he is likely to succeed at the hearing of the action. So it is not sufficient for him simply to show a prima facie case, and in particular the courts have been slow to grant interlocutory injunctions to enforce contracts of employment."*

15. In truth, the more one looks at matters, the more challenging the position of the applicants becomes for them, and for two principal reasons. First, if one accepts the applicants' contention that they are employees then that would seem to bring them within the ambit of *Maha Lingham* and thus require of them, to borrow from the wording of Fennelly J. in that case, that they show a "*strong case*" that they are "*likely to succeed at the hearing of the action*". Second, if one accepts the applicants' proposition that the within proceedings ought to be treated as 'plain' judicial review proceedings, this would seem to involve an acceptance on their part (though this could in any event be contended to arise, given the form of the within proceedings) that they recognise the position of Assistant Classifier to be that of an office-holder amenable to judicial review, a proposition that would seem to run contrary to their contention that they are employees. Regrettably for the applicants, and the court has considerable sympathy for them and the unenviable position in which they find themselves, it seems to it that, as a matter of logic, the same outcome arises in the within application regardless of which approach one takes to its resolution. Thus, if one applies the *Maha Lingham* test, the court respectfully does not consider that, having regard to all of the above-described facts, the applicants have demonstrated to the court a "*strong case*" that they are "*likely to succeed*" at the hearing of their judicial review application. Likewise, if the court applies those criteria identified in *Okunade* as applicable in the context of judicial review proceedings in which interlocutory injunctive relief is sought, while the applicants may just have established an arguable case, it seems to the court that the greater risk of injustice lies in granting the injunctive relief sought and requiring the Minister, following but an interlocutory application and hearing, to undo the *prima facie* valid actions that she has undertaken vis-à-vis the applicants and which it is and will be sought to impugn in the within proceedings. Thus, either by way of *Maha Lingham* or *Okunade*, the court arrives at the conclusion that its discretion ought properly to be exercised in the within application by refusing to grant to the applicants the interlocutory injunctive relief now sought. The court's conclusion in this regard is buttressed by the general hesitancy traditionally manifested by the courts as regards giving interlocutory mandatory injunctions, and (if and to the extent that what is now in issue is an employment dispute) that hesitancy, touched upon by Fennelly J. in the above-quoted extract from *Maha Lingham*, which the courts typically manifest at the granting of interlocutory injunctions in same.

VII: Delay and Acquiescence?
16. Having just reached the conclusion that it ought for the reasons aforesaid to decline to grant the interlocutory injunctive relief sought by way of the within application, it is not strictly necessary for the court to proceed to consider the issues of delay and acquiescence. However, for the sake of completeness it will touch upon them.

17. The Minister contends that rather than instituting proceedings sometime in or around August of last year, the applicants chose instead to go through the process of applying for admission to the panel and have only belatedly returned to their original complaint, notwithstanding the expenditure by the Department of time and money in advertising and establishing the said panel. By contrast, the applicants maintain that: it was only on receipt of the letter of 3rd March, 2017, that, to use a colloquialism, 'the penny dropped' and it became clear to them that the Minister has consistently, and in their eyes, mistakenly, viewed them from the outset of the events that have led to the within proceedings as office-holders and not employees; and the within proceedings were then commenced, and the within application brought, in all haste.

18. It seems to the court that in the facts presenting there is sufficient delay and acquiescence (*i.e.* an assent or 'lying by' in relation to the acts of the Minister, as a result of which assent or lying by and consequent acts it is unjust in all the circumstances to grant interlocutory injunctive relief) *as might* have justified the court in refusing the within application even had it not been minded to do so for the reasons identified previously above. As against that, the court would doubtless also have weighed in its considerations in this regard the fact that the applicants appear to the court to be among that increasing number of so-called 'ordinary' people who cannot readily afford to come to court; as a result it was perhaps inevitable that they elected to participate in the recruitment process and only then turned to court proceedings (albeit that they could perhaps have commenced proceedings and then sought to 'park' them until the outcome of the interview process was known). However, given the conclusions reached by the court by reference to *Maha Lingham* and *Okunade* previously above, it does not appear to the court that it is necessary to arrive at a considered view on such delay and acquiescence as has been alleged to present in the applicants' actions to date.

VIII: Conclusion

19. The court has considerable sympathy for the applicants and the unenviable position in which they find themselves. However, for the reasons identified above, the court must respectfully decline to grant the interlocutory injunctive relief that the applicants now seek.