UNAPPROVED
THE COURT OF APPEAL

Neutral Citation: IECA [2025] 4
High Court Record No. 2021/37/MCA
2021/38/MCA
Court of Appeal Record Nos: 2022/268 and 2022/269

Whelan J.
Faherty J.
Binchy J.

BETWEEN/

DEIRDRE MORGAN

APPELLANT

- AND –

THE LABOUR COURT

RESPONDENT

-AND-

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

NOTICE PARTY

Judgment of Ms. Justice Faherty delivered on the 14th day of January 2025

1. This judgment deals with two appeals by Ms. Morgan (hereinafter "the appellant") from the judgment dated 2 June 2022 ([2022] IEHC 362) and Orders (24 October 2022) of

the High Court (Ferriter J. ("the Judge")) which dismissed two statutory appeals (2021/37/MCA and 2021/38/MCA) brought by the appellant on a point of law from two determinations of the Labour Court dated 9 February 2021.

2. The within appeals are themselves part of a suite of six appeals heard by the Court. All six appeals concern, in one way or another, the removal of the appellant from her erstwhile employment as a teacher.

3. Of the four other appeals which are not the subject of the within judgment, two are in respect of the judgments ([2022] IEHC 362 and [2022] IEHC 360) and Orders of the High Court (Ferriter J.) in respect of two applications for leave for judicial review (2021/103 JR and 2020/787JR) brought by the appellant against the Minister for Education and Skills ("the Minister") and Kildare and Wicklow Education and Training Board (hereinafter "the Board"), whilst the remaining appeals arise from the judgment ([2022 IEHC 361) and two *Isaac Wunder* Orders of Ferriter J. on foot of motions which were issued, respectively, by the Minister in the 2020/787 JR proceedings and the Board in another statutory appeal brought by the appellant which bears the record no. 2020/123/MCA.

4. The appellant's appeals against the refusal to grant her leave for judicial review are the subject a separate judgment of this Court (Binchy J. writing for the Court) delivered alongside this judgment. Her two appeals against the granting of the two *Isaac Wunder* Orders are dealt with in the judgment of Whelan J. (writing for the Court), which is also being delivered in conjunction with the within judgment.

5. The genesis of the appeals the subject of this judgment is the referral by the appellant on 15 April 2019 to the Workplace Relations Commission ("WRC") of two complaints against the Board under, respectively, s.77 of the 1998 Act and s.81E of the Pensions Act 1990 (as amended) ("the 1990 Act"). How these referrals came to pass is explained below.

Background

6. The appellant was employed from September 2000 to June 2015 as a teacher by Wicklow VEC which on 1 July 2013, pursuant to the Education and Training Boards Act 2013, became part of the Board. In the judgment, there will, variously, be reference to "Wicklow VEC", "the VEC" or "the Board", as appropriate.

7. On 11 March 2009, the appellant referred a complaint against Wicklow VEC to the Equality Tribunal alleging discrimination on the ground of gender, contrary to s.6(2)(a) of the Employment Equality Act 1998 (as amended) ("the 1998 Act") in relation to access to employment, conditions of employment, promotion/regrading and training. She also alleged harassment on grounds of gender contrary to s.14A of the 1998 Act.

8. On 20 August 2010, the appellant made a complaint to Wicklow VEC alleging that a male student had sexually harassed her. There was no immediate response from the appellant to the VEC's request for further details of this complaint. On 4 October 2010, the appellant was placed on protective leave, having been advised on 20 September 2010 by the VEC of this proposed course of action. On 8 October 2010, after the appellant provided further details of her complaint, the VEC set up an external investigation into the complaint which was conducted between 15 November 2010 and 29 November 2010 by junior counsel (Mr. O'Bradaigh) and during which the parties to the complaint were interviewed. In the course of her interview on 15 November 2010, the appellant withdrew her complaint against the male student.

9. On 31 December 2010, the appellant submitted a complaint to the Rights Commissioner Service in the Labour Relations Commission pursuant to the Protection for Persons Reporting Child Abuse Act 1998.

10. Turning again to the external investigation instituted by the VEC, the report of the external investigator (Mr. O'Bradaigh) issued on 10 December 2010. He found that the

allegations made by the appellant against the student were without foundation and that same were vexatious and malicious and on the balance of probability made to victimise the student concerned.

11. On foot of Mr. O'Bradaigh's findings, Wicklow VEC initiated disciplinary proceedings against the appellant. The appellant was informed of this in January 2011.

12. The appellant's response to the institution of disciplinary proceedings was to launch a complaint with a Rights Commissioner in the Labour Relations Commission on 22 March 2011 under the Safety, Health and Welfare at Work Act 2005 ("the 2005 Act") alleging that Wicklow VEC had penalised her for making the aforementioned sexual harassment complaint to the VEC.

13. In a decision of 22 September 2011, the Rights Commissioner found that there was no action on the part of the VEC that could be said to constitute penalisation. The appellant duly appealed to the Labour Court against that decision. The appeal was however adjourned by the Labour Court on 3 January 2012 on the basis that a similar complaint alleging victimisation had been made by the appellant to the Equality Tribunal on 6 September 2011 and which was due to be heard on 25 January 2012, a matter to which I will return shortly.

14. Fast forwarding for the moment to 2020, the appellant's appeal of the Rights Commissioner's decision of 22 September 2011 was ultimately heard by the Labour Court on 2 March 2020 (after the appellant succeeded in re-entering the appeal despite objection from the Board). In a letter sent to the appellant on 15 August 2019 prior to the oral hearing of the appeal, the Labour Court advised the appellant that the appeal would be heard using the parties' original submissions only. On 1 April 2020, the Labour Court dismissed the appellant's appeal of the Rights Commissioner's decision (DET No. HSD201). As it noted in its determination, the appellant did not abide the Court's direction

regarding the parameters of the appeal and at the appeal hearing sought to include new materials and make complaint against an individual not in attendance at the hearing. As its determination records, the Labour Court, however, clarified that it would take no account of the allegations made by the appellant against the third party or of documents naming the third party and that *"any such documents would be destroyed by the Court"*. The Labour Court went on to find that the appellant had failed to establish a set of facts from which it could be concluded that she had been penalised within the meaning of the 2005 Act.

15. The appellant then appealed the Labour Court determination to the High Court on a point of law (record no. 2020/123/MCA) pursuant to s.46 of the Workplace Relations Act 2015 ("the 2015 Act"). In an *ex tempore* ruling given on 22 March 2022, the High Court (Ferriter J.) dismissed the appellant's appeal on a point of law. The appellant's application for leave to appeal was refused by the Supreme Court on 20 April 2023 ([2023] IESCDET 48).

16. I should add, at this juncture, that at the hearing of the within appeals, the appellant took issue with the Judge's treatment of statutory appeal 2020/123/MCA and urged this Court to remit the matter back to the High Court for the purposes of the High Court re-opening the matter. She submitted that the High Court had a residual jurisdiction to do so and, in this regard, she cited the decision of the Court of Appeal of England and Wales in *Taylor v. Lawrence* [2002] EWCA Civ 90.

17. The appellant's urging is misconceived. In light of s. 46 of the 2015 Act which provides (when read in conjunction with Schedule 5 of the 2015 Act) that in respect of a statutory appeal on a point of law in relating to s.27 of the 2005 Act the decision of the High Court is *"final and conclusive"*, this Court is entirely without jurisdiction to entertain any submissions or argument advanced by the appellant in respect of statutory appeal 2020/123/MCA.

18. Turning again to the VEC's disciplinary proceedings, in September 2011, a subcommittee of the VEC was established in accordance with s.4.2 of circular CL59/2009 which is a circular of the Department of Education and Skills which governs disciplinary proceedings against VEC employees. The appellant was represented by her solicitor in this process and had the support of her union representative. The subcommittee investigated a series of disciplinary complaints, including that the appellant had made unfounded, malicious, and vexatious allegations of sexual harassment against a student in her art class. A number of oral hearings took place, and submissions were made on the appellant's behalf. During one such hearing on 5 September 2012, the appellant again withdrew her allegation of sexual harassment against the male student.

19. As already referred to above, on 6 September 2011, the appellant made a complaint of victimisation to the Equality Tribunal against the principal of her school alleging that the principal had taken disciplinary action against her arising out of her allegation that she had been sexually harassed by a student, and that the report of Mr. O'Bradaigh constituted harassment.

20. Ultimately, the appellant's complaints to the Equality Tribunal were addressed in a written decision of the Equality Officer (Mr. Gary Doherty) which issued on 30 March 2012. The Equality Officer dismissed various of the appellant's complaints including that Mr. O'Bradaigh's investigation and conclusion constituted victimisation, noting that the investigation had been set up on foot of a complaint brought by the appellant. The Equality Officer was also satisfied that Mr. O'Bradaigh was independent in his investigation.

21. The Equality Officer, however, ruled in favour of the appellant in relation to one aspect of her complaints, namely that Wicklow VEC had been guilty of victimisation of the appellant for making a claim to the Equality Tribunal. As the Equality Officer put it: *"I consider that the inclusion of a complaint to the Tribunal as a reason for taking*

disciplinary action against [the appellant] is adverse treatment arising out of her making a complaint to the Tribunal. It was, and remains, victimisation within the meaning of the Acts." The Equality Officer ordered Wicklow VEC to pay the appellant €500 in respect of this victimisation.

22. It is common case that Wicklow VEC/the Board did not pay the appellant the €500 compensation until some considerable time later. Indeed, it remained unpaid as of the date of the hearing of the applications for *Isaac Wunder* type orders in March/April 2022. On 29 April 2022 (the final day of hearing), the Board confirmed to the High Court that it would be paid within 14 days. As recorded by the Judge at para. 25 of the judgment he gave in respect of the applications for *Isaac Wunder* type orders ([2022 IEHC 361), the Board subsequently confirmed that the sum had been paid to the appellant. At the hearing before this Court the appellant contended that she had not received the compensation ordered by the Equality Officer. However, the Court is satisfied that payment was made by the Board, as Whelan J. explains in her judgment in respect of the appellant's appeals against High Court judgment [2022] IEHC 361.

23. Returning now to the disciplinary process initiated by Wicklow VEC, on 27 March 2013, the VEC issued its final decision of foot of the disciplinary proceedings initiated against the appellant upholding all five of the original complaints brought against the appellant and making determinations regarding sanction. The appellant duly appealed the determination of the VEC to the Department of Education and Skills Disciplinary Panel in accordance with circular CL 59/2009. Her appeal was dismissed. She was legally represented at this appeal.

24. On 25 July 2013, the Board formally notified the appellant of her suspension from duties following the disciplinary findings. In February 2014, an inquiry was established by the Minister under s.105 of the Vocational Education Act 1930 ("the 1930 Act"). Mr.

Declan Cahalane was appointed as Inquiry Officer. Mr. Cahalane's terms of reference included authorisation by the Minister *"to carry out an inquiry into the fitness/unfitness of [the appellant] to hold office under [the Board] …"*. The appellant was legally represented during this inquiry.

25. Mr. Cahalane issued his Final Report on 8 May 2015. The Report found in relation to the five issues which had led Wicklow VEC to have concerns for the appellant's fitness for office and which had led the VEC to suspend the appellant from the performance her duties in accordance with s.7 of the Vocational Education (Amendment) Act 1944 that:

- The appellant had made an allegation and complaint of sexual harassment against a student in her class.
- She subsequently withdrew that allegation and complaint.
- The evidence available to the Inquiry Officer was not sufficient to draw a definite conclusion as to whether or not the complaint and allegation had a foundation in fact.
- Through the appellant's actions in making the allegation and complaint she had exposed the VEC to potential legal action and loss.
- The appellant had accessed material from the Facebook account of students which material included the publication of material relating to the student against whom she had made an allegation and complaint of sexual harassment.
- The access was for the purpose of supporting her own position.
- The access was inappropriate.
- The appellant wrote the statements complained of in a Notice of Complaint Form to the Rights Commissioner Service under the form "*Protections for Persons Reporting Child Abuse Acts, 1998"*.
- The statements contained in the Notice of Complaints Form were untrue.

- The appellant was aware of her responsibilities under the Child Protection Guidelines in place at the relevant time in respect of her duty to report the alleged child abuse observed in class and an incident of alleged child abuse to the VEC and/or her school principal.

The Inquiry Officer found that the appellant's actions in making and subsequently withdrawing a complaint and allegation of sexual harassment against a named student and using materials from students' Facebook accounts to support her case *"demonstrates a lack of judgement and integrity in whole or part to several statements and objectives set out in the ["Codes of Professional Conduct for Teachers"]".*

26. Following consideration of the Final Report, the Minister made a decision on 15 June 2015 to remove the appellant from office. The *"Order for Removal from Office"* was signed by the Minister and dated 15 June 2015. The Minister's decision was communicated to the appellant by letter dated 23 June 2015. The appellant was removed from the Board's payroll on 30 June 2015.

27. Notwithstanding that she was legally represented throughout all stages of the process which culminated in her removal from office in June 2015, no challenge was made by the appellant at the time of her removal whether by judicial review, plenary proceedings for wrongful dismissal or an application to the Employment Appeals Tribunal ("EAT") under the Unfair Dismissal Act 1977 (the EAT being the relevant statutory forum at that time).

28. It should be noted, however, at this juncture, that the appellant disputes that she was removed from office or otherwise dismissed in June 2015, and she alleges, variously, that her employment terminated in February 2019 (in the course of a hearing before the Workplace Relations Commission ("WRC") and/or that she was subjected to forced retirement in November 2018.

29. On 9 June 2016, approximately a year after her dismissal from office by the Minister, the appellant made separate complaints under the 1998 Act to the Workplace Relations Commission ("WRC") (the successor to the Labour Relations Commission) alleging that the Board and the Minister had discriminated against her on grounds of disability. On 14 June 2017, those complaints were rejected by an Adjudication Officer ("AO") whose decision (ADJ-00005143) was subsequently upheld by the Labour Court on 17 January 2018 (DET EDA188) on the basis that the complaints were not made within the required six-month time limit under the 1998 Act and that there were no reasonable grounds to extend time. The appellant did not appeal the Labour Court determination to the High Court and indeed, in her oral submissions to this Court she agreed that the claim was statute-barred. The Labour Court determination is notable in that it records that the appellant acknowledged that she was removed from office by decision of the Minister dated 15 June 2015.

30. The appellant's first complaint of discrimination/victimisation in respect of her pension was launched in the WRC against the Minister on 16 November 2017 alleging discrimination pursuant to s.77 of the 1998 Act and discrimination/victimisation pursuant to the 1990 Act. However, the appellant walked out of the hearing in respect of this complaint before an AO on 7 November 2018. The decision of the AO was delivered on 11 December 2018 ruling against the appellant. The appellant appealed this decision to the Labour Court on 21 June 2019. The appeal had not been heard as of the date of the hearings before the High Court in March 2022.

31. On the same date (7 November 2018) as she walked out of the hearing regarding her pension complaint, the appellant filed a further complaint with the WRC against the Board under the 1998 Act together with a complaint under the 1990 Act. In her decision (ADJ-00017934) of 19 March 2019, the AO determined that the 1998 Act complaint was statute-

barred. In respect of the appellant's 1990 Act complaint, the AO determined that the appellant had not been subject to discriminatory treatment. The appellant appealed the AO's decision to the Labour Court. This appeal had not been determined by the Labour Court at the time of the High Court hearings and the appeal was struck out by the High Court on 28 June 2022.

32. I should explain at this juncture that on foot of the motions brought by the Minister and the Board in the 2020/787 JR proceedings and statutory appeal 2020/123/MCA, respectively, in June 2022 the High Court made orders striking out, *inter alia,* the appellant's pending applications and appeals before the WRC and the Labour Court, and restricting her from instituting further proceedings in any court or forum in relation to any matter touching upon her suspension and ultimate dismissal from office without the leave of the President of the High Court. The appellant appealed against these orders and her appeals are the subject of the judgment of Whelan J. also being handed down today.

33. Turning again to the appellant's ongoing litigation campaign, the next complaints filed against the Board were those of the 15 April 2019 which are the subject of the High Court judgment under appeal here and to which I will shortly return. Before doing so, I will briefly refer to subsequent complaints filed by the appellant against the Board.

34. On 8 August 2019, the appellant made complaint against the Board to the WRC alleging that she had been unfairly dismissed under the Unfair Dismissal Act 1977 as well as making a complaint purportedly under s. 28 of the 2005 Act. A determination had not been made by the WRC by the time of the High Court hearing of the matters that comprise the within appeals. Again, these complaints were struck out by the High Court on 28 June 2022.

35. On 25 February 2020, the appellant lodged further complaints under the 1998 Act and the 1990 Act against the Board. These complaints too are captured by the orders made by the High Court on 28 June 2022.

36. On 29 June 2020, the appellant made yet another complaint against the Board to the WRC alleging discrimination under the 1998 Act. This complaint ultimately met the same fate as the others, being struck out by order of the High Court on 26 June 2022. The 29 June complaint was followed by a complaint on 3 August 2021 alleging penalisation under the 2005 Act. On 3 March 2022 two further complaints were filed against the Board under the 1998 Act and the 1990 Act. All of these too were ultimately struck out by the High Court on 28 June 2022.

37. In many of the instances referred to above, the appellant's filing of complaints to the WRC against the Board was in tandem with similar complaints lodged by her against the Minister. A more detailed account of the appellant's voluminous litigation involving both the Board and the Minister is found in the judgment of Whelan J. in respect of the appellant's appeals against the granting of *Isaac Wunder* type relief to the Board and the Minister. The serial nature of the appellant's complaints against the Board and the Minister was the trigger for the applications brought by the Board and the Minister for *Isaac Wunder* orders to be made against the appellant.

38. It is also noteworthy that in addition to the three statutory appeals (2020/123/MCA, 2021/37/MCA and 2021/38/MCA) to which reference has already been made, on 29 June 2021 the appellant issued High Court Summary Summons proceedings bearing record no. 2021/404S against the Board wherein she claimed *"unpaid salary from 1 July 2015 to 31 October 2018"* in the amount of €210, 255. Some three months earlier, on 4 February 2021, she had issued Circuit Court proceedings (Eastern Circuit, Co. Kildare) bearing record no. 2021/00033 against the Board and the Minister, seeking redress under s.77 of

the 1998 Act in which she sought salary since 1 July 2015 and annulment of *"the unwanted resignation imposed on me in 2019"*, in addition to alleging gender discrimination. The Summary Summons and Circuit Court proceedings were struck out by order of the High Court of 28 June 2022.

The genesis of the within appeals

39. As already referred to, the genesis of the within appeals is the referral by the appellant on 15 April 2019 of two complaints against the Board to the WRC. The first complaint contended that the appellant had been discriminated against contrary to s.77 of the 1998 Act. Section 77 of the 1998 Act addresses, *inter alia*, claims by persons who claim to have been discriminated against or subjected to victimisation in the course of their employment or who claim to have been dismissed in circumstances amounting to discrimination or victimisation. The appellant claimed that she had been discriminated against by her employer victimising her by reason of gender and disability. She alleged that the most recent date of discrimination was 15 April 2019. The specifics of her complaint were outlined as follows:

> *"My complaint here of 15th April 2019 follows on almost 6 months in time from an earlier complaint I made against Kildare and Wicklow ETB dated 6th November 2018 under the Employment Equality Acts and the Pensions Act…*
>
> *In the hearing of that earlier complaint which took place in February, the KWETB asserted that my complaint was out of time because my employment had been terminated in 2015. This worried me and I wrote to the KWETB seeking clarification on this assertion. As it has not responded and as this matter has already been discussed at the Labour Court in 2018 it can only mean that their assertion that my contract as (sic) terminated was incorrect and was just a defence tactic as opposed to being the legal position.*

Otherwise, if it is a retrospective termination of my contract then it has been done in reaction to my complaint to the WRC dated 6th November and it is therefore victimisation. (The [Employment Equality Act] even protects terminated workers at section 2). It also protects prospective employees and those removed from office and in contract."

40. The second complaint brought by the appellant on 15 April 2019 was that she had been discriminated against contrary to s.81E of the 1990 Act. Section 81E addresses claims by persons who claim not to be receiving, or not to have received, equal pension treatment in accordance with the provisions of the 1990 Act or to have been penalised in circumstances amounting to victimisation. Specifically, with regard to the 1990 Act complaint, the appellant claimed:

"...Since July/Aug 2017 I am unable to access the injury allowance/gratuity of my pension or to get any information on how to access it. I seek this in order to get treatment [for] severe stress at the Equality Tribunal in 2012 when my school principal who was a barrister tested my evidence that I was feeling victimised by him and the VEC.

In recent years I have been getting worse not better. I have been getting lost and having accidents. I am caring for a drug/alcohol dependant [adult] on my own at present for work and I find I am not able to deal with certain aggressive sexual acts. I am not coping generally. I have also been very upset in recent days because the [Teaching Council] sent me a survey seeking my input [into] its social media guidelines. Adult Male X and others had abused a female child at the school where I taught last and they uploaded a video of the female child being abused to Facebook. The Sexual Harassment by Adult Male X was referred by Co Wicklow

VEC to the Equality Tribunal in December 2009 in response to a complaint I made against it in March 2009.

I would like the injury allowance to get treatment for my stress. I believe that not giving me access to the injury allowance or any information on it is the opposite of positive or appropriate measures as per section 16 of the Employment Equality Act and Article 5 of the Council Directive 2000/78/EC Equal Treatment in Employment where it states "advance in employment". I was 46 when I first made my request I will be 48 in a few weeks time. All things being normal I should be healthy and be in my prime as a teacher. Year after year my students result were among the best if not "the" best in the school. The reason why my students did so well is because I asserted a high standard of sexual respect contrary to my principal.

... I retired from teaching on 20th November 2018 I have no pension because its (sic) being held up because of exgratia payments that the Ministers made to KWETB. Those exgratia payments and the resulting hold up to my pension which they are causing is current live victimisation contrary to the orders of Equality Officer O'Doherty in 2012.

... The KWETB knows from my written submission to the Labour Court and [the] hearing that took [place] in 2018 at the court that I do not want to retire and that I want to get better and return to teaching.

... Overarchingly there is a regime/practice of female teacher early retirement/resignation. 37.5 female teachers of [the school] has to retire early on ill health or resign due to the principal's treatment of them (actual or perceived) this is gender discrimination. This compares with no males. I am the latest female to go under this regime. My comparator is [a named person] for gender and disability.

… The Minister for Education has been acting with victimisation towards me and discrimination for years. The KWETB are vicariously liable for the Minister and they have procured this victimisation and discrimination by the Minister contrary to the orders of the Equality Officer.

… This complaint is not res judicata because the Adjudication Officer was dealing only with a complaint up to 6th November 2018. My complaint is of what happened to me from November to today. It is not out of time as explained above."

41. The decision (ADJ-00021077) of the AO in respect of the appellant's two complaints issued on 23 October 2019**.** First, by way of background, the AO noted that the appellant had been the subject of a disciplinary inquiry that commenced in 2011 following which she was removed from office by the Minister. The AO noted that the appellant disagreed that she was dismissed, her claim that she was not an office holder and that the Minister had thus not removed her from office. It was noted that the appellant described herself as *"retired"*. It was noted that the previous complaints submitted by the appellant in November 2018 were the subject of a decision of the WRC on 19 March 2019 (ADJ-00017934) following a hearing on 12 February 2019 and that the appellant was contending, in the context of her current complaints, that if her dismissal had occurred then it could only have happened in reaction to her previous complaints against her employer, which the AO took as the appellant saying that she was dismissed on the date of the hearing before the WRC of her previous complaints.

42. The Board's position, as noted by the AO, was that the appellant's complaints had already been determined by the WRC and the Labour Court. According to the Board, the appellant's complaints were already the subject of a WRC decision (ADJ-00005703) of 14 June 2017 which held that her complaints were out of time and which was upheld by the Labour Court on appeal. Moreover, further complaints brought by the appellant in 2018

were also adjudicated by the WRC as being out of time (ADJ-00017934), and that decision was under appeal to the Labour Court. The Board also advised that a complaint made by the appellant to the former Equality Tribunal had been decided (largely) adverse to her in February 2012. Essentially, the Board contended that the appellant had been removed from office by the Minister for Education on 15 June 2015 following a disciplinary investigation at which she was represented by her union and her solicitor. As she had been dismissed in June 2015, her complaint lodged on 15 April 2019 was accordingly out of time. It was also the Board's contention that the appellant had not set out any basic fact to show that she had been discriminated against on any of the nine grounds set out in s.6 of the 1998 Act.

43. Ultimately, the AO was satisfied that the Minister had removed the appellant from office in accordance with s.8 of the Vocational Education Act 1944 and that in removing her from office the Minister's intention was to dismiss the appellant from her job as a teacher. Thus, there was no substance to the appellant's contention that she was dismissed on 10 February 2019 at a hearing before the WRC. Noting that the appellant's previous complaints as lodged in 2016 and 2018 had been adjudicated as out of time, the AO went on to state:

> *"Under the principle known as 'res judicata', the parties to litigation are required to bring all the aspects of their case to the court or forum considering their case so that all matters can be decided. In the absence of special circumstances, the parties are not entitled to return to court to advance arguments, claims or defences which have not been raised at the first hearing. The purpose of this rule is to ensure that defendants are not exposed to successive attempts at litigation.*
>
> ...

In the case under consideration here, I find that the complainant has brought forward no new information, but rather has sought to construe what occurred on June 15th 2015 as something other than a dismissal. I accept that, for any person, a decision by their employer to dismiss them is very painful and even traumatic. However, it is my view that the complainant's position in respect of her dismissal as set out at this hearing does not stand up.

…

Section 79 of the Employment Equality Acts, 1998 -2015 requires that I make a decision in relation to the complaint in accordance with the relevant redress provisions under section 82 of the Act.

I have concluded that the complainant was dismissed on June 15th 2015 and not on February 10th 2019. I have also concluded that the complainant's allegation of discriminatory dismissal has been adjudicated upon already by the WRC and the Labour Court. As the matters have already been heard, considered and decided upon, the principle of res judicata applies and I decide therefore, that this complaint is dismissed."

44. In respect of the appellant's complaint under the 1990 Act that she had been prevented from getting a gratuity payment that may be due to her, and noting that the appellant had applied for and obtained an ill-health early retirement pension and lump sum with effect from 6 June 2018, the AO concluded as follows:

"I have considered the complainant's complaint that she has been prevented from accessing an injury gratuity that may be available to her under the ETB's Teachers' Pension Scheme. The complainant is currently in receipt of an ill-health retirement pension and I am satisfied therefore that she is in receipt of a benefit that will provide a regular income for her future. I note that the ETB has made

inquiries with the Department of Education and Skills to determine if this ill-health early retirement pension is the appropriate benefit for her and I expect a response will be issued to the complainant about this reasonably soon.

At the hearing, the complainant made no allegation of discrimination or victimisation in respect of her pension benefit.

…

I have found no evidence that the complainant has been discriminated against, penalised or victimised in respect of her entitlements under the ETB Teachers' Superannuation Scheme. I decide therefore, that he complaint under the Pensions Act 1990 -2015 is not upheld."

45. Following the appellant's appeal of the AO's decision, on 9 February 2021 the Labour Court delivered separate determinations on the s.77 and s.81E matters.

46. In its determination (DET EDA214) of the appellant's 1998 Act complaint, the Labour Court noted that as the appellant had lodged a complaint with the WRC on 15 April 2019 *"the cognisable period"* for the purposes of the 1998 Act therefore was 16 November 2018 to 15 April 2019, and that it was for the appellant, in the first instance, as set out in *Mitchell v Southern Health Board* [2001] ELR 201, to raise an inference of discrimination before the burden shifted to the Board to prove that there was no infringement of the principle of equal treatment. In order to raise an inference, the appellant was required to prove the primary facts upon which she relied. It went on to state:

"With the consent of the parties the Court proceeded to hear the parties on the preliminary issue of whether or not there was prima facie an infringement of the Act, and whether or not that this occurred within the cognisable period."

47. The acts of discrimination on grounds of disability, gender and victimisation which the appellant identified during that period were noted by the Labour Court as follows:

(a) *"Green victimisation"* at WRC hearing. (As the appellant purported to explain to the Judge on 23 March 2022 in the course of the hearing of her appeals to the High Court on a point of law, *"green victimisation causes people to believe that [the appellant] withdrew [her] sexual harassment complaint, that it never existed and that [the appellant] accepted that"* (High Court transcript 23 March 2022, p. 31, lines 10-12).

(b) Denial of appropriate measures on the disability ground in the context of the appellant looking for a gratuity from her pension fund.

(c) That the appellant did not have a pension of any kind.

(d) That in respect of continuous treatment she was put on a different track.

(e) Procurement of victimisation from other bodies (including the WRC) by the Board.

(f) The Labour Court did not give her a hearing because fraudulent documents were submitted by the appellant's employer.

(g) The decision made by the Minister in respect of the appellant's pension.

48. The Board's position as noted by the Labour Court was that *"there were absolutely no breaches of the Act within the cognisable period",* and that the appellant's employment had ended on 15 June 2015 following which she took up work with a different employer. It submitted that in accordance with the 1998 Act, 29 December 2015 was the last date the appellant could have taken a case unless she could establish exceptional circumstances, and that even then the extended date would have been 29 June 2016.

49. Following reference to what constitutes discrimination pursuant to s.6 of the 1998 Act, and noting again that it was for the appellant, in the first instance, to raise an inference of discrimination before the burden shifted to the Board, and for the appellant to prove the primary facts upon which she relies, the Labour Court stated as follows:

> *"The Court, having carefully considered the incidents identified by the Complainant and the Respondent's response to same as set out above, finds that in the circumstances of this case the Complainant has not made out a 'prima facie' case and therefore her claim cannot succeed.*
>
> *The Court also notes that the Complainant's employment with the Respondent had ceased in June 2015 almost four years earlier. However, as the Court has decided that the Complainant has not raised an inference of discrimination within the cognisable period the Court does not need to consider the locus standi of the Complainant to make a [complaint] under the Act.*
>
> *Determination*
>
> *For the reasons set out herein, the Court is satisfied that the Complainant was not discriminated against on any of the grounds raised by her and therefore her claims must fail. The Complainant's appeal cannot succeed, and it is dismissed. The Decision of the Adjudication Ofer is varied to reflect the determination of the court that there was no breaches of the Act."*

As its determination reflects, in coming to its conclusion that the appellant had not made out a *prima facie* case, the Labour Court noted that her employment ceased in June 2015, her complaint was made in April 2019 and that an incidence of discrimination had not been raised within the six-month cognisable period.

50. In its determination (PAT211) on the appellant's 1990 Act appeal, the Labour Court noted that the case being advanced by the appellant was that she was looking for an injury allowance/gratuity from her pension in and around October/November 2017 but had found it difficult to get information. She retired in 2018 but did not want to retire. She had submitted an ill-health retirement form as this was the form that she was given. As noted by the Labour Court, the appellant's specific complaints were:

(a) She was not given information about the pension she could get.

(b) She did not get information on how to access injury gratuity.

(c) She had an unwanted pension imposed on her.

(d) She did not want to be put on a preserved pension which is what she had been given.

(e) Imposing retirement on her when she did not want to retire was victimisation under the 1990 Act.

(f) The payment of the injury allowance was discretionary and whoever made the decision did not apply equal treatment.

51. The Board's position was that the appellant was not forced to retire and that in the normal course of events she would have access to her retirement benefit at aged 65. The appellant sought access to injury gratuity in 2017. She did not, however, meet the criteria for injury gratuity but was provided with information and forms in order to make an application under the ill-health retirement scheme which she duly applied for in 2018 and which was granted to her on appeal following an initial refusal.

52. Dismissing the appellant's appeal, the Labour Court's determination was in the following terms:

"The Complainant's submission is in effect that she wanted to get a gratuity from her pension scheme and not a pension. The Complainant is seeking to have the Court find under this piece of legislation that she should be given the injury gratuity despite not meeting the requirements for same. The Complainant completed the forms for the granting of an ill-health retirement pension and participated in the process to achieve same. When her initial application was rejected the Complainant successfully appealed that decision. The Complainant was granted the pension she

had submitted an application for. The Court finds that the Complainant has not identified any breaches of the Act and that her complaint is misconceived.

Determination

For the reason set out herein, the Court is satisfied that the complaint is misconceived. The Decision of the Adjudication Officer is upheld. The appeal fails."

Appeal on a point of law to the High Court

53. By identical notices of motion dated 5 March 2021 (2021/37/MCA and 2021/38/MCA), the appellant appealed the two determinations of the Labour Court to the High Court on asserted identical points of law, namely:

*"1. **The remote communication mismatch is an error in law***

The Respondent conducted a remote hearing of preliminary issues into my appeals under the Employment Equality Act and Pension Act in a Virtual Courtroom using Webex. The words used by the Respondent at the remote hearing, as heard by me, and which the Stenography Transcript recorded, and which my sister confirms she heard, all tally. However, these words are at total and complete variance to the words used in the decision that issued from the Respondent under the Employment Equality Act subsequent to the online event. The decision uses words to communicate, as if it had conducted a hearing on the substantial matters rather than on preliminary ones. And communicate as if it had permitted evidence to be given, as if it had not instructed evidence not to be given, or as if full submissions had been made on substantial matters.

*2**. Important Preliminary jurisdictional issues that exist had been pointed out before the remote hearing. Breaches of jurisdiction are errors in law***

My written submissions to the Respondent on preliminary issues made important points of law to the Respondent in relation to its jurisdiction to act in these matters. Yet I found it impossible at the remote hearing to get the chance to speak about them. The Respondent informed me that there are other avenues. I was removed from the virtual courtroom and into the lobby. The High Court is the only avenue open at present." (Emphasis in bold in original)

54. In her affidavit (sworn 3 March 2021) grounding her appeals on a point of law, the appellant asserted, *inter alia*, that she was compelled by the Labour Court to attend a remote hearing and that the Chairperson of the Court had insisted that the hearing was to be on preliminary issues only and not on the substantive issues. She averred that her numerous written submissions on jurisdictional issues were not allowed to proceed because of the Labour Court's "*insistences on other preliminary issues…".* She claimed that her sister who attended the hearing was not permitted to give her evidence. At para. 9, she went on to state:

"I say that I was shocked on 11th February to receive two written determinations on the substantial matters. I received on determination on the Employment Equality Act and another under the pensions Act. I say both of these decisions are composed using words to communicate as if an actual hearing of substantial issues had occurred."

55. In aid of her arguments, the appellant relied on various extracts from the transcript of the Labour Court hearing which she lists at para. 16 of her affidavit.

56. By its statement of opposition, the Board opposed the appeals, firstly on the preliminary ground that the appellant had not stated concisely the point of law pursuant to which the appeals are made (as required by Order 84C, r.2(3) of the Rules of the Superior Courts) and that the reliefs she was seeking were more appropriate to a judicial review than

an appeal on a point of law. The Board went on, in any event, to deny that there was any *"mismatch"* between the conduct of the Labour Court hearing and the determinations made by the Labour Court, as alleged by the appellant. It also denied that the appellant was deprived of an opportunity to make submissions to the Labour Court. The Board's position was that for the purposes of the 1998 Act, what the Labour Court had to determine was whether a complaint of discrimination had been made within the relevant period and that the Labour Court had lawfully determined that the appellant had failed to satisfy on a *prima facie* basis that there had been an infringement within the relevant period. In respect of her pension complaint, the Board's position was that having considered the evidence before it the Labour Court was satisfied that the appellant had failed to identify any breaches of the 1990 Act and that the appellant's complaint was misconceived. With regard to both appeals, while not a point of law, the Board denied that there was any irregularity to the proceedings before the Labour Court and asserted that the appellant had been given every opportunity to address the Labour Court on the issues concerned.

57. On 11 June 2021, Ms. Áine O'Sullivan of the Board swore a verifying affidavit and therein addressed the matters raised by the appellant in her grounding affidavit. The appellant's sister swore a short affidavit on 18 October 2021 and in December 2021, the appellant filed a further affidavit exhibiting, *inter alia,* the transcript of the Labour Court hearing of 21 January 2021.

The High Court hearing of statutory appeals 2021/37/MCA and 2021/38/MCA

58. There were in all three appeals on a point of law before the High Court on 22-23 March 2022. The hearing of the two appeals (2021/37/MCA and 2021/38/MCA) with which this judgment is concerned commenced in the wake of the Judge on 22 March 2022 having delivered a lengthy *ex tempore* ruling in respect of statutory appeal bearing record no. 2020/123/MCA, being the appellant's appeal on a point of law from the Labour Court's

determination of 1 April 2020 in respect of a complaint she had lodged on 22 March 2011 under the 2005 Act. For the reasons he set out in his *ex tempore* judgment, the Judge dismissed statutory appeal 2020/123/MCA. (As already referred to, the Supreme Court refused the appellant leave to appeal this decision).

59. Following his *ex tempore* ruling in respect of statutory appeal 2020/123/MCA, the Judge duly called on the appellant to commence her submissions in respect of a motion she had issued in that appeal for an order pursuant to s.97(6) of the 1998 Act permitting her to disclose information contained in those proceedings for the purpose of use of that information in other proceedings. Despite it having been made clear to her by the Judge that her application under s.97(6) of the 1998 Act was independent of the fact that he had dismissed statutory appeal 2020/123/MCA and that the Judge would hear her s.97(6) application, the appellant declined to pursue her application. In the course of her oral submissions before this Court, the appellant suggested that she had no option but to adopt the stance she did in light of the Judge's dismissal of statutory appeal 2020/123/MCA. In my view, in circumstances where it was made clear to her by the Judge that she was fully at liberty to make her submissions with regard to her s.97(6) application, the appellant's explanation for not pursuing the application rings hollow. Hence, she cannot now complain that she was deprived of the opportunity to advance her s.97(6) application for the purposes of her remaining statutory appeals.

60. After the appellant had made clear that she was not pursuing the s.97(6) application, she was then called upon by the Judge to commence her submissions in respect of her statutory appeal 2021/37/MCA. Again, her response to that request was that in light of the Judge's ruling in relation to statutory appeal 2020/123MCA, she was not going to pursue her remaining statutory appeals. There followed a series of exchanges between the appellant and the Judge during which the Judge made clear that he was *"not going to shut*

[the appellant] out" from making any submission she wished to make in respect of her remaining statutory appeals (High Court Transcript p.59 lines 21-26). Furthermore, the Judge was prepared, for the purposes the appellant making her submissions, to allow her to refer to a particular exhibit in an affidavit which the Judge had earlier ruled was not properly before the High Court (counsel for the Board having objected to the appellant adducing the affidavit in question on the basis that the appellant was well outside the time limits the High Court had set for the delivery of affidavits).

61. Similar assurances that the appellant was not being shut out from advancing her submissions were repeated by the Judge throughout the remainder of the hearing on 22 March 2022 albeit the appellant was warned that if she did not proceed with her statutory appeals, he would be left with no option but to strike the matters out. Ultimately, in the wake of calls from the Board to do just that, and in the face of the appellant's continuing recalcitrance after the Judge renewed his invitation to her to commence her statutory appeals, the Judge ultimately adjourned the matters to 23 March 2022 for the appellant to reflect overnight.

62. On 23 March 2022, after a further series of exchanges between the Judge and the appellant, the appellant finally made her submissions in respect of her two statutory appeals (High Court transcript pp. 8-14), following which counsel for the Board advanced her submissions (High Court transcript pp. 14-24), in respect of which the appellant then made her reply (High Court transcript pp. 25-28).

The High Court judgment

63. The appellant's two statutory appeals 2021/37/MCA and 2021/38/MCA were duly dealt with in a composite judgment of the High Court. For the purposes of his judgment, the Judge had the benefit of a transcript of the hearing before the Labour Court.

64. The Judge considered that the substance of the appellant's first ground of appeal on a point of law was that the Labour Court's decision *"uses words to communicate as if it had conducted the hearing of the substantial matters rather than preliminary ones."* He found that as was clear from the transcript of the Labour Court hearing, it had been agreed at the outset of the hearing that as far as the 1998 Act complaint was concerned the Labour Court was looking at preliminary issues only. At para. 19, the Judge noted the words of the Chairperson of the Labour Court:

> *"So we're going to take the Equality Act first. So our understanding is that the complaint was lodged on the 15/4/2019 and therefore the cognisable period is the 16/11/2018 to the 15/4/2019. So Ms. Morgan we need to hear from you as to what you say were the acts of discrimination within that period".* (Labour Court transcript, p.4).

The reference to the Labour Court dealing with a preliminary issue was again repeated at p.13 of the transcript. Accordingly, the Judge was satisfied that *"No error of law has been demonstrated".* He stated:

> *"It was agreed that the hearing would address the preliminary issues including whether there were acts of discrimination within the cognisable period. This is what the determination the subject of the appeal in 2021/37 MCA (relating to the s.77 complaint) in fact addresses. This ground of appeal is not well founded."* (para. 20)

65. As far as the 1990 Act complaint was concerned, the Judge found that the Labour Court's determination *"in fact addresses the substance of the pension discrimination claim in that case".* He went on to state:

> *"The Labour Court held that the appellant received the ill-health retirement pension she applied for and that there was no discrimination involved in not giving her an injury gratuity when she did not meet the requirements for such a gratuity. I am*

satisfied that the findings in that determination are unimpeachable as a matter of law and no error of law arises on the first ground of appeal in respect of that determination either." (para. 21)

66. The Judge then turned to the appellant's second ground of appeal on a point of law which he considered *"essentially alleges that the appellant did not get a chance to make submissions during the course of the remote hearing".* He found that that complaint "*is simply not borne out by the contents of the transcript of the hearing"* (para. 22). He noted the affidavit evidence of Ms. O'Sullivan on behalf of the Board as put before the High Court. Therein Ms. O'Sullivan, who was present at the Labour Court hearing on behalf of the Board, averred that *"the hearing before the Labour Court was conducted appropriately and fairly"* and that the Labour Court *"gave the appellant every opportunity to advance her case. It was conducted fairly and in accordance with natural justice".* He noted that Ms. O'Sullivan's evidence in this regard was not challenged by the appellant and that it was, in any event, borne out by the contents of the transcript of the Labour Court hearing *"which makes it clear that the appellant was given a fair hearing and had her submissions heard in full".* Consequently, the appellant had not demonstrated any error of law in respect of her second ground of appeal lodged in respect of each of the two determinations. The Judge next went on to state:

"26. At the hearing of these applications, the appellant sought to make wide-ranging submissions on matters relating to what she termed 'green victimisation' and other alleged wrongs done to her. These submissions did not confine themselves to points of law contained in the pleading. These impermissible submissions formed part of her legally vexatious campaign of grievance against the Board and the Minister, the background to which is more fully set out in a separate judgment delivered by me today in High Court proceedings record no. 2020/878 JR

and 2020/37 (sic)MCA involving the same parties, which deals with applications for Isaac Wunder -type relief sought by the Minister and the Board against the appellant.

27. Having carefully considered the affidavit material and the submissions legitimately directed towards the points of law sought to be advanced before me, I am quite satisfied that no error of law has been demonstrated."

67. The appellant's two statutory appeals were accordingly dismissed.

The appeals

68. In her notice of appeal to this Court in respect of her 1998 Act complaint, the appellant advances some four grounds which can be summarised as follows:

1. Most of the conclusions reached in the High Court judgment are not supported by fact. They are contrary to the fact of the Labour Court's hearings as recorded in the transcript and confirmed in the affidavits of the appellant and her sister. *"The recorded facts of what occurred during the Labour Court hearing, compared with the determination that that Court issued, prove that errors in law occurred".* Before the Labour Court, the appellant was not allowed to present evidence or call her witnesses or go into detail on the substantive matters under the 1998 Act and the 1990 Act or allowed to adduce the relevant preliminary issues the appellant had raised in her written submissions to the Labour Court. When the appellant tried to raise objections to the procedure ordained by the Labour Court she was removed from the online court. Albeit the Labour Court had instructed the appellant that if it was going to deal with substantive matters it would hold a full hearing, the determinations that duly issued from the Labour Court are written as if a full hearing of the substantive issues had occurred *"when the reality was that no*

such hearing had taken place". Contrary to the High Court judgment, the appellant did not agree to the Labour Court process. *"The procedure that the Labour Court stated would happen, did not happen".*

2. The High Court erred in law in failing to find that the Labour Court was wrong to have varied the AO's decision in circumstances where, the appellant asserts, the Labour Court only had jurisdiction to annul the AO's decision or otherwise remit the matter back to the WRC. Furthermore, the Labour Court *"leapfrogged"* the appeal over an appeal previously filed by the appellant. Additionally, the High Court failed to find, as it should have, that *"the cogitative periods and substantive issues became distorted, or herniated"* which resulted in an abuse of process.

3. The Board's application for an *Isaac Wunder* Order (which was heard alongside the statutory appeals) *"has made the jurisdiction issues/distortion of process much worse not better".* Paragraph 26 of the High Court judgment *"demonstrates prejudice to the substantial issues"* in the appellant's complaint under the 1998 Act.

4. The High Court's finding that the appellant's submissions in relation to *"Green Victimisation"* and on matters pertaining to child sexual abuse were *"impermissible" "is further breakdown in the administration of justice"* on the gender and disability grounds. *"Green Victimisation is contrary to my right to an effective remedy".*

69. The appellant's notice of appeal in respect of her complaint under the 1990 Act also advances four grounds of appeal. Grounds 1 and 2 largely replicate the grounds advanced in the 1998 Act appeal save that at ground 2, the appellant further asserts that *"it was an*

error in law and fact for the Labour Court to make any determination [in respect of the appellant's pension] outside of the cognisable period".

70. Ground 3 asserts as follows:

> *"Under the Pensions Act, a complaint can only be made within 6 months of the termination of the employment contract. I had raised this issue to the Labour Court. I am sure that that court would not have proceeded to issue a determination of a substantive issue under the Pensions Act unless it was certain that my employment had not been terminated in the 6 months before I complained in April 2010".*

Under this ground also, the appellant asserts, as she did in respect of her 1998 Act appeal, that the Judge was wrong to hear applications for *Isaac Wunder* orders alongside her statutory appeal. She again complains that the Judge's comments at para. 26 of the judgment prejudiced her appeal.

71. At Ground 4, she asserts that her claim under the 1990 Act was determined without her having had the opportunity to make written submissions *"as well as the absence of a hearing on the substantive matter"* in circumstances where, as was advised by the Labour Court at the hearing, the hearing was only on preliminary issues.

Discussion and Decision

72. It is not in dispute that having received the two Labour Court determinations in issue here, the appellant duly exercised her entitlement pursuant to s.46 of the Workplace Relations Act 2015 to appeal both determinations on a point of law to the High Court.

73. Before embarking on a consideration of the arguments the appellant now makes in this Court as regards the outcome of her statutory appeals, it is instructive to have regard to the approach to be taken by the High Court when considering appeals brought on a point of law.

74. The requisite approach was summarised by McKechnie J. in *The Attorney General v. Davis* [2018] IESC 27, [2018] 2 IR 357 where he quoted from *Fitzgibbon v. Law Society* [2015] 1 IR 516, [2014] IESC 48 by reference to the judgment of Clarke J. (as he then was) which itself referenced the earlier judgment of McKechnie J. in *Deely v. The Information Commissioner* [2001] 3 IR 439. In *Fitzgibbon*, Clarke J. set out the requisite approach as follows:

> *"[127] The applicable principles were helpfully summarised by McKechnie J. in Deely v. Information Commissioner [2001] 3 IR 439 at p. 452, which concerned an appeal under s. 42 of the Freedom of Information Act 1997, as follows:*
>
> > *'There is no doubt but that when a court is considering only a point of law, whether by way of a restricted appeal or via a case stated, the distinction in my view being irrelevant, it is, in accordance with established principles, confined as to its remit, in the manner following:*
> >
> > *(a) it cannot set aside findings of primary fact unless there is no evidence to support such findings;*
> >
> > *(b) it ought not to set aside inferences drawn from such facts unless such inferences were ones which no reasonable decision making body could draw;*
> >
> > *(c) it can however, reverse such inferences, if the same were based on the interpretation of documents and should do so if incorrect; and finally;*
> >
> > *(d) if the conclusion reached by such bodies shows that they have taken an erroneous view of the law, then that also is a ground for setting aside the resulting decision …'*

This passage was later cited in the Supreme Court judgments of both Fennelly and Kearns JJ. In Sheedy v. Information Commissioner [2005] IESC 35, [2005] 2 IR 272.

128. In one sense it may be said that two types of points of law can legitimately be raised in an appeal which is limited to points of law alone. First, there may be an error of law in the determination of the first instance body. Second, it may be the case that the way in which the first instance body has reached its conclusions on the facts involves an error which itself amounts to an error in law. There may have been no evidence to support a finding or inferences may have been drawn on the facts which no reasonable decision maker could have drawn. It follows that a higher degree of deference, so far as the facts are concerned, is paid by the appellate body to the decision of the first instance body in an appeal on a point of law only, as opposed to an appeal against error. In the latter case the court is entitled to form its own view on the proper inferences to be drawn (although not on primary facts)."

75. Those dicta have been endorsed in later Supreme Court decisions, including by MacMenamin J. in *Nano Nagle School v. Daly* [2019] IESC 63 (at para. 128). More recently, in *Petecel v. The Minister for Social Protection* [2020] IESC 25, O'Malley J. emphasised the narrow scope of appeals on a point of law, stating at para. 106:

"Questions as to the scope of the jurisdiction of the High Court in a statutory appeal must always be answered by reference to the terms of the statute creating that jurisdiction…It may be borne in mind that an appeal on a point of law is the narrowest of the four categories of statutory appeals identified by Clarke J. in Fitzgibbon v. Law Society [2014] IESC 48."

76. Albeit this case law is not referenced by the Judge in the judgment under appeal, it is clear that the Judge was well aware of the requisite principles to be adopted in considering appeals on a point of law since in the course of his *ex tempore* judgment on 22 March 2022 delivered in respect of statutory appeal 2020/123/MCA, the Judge quoted the *dicta* of McKechnie J. in *The Attorney General v. Davis.* Moreover, the Judge went on to add:

> *"So, to those dicta, I might just add the following observations. Firstly, on a statutory appeal on a point of law to the High Court it is not permissible to reopen factual matters. It is not a form of appeal on the merits. Secondly, as we have seen, findings of primary fact will only be set aside if there is no basis for these findings, so that's a particularly high hurdle, and thirdly, it's a well established principle that one can only rely in an appeal on matters which were before the decision making body from which the appeal is sought to be brought…"* (High Court transcript 22 March 2022, p. 51, lines 15-21).

77. Thus, in summary, the case law requires that for an appeal on a point of law to the High Court to succeed, the appellant must establish a clear error of law on the part of the decision-maker. In other words, it is for the appellant to establish a fact-independent point of law which the tribunal got wrong. If same is not established by the appellant, the Labour Court's fact finding cannot be interfered with by the High Court, save on grounds of irrationality or a no evidence basis. Essentially, if a finding is one that can reasonably be made by a tribunal on the materials before it, then it is not a finding that is in serious error. It is not sufficient that the High Court might have reached a different decision on the merits.

78. For reasons that will hopefully become self-explanatory, I am satisfied that when considering statutory appeals 2021/37/MCA and 2021/38/MCA the Judge was conscious of and applied the requisite principles to the appellant's asserted points of law.

79. Before continuing further, it is also instructive to have regard to the jurisdiction of this Court in cases such as the present. In *Greenwich Project Holdings v. Cronin* [2022] IECA 154, this Court affirmed the standard of review for the appellate court. Writing for the Court, Whelan J. stated:

> *"[H]aving due regard to the jurisprudence and including Ryanair Limited v. Billigfluege.de GmbH [2015] IESC 11 (Unreported, Supreme Court, Charleton, 19 February 2015) and McDonagh v. Sunday Newspapers Limited [2017] IESC 46, [2018] 2 I.R. 1, a somewhat deferential approach ought to be taken by this Court to the exercise engaged in by the trial judge albeit however it is to be recognised that this Court is not in any less position than the trial judge to evaluate the affidavits and to form its own view after having afforded due weight to the views of the trial judge."* (para. 35)

80. In *AK v. US* [2022] IECA 65, Murray J. put it thus, at para. 53:

> *"The appellate court affords limited deference to the decision of the trial judge by beginning its analysis from the firm assumption that the trial judge was correct in the findings or inferences he or she has drawn, and interfering with those conclusions only where it is satisfied that the judge has clearly erred in the findings made or inferences drawn in a material respect."*

81. With all of this in mind, I now turn to the appellant's appeal grounds and her arguments. I propose to deal firstly with the 1998 Act.

<u>The 1998 Act</u>

Ground 1

82. The appellant's first ground is that most of the conclusions reached by the Judge are not supported by fact and are contrary to the fact of the Labour Court's hearings as recorded in the transcript of the Labour Court hearing and confirmed in the affidavits of the appellant and her sister. She asserts, effectively, that the Judge erred in finding no

error of law on the part of the Labour Court and that *"[t]he recorded facts of what occurred during the Labour Court hearing, compared with the determination that that Court issued, prove that errors in law occurred".*

83. The appellant also contends that the Judge failed to take account of her claim that the Labour Court kept blocking her in her endeavour to advance her case which, the appellant says, is evident from the transcript of the Labour Court hearing. She further says that the Judge failed to appreciate or allude to her argument that in respect of her 1998 Act claim, that the Labour Court had issued its determination as if it had heard evidence on the substantive claim when in fact the Labour Court had not embarked on a hearing of the substantive claim.

84. The Board says that based on the transcript of the hearing before the Labour Court, and the evidence the Board placed before the High Court, there can be no basis for the appellant's contention that the Judge's conclusions were not supported by fact. It also says that the appellant has not identified the conclusions where she says the Judge erred. It further submits the evidence that was before the High Court did not support the appellant's contention that at the Labour Court hearing she was *"removed from the online court".*

85. I consider that in light of the framing of the appellant's argument at Ground 1, it is necessary first to look at what transpired at the Labour Court hearing of 21 January 2021. As is evident from the Labour Court transcript (and as noted by the Judge), at the outset of the hearing it was indicated by the Chairperson that the Labour Court was looking at preliminary issues only. As the Chairperson put it, both complaints were to be dealt with initially by *"just looking at the preliminary issues and then we will adjourn and see how we are going to go on"* (Labour Court transcript pp. 3-4). The Labour Court recognised the requisite cognisable period as running from 16 November 2018 to 15 April 2019 and thus advised the appellant that it needed to hear from her as to the claimed act of discrimination

within that period. The appellant did not demur in this regard. At p. 20 of the transcript the Chairperson repeated that the Labour Court was not dealing with substantive issues but rather the cognisable period stating: *"[o]bviously we have to be satisfied that within that cognisable period [there] was an act of discrimination".* Again, the appellant did not demur. Thus, I find no merit in her contention that she did not agree to or was otherwise unaware of how the Labour Court intended to proceed.

86. As the Labour Court transcript records, with regard to the issue of alleged discrimination in the cognisable period, the appellant was duly invited to commence her submissions. The appellant proceeded to outline the alleged discrimination and victimisation upon which she relied, including *"green victimisation"*. The latter, it was said, happened at a WRC hearing in February 2019 and was part of the *"green victimisation"* that *"happens periodically over the years".* The appellant also referenced being *"denied appropriate measures"* (a pension) *"on the disability ground".* As the appellant confirmed to the Labour Court, the relevance (according to the appellant) of this to the issue of the cognisable period was the fact that her pursuit of her pension was a continuing endeavour on her part.

87. When again pressed by the Labour Court to outline the 1998 Act discrimination she was alleging during the cognisable period, the appellant replied that the discrimination had occurred when she was at hearing before the WRC during the cognisable period. In this regard she referenced November, February and April. (Although the exact year or years to which the appellant was alluding are not stated on the transcript, I am satisfied that November 2018, February 2019 and April 2019 are the dates being referred to). She further alleged that the Board had procured the Labour Court to victimise her by the Board submitting what the appellant characterised as *"fraudulent"* documents and that the Board had procured the Minister to make decisions in relation to her pension. These alleged

actions, the appellant emphasised, were continuing to occur during the requisite cognisable period because the appellant's attempt to access her pension was itself an ongoing process.

88. The Board's response was to deny any breaches of the 1998 Act within the cognisable period either by way of discrimination or victimisation. It outlined that the appellant had been removed from office in June 2015 by the Minister after a long process during which the appellant had union and legal representation.

89. The appellant was then duly apprised by the Chairperson that the Board's position was that once the six-month time limit had run from the termination of her employment on 30 June 2015, she had no entitlement to bring a case against the Board under the 1998 Act.

90. The appellant's response to that was that the time limit continued to run (and the appellant was not conceding that her employment with the Board terminated on 30 June 2015). In her further submissions to the Labour Court, the appellant maintained that whilst the *"Minister did what the Minister did",* she (the appellant) *"was not actually in office at the time".* Insofar as it was being contended that she had been removed from office by the Minister, the appellant drew a distinction between her removal from office and her being dismissed by the Board. She contended that the latter had yet to occur. She also maintained that the first mention by the Board of her employment having been terminated was at a WRC hearing in February 2019.

91. As the transcript of the Labour Court hearing shows, at the close of the parties' submissions and following a short recess, the Labour Court advised the parties that it was going to adjourn both cases and that it would consider whether there was a case to be made within the cognisable period or whether there was a case that meets the requirements of the legislation. Specifically, with regard to the appellant's complaint under the 1998 Act, it stated that if it found that there was a case within the cognisable period, the parties would be contacted in relation to a hearing on the substantive issues. On the other hand, if the

Labour Court were to find no breach of the 1998 Act within the cognisable period, it would issue a determination to that effect, which is in fact what the Labour Court did in this case.

92. As we know, the Labour Court duly determined that the appellant had not made out a "*prima facie*" under the 1998 Act. As already referred to, the nub of the Labour Court's determination that a *prima facie* case had not been made out was that the appellant *"has not raised an instance of discrimination within the cognisable period".*

93. As can be seen from her identical notices of motion, the first asserted point of law advanced by the appellant in the High Court was that the words used in the Labour Court hearing were *"at complete variance to the words used in the determination that issued"* and that the determination used words to communicate as if the Labour Court had conducted a hearing on the substantive matters rather than on preliminary ones. In other words, it is said that the Labour Court determination was framed or structured as if it had conducted a full hearing on the appellant's substantive complaints under the 1998 Act when in fact this was not the case.

94. The Judge rejected the appellant's complaint that there was a *"mismatch"* between the Labour Court hearing and its determination. He did so by having regard to the transcript of the Labour Court hearing. In the view of the Judge, the Labour Court's determination reflected exactly what that tribunal said it would do.

95. To my mind, the Judge was correct in finding that the determination issued by the Labour Court reflects what the Labour Court clearly stated at the outset of the hearing of 21 January 2021 it would do, namely ascertain whether there were acts of discrimination within the cognisable period.

96. As, patently, the Labour Court did what it said it was going to do, in my view, the Judge correctly concluded that *"no error of law"* had been demonstrated in respect of the

appellant's first ground of appeal on a point of law. Thus, the appellant has not established before this Court that the Judge erred in his treatment of her first point of law.

97. The second statutory ground advanced by the appellant in the High Court was that she was not given the opportunity to speak about jurisdictional issues at the Labour Court hearing and that she was removed from the virtual courtroom. It will be recalled that this ground too was rejected by the Judge.

98. Notwithstanding the appellant's submissions to this Court, I am satisfied that there is no merit in the contention that the Judge erred in not finding that the appellant was denied the opportunity to make submissions in the Labour Court. The appellant's complaint is not borne out by the transcript of the Labour Court hearing which clearly records the submissions she made to the Labour Court in relation to the discrimination she alleged was taking place during the cognisable period. I also reject the suggestion in Ground 1 of the within appeal that the Labour Court *"instructed"* the Board that it had only to say, *"no breaches occurred".* That is palpably not the case: the length of the Board's submissions to the Labour Court on the cognisable period issue and the matters to which it adverted in the course of those submissions belie any such suggestion.

99. Thus, insofar as the appellant complains at ground 1 that the Judge erred in not finding that unfair procedures were visited on her at the Labour Court hearing, I reject this argument. In light of the understanding of all concerned at the Labour Court hearing of 21 January 2021 that the only matters being considered were preliminary matters going to the jurisdiction of the Labour Court, in my view, the appellant has no valid basis upon which to impugn the Judge for finding that she had demonstrated no error of law in respect of her second ground of appeal on a point of law.

100. Furthermore, insofar as the appellant alleges that she was removed by the Labour Court from the *"online court"* (i.e. suggesting that she was somehow prevented from

making her submissions), that is palpably not the case, as again the Labour Court transcript reflects and indeed as found by the Judge.

101. I accept, however, that the transcript records the Chairperson directing the Labour Court Secretary *"to move the parties to the lobby"*. This, however, occurs at the very end of the hearing and when all submissions on the preliminary issues had been heard and indeed in the wake of the assurance given to the appellant that should she surmount the cognisable period hurdle, a substantive hearing would take place and that she would then have an opportunity to apply to have new material that had come into her possession adduced. In those circumstances, the appellant therefore cannot seriously contend that she was prejudiced by the Chairperson's direction which, to my mind, was intended only to signal to both parties that the hearing was at an end.

102. It is the case that after the parties had made their submissions to the Labour Court, and after the Chairperson had outlined how the Labour Court would proceed thereafter, the appellant sought to adduce new materials. The Labour Court refused to admit those materials at that stage. However, as just referred to, the Chairperson made it clear that if the Labour Court were to rule in the appellant's favour in relation to the preliminary issues, then at any substantive hearing the appellant would be free to make an application to have this material admitted. As, however, the appellant did not surmount the cognisable period requirement, the need for a hearing on the substantive issues never came to pass.

103. For the reasons set out above, in my judgment Ground 1 of the appellant's appeal to this Court has not been made out.

Ground 2

104. By Ground 2, the appellant firstly asserts that the High Court erred in failing to find that the Labour Court wrongly varied the decision of the AO in circumstance where, she

contends, the Labour Court only had jurisdiction to annul the AO's decision or otherwise remit it back to the WRC.

105. In my view, there is no basis for the contention that the Labour Court varied the decision of the AO in circumstances where the appellant's appeal was simply dismissed, albeit the Labour Court's reasons for the dismissal were different to those of the AO.

106. The appellant also suggests in Ground 2 that it was an error of law for the Labour Court to have *"leapfrogged"* the appeals it heard on 21 January 2021 over a preceding appeal the appellant had filed and which was pending before the Labour Court. The first observation I would make is that this alleged point of law was not included in the appellant's notice of motion to the High Court. More fundamentally, the appellant has not put before this Court evidence of any alleged prejudice she suffered when making her submissions to the Labour Court on the agreed preliminary issues in the within cases by virtue of the fact that an earlier appeal which she had before the Labour Court had not been determined.

107. Furthermore, contrary to the appellant's argument, the Labour Court did not determine her appeal under s. 42 of the Workplace Relations Act 2015. The question of whether the appellant's claim under the 1998 Act was frivolous and vexatious such that it warranted dismissal, as provided for in s. 42, was not what was considered by either the AO or the Labour Court. As can be seen, the AO dismissed the appellant's 1998 Act complaint on the basis that the principle of *res judicata* applied. What was before the Labour Court was the appellant's appeal from that adjudication. Her appeal was duly dealt with on its merits by the Labour Court albeit that the "merits" in the instant case were concerned with whether the appellant had established discrimination or victimisation under the 1998 Act within the requisite cognisable period in respect of which the Labour Court determined she had not.

108. Ground 2 is not made out.

Ground 3

109. By Ground 3, the appellant takes issue with the High Court having heard the Minister's and the Board's respective applications for *Isaac Wunder* orders alongside her two statutory appeals 2021/37/MCA and 2021/38/MCA. On the other hand, the Board submits that the appellant has not established how the Judge erred in circumstances where its application for *Isaac Wunder* type– relief (and indeed the Minister's application for similar relief) were heard after the Judge had heard the appellant's statutory appeal in respect of the 1998 Act complaint.

110. I am satisfied that there is no merit in this ground in circumstances (as the High Court transcript reflects) where the applications for an *Isaac Wunder*-type relief were heard only after the appellant's statutory appeals were heard, and where assurances were given by the Judge on more than one occasion during the High Court hearing that the appellant's arguments in respect of her two statutory appeals would be considered in full, as indeed the High Court judgment shows they were.

Ground 4

111. By Ground 4, the appellant asserts that the High Court was wrong to find (at para. 26) that her submissions on *"green victimisation"* and on matters pertaining to child sexual abuse were *"impermissible"*. She contends that the Judge's finding constitutes a *"further breakdown in the administration of justice"*. She asserts that albeit she was not permitted to go into detail at the Labour Court hearing, the booklets she had submitted on *"green victimisation"* and conduct relating to child sexual abuse met the burden of proof under the 1998 Act and the Gender Directive (Directive 2006/54 EC).

112. The Board says that the issue of alleged child sexual abuse was not before either the AO or the Labour Court and, hence, it was proper for the Judge to say that her arguments in that regard were *"impermissible".*

113. Insofar as the appellant advances this ground, I agree with the Board's submission that Ground 4 of the within appeal does not contain an asserted point of law relevant to the Labour Court determination. What was before the Labour Court was an appeal by which the appellant was seeking statutory redress under s.77 of the 1998 Act. Her appeal failed for the reasons set out by the Labour Court. The question for the High Court was whether the Labour Court correctly determined that the appellant had not identified an instance of discrimination within the relevant cognisable period. The Judge duly considered that issue at paras. 18-25 of his judgment and duly found that the appellant had not established any error of law on the part of the Labour Court. It is the case that at paras. 26, the Judge went on to address the appellant's attempts to import matters such as *"green victimisation"* into the appeal on a point of law and he held that these matters were not properly before the High Court and indeed that these *"impermissible submissions formed part of [the appellant's] legally vexatious campaign of grievance against the Board and the Minister…".*

114. Whilst the appellant takes issue with the contents of paras. 26, what she fails to appreciate is that by the time the Judge comes to paras. 26 of the judgment, he has comprehensively addressed each of the asserted points of law the appellant advanced in her two statutory appeals and in doing so had, as the Judge himself states at para. 27, *"carefully considered the affidavit material and submissions <u>legitimately</u> directed towards the points of law sought to be advanced…".* (Emphasis added)

115. In my view, paragraph 26 of the judgment simply reflects the Judge's entitlement to comment on matters which the appellant had tried to raise in the course of her High Court

submissions and which were correctly described by the Judge as *"impermissible"* in the context of the asserted points of law that were before the High Court. I perceive no prejudice to the appellant by such remarks. Nor did same constitute a *"breakdown in the administration of justice"*, contrary to the appellant's assertion. Accordingly, Ground 4 fails.

116. I turn now to the appellant's appeal grounds in respect of her 1990 Act claim.

The 1990 Act

117. It will be recalled that what came before the High Court was an appeal on a point of law from a determination of the Labour Court under the 1990 Act. The appellant had referred a complaint to the WRC on 15 April 2019 contending that she had been discriminated against in breach of s.81E of the 1990 Act. In particular, she contended that she was prevented from getting a gratuity payment under a pension scheme. The essence of the claim was that the appellant was discriminated against in the context of an occupational pension. However, as noted by the AO in her decision of 23 October 2019, the appellant in fact made no specific complaint of discrimination or victimisation in respect of her pension benefit. In any event, having reviewed her pension history, the AO found no evidence that the appellant had been discriminated against, penalised or victimised in respect of her entitlements under the ETB's Teachers' Superannuation Scheme. Following an appeal to the Labour Court by the appellant, the Labour Court dismissed the appeal. That Court found that the appellant had applied for and was ultimately granted an ill-health retirement pension and that her claim was accordingly *"misconceived"*. Again, when before the Labour Court, the appellant did not allege any specific discrimination or victimisation – the height of her complaint was that she was entitled to another pension. The Labour Court summarised the appellant's complaint as one where she was contending that she should be given an injury gratuity payment despite not meeting the requirements of same. It duly

went on to hold that the appellant *"was given the pension [ill-health retirement] she had submitted an application for".*

118. Following the appellant's appeal on a point of law to the High Court, the Judge noted that as far as her 1990 Act claim was concerned, the Labour Court had addressed the substance of the appellant's pension discrimination claim, finding that she had received the ill-health retirement pension she had applied for and that there was no discrimination involved in not giving her an injury gratuity when she did not meet the requirements for such a gratuity. Accordingly, the High Court concluded that the Labour Court's findings were *"unimpeachable as a matter of law"* and thus no error of law arose on the first ground of appeal on a point of law. As noted by the Judge, the Labour Court when dealing with the appellant's pension appeal did not just deal with preliminary issues raised by the Board but in fact addressed the substance of the claim.

119. In respect of the appellant's second point of law, again, as he had in respect of her 1998 Act appeal, the Judge found that this second point of law was not borne out by the transcript of the Labour Court hearing, from which he was satisfied that the appellant had been given a fair hearing and had her submissions heard in full.

120. I turn now to the appellant's grounds of appeal in this Court.

Ground 1

121. Ground 1 makes essentially the same complaint as the appellant makes in relation to her 1998 Act complaint, namely that key conclusions reached in the High Court judgment run *"contrary to the facts of the Labour Court [hearing] as recorded in the transcript".* It is contended that those facts when compared to the Labour Court determination prove that an error of law occurred on the part of the Labour Court and that the Judge erred in finding otherwise.

122. Again, in order to test these assertions, it is instructive to have regard to the transcript of the Labour Court hearing which, as referred to earlier, was available to the Judge.

123. As it had with the 1998 Act matter, at the outset of its consideration of the pension claim the Labour Court announced that it was dealing with preliminary issues only in relation to the 1990 Act claim, which would determine its jurisdiction in the matter. In the knowledge that the cognisable period was 16 November 2018 to 15 April 2019, the appellant was invited by the Chairperson to set out the alleged acts of discrimination under the 1990 Act. As the transcript reflects, what she outlined was that she was retired in November 2018 against her will and had an unwanted ill-health retirement pension imposed on her when what in fact she had applied for was an injury gratuity. Thus, the nub of the appellant's complaint under the 1990 Act was that an *"unwanted retirement"* was imposed on her which she contended constitutes victimisation under the 1990 Act; that she had not been given information on the pension she would receive; and that she had not been given requested information on how to access injury gratuity. She submitted to the Labour Court that refusing her information on or access to injury gratuity because her injury *"wasn't a catastrophic injury"* constituted discrimination against her by the Board on disability grounds.

124. As the transcript records, the Board's position before the Labour Court was that the appellant was not forced to retire. She had written to the Board's Chief Executive in August 2017 seeking access to the Teachers' Superannuation Scheme under gratuity or allowance in the case of injury. As there was no evidence of the appellant having suffered injury at work, she was directed by the Pension Officer to ill-health retirement. In June 2018, she applied for ill-health retirement. She was then assessed under the Scheme, initially refused but later approved on appeal for ill-health retirement. The pension that was duly granted to her was based on her salary up to 30 June 2015 and was paid from the date

(June 2018) of her application for same and continued to be paid. Moreover, the handling of the appellant's pension application had been reviewed by the Chief Executive of the Board who was satisfied that it was properly processed. Furthermore, the appellant had exercised her right of appeal to the Department of Education and Skills, and the Department's Pension Unit was satisfied that the Board had administered the pension correctly and that injury benefit did not apply. The Board emphasised that it had not forced retirement on the appellant or otherwise initiated any ill-health retirement or access to retirement benefits. The initiative, it was said, was taken by the appellant herself. The Board's position was that the pension the appellant received was the one she applied for.

125. As the transcript records, following a brief recess after the parties' submissions concluded, the Labour Court indicated that it was going to adjourn the matter in order to consider whether it had jurisdiction to hear the pension case. If the Labour Court found that it had jurisdiction, the parties would be invited to a hearing on the substantive issue. If the Court found it did not have jurisdiction, then that would be the end of the matter.

126. Albeit having set out its stall in the terms outlined above, as its determination records, the Labour Court did not in fact decide the pension complaint by reference to any cognisable period. Rather, it duly determined that the appellant had received the ill-health retirement pension she applied for, and that there was no discrimination involved in the Board not giving her an injury gratuity when she did not meet the requirements for such gratuity. Hence, it found that the appellant had not identified any breaches of the 1990 Act and that her complaint was *"misconceived".*

127. As we know, the Judge found that determination *"unimpeachable as a matter of law".* As far as I am concerned, the Judge was entirely correct. Contrary to the appellant's contention, the Judge's conclusion derives from the evidence that was before him by way of the Labour Court transcript and, more particularly, the affidavit evidence of Ms.

O'Sullivan (which set out in some detail the appellant's pension history) and which the appellant had not challenged. I note that albeit on 20 December 2021 the appellant swore an affidavit subsequent to that sworn by Ms. O'Sullivan, she did not in her December 2021 affidavit take issue with any of the averments made by Ms. O'Sullivan.

128. In my view, there was ample material before the Labour Court for it to find as it did and indeed for the Judge to uphold the Labour Court's determination, not least the fact that the appellant had applied for ill-health retirement benefit on 6 June 2018 (as deposed to by Ms. O'Sullivan) which was granted to her, and that her circumstances did not qualify her for injury gratuity.

129. Insofar as the appellant at Ground 1 of the within appeal also asserts, variously, that: a) she did not agree to the process the Labour Court ordained at the outset of the hearing; b) the Labour Court instructed the Board that it only had to say *"no breaches occurred"* and c) that she was *"removed from the online court",* I reject all of those contentions for the reasons I have already set out above in respect of the 1998 Act appeal. There is also no merit in the contention that the appellant was not allowed to present evidence before the Labour Court since the Labour Court in fact dealt with the merits of her claim which in any event did not allege discrimination or victimisation but rather only that the appellant should be entitled to another pension.

130. Insofar as the appellant's maintained in her oral submissions in this Court that the High Court did not understand the pension issue in particular her contention that she was not removed from office on 15 June 2015 or that if such removal occurred it did not have the effect the Board contends for, it is apparent from the face of the judgment that the Judge well understood the pension issue since he quotes extensively from the decision of the AO which, *inter alia,* sets the appellant's claims regarding her employment status.

131. Ground 1 also asserts that it was an error of law for the Labour Court to make any determination on the appellant's pension complaint *"outside of the cognisable period"*. There is absolutely no merit in that contention having regard to the factual matrix before the Labour Court regarding the appellant's pension.

Ground 2

132. Insofar as complaint is made in Ground 2 about alleged *"leapfrogging"* by the Labour Court, I reject that complaint for the reason I have already given in respect of the 1998 Act complaint.

Ground 3

133. At Ground 3, the appellant again makes complaint against the Judge for having heard the applications for *Isaac Wunder* orders alongside her statutory appeals, and again takes issue with para. 26 of the High Court judgment. I reject these arguments for precisely the same reasons I rejected the same complaints as made in respect of her 1998 Act appeal.

134. The appellant further asserts, at Ground 3, that the fact that the Labour Court proceeded to deal substantively with her pension complaint must mean that the Labour Court was *"certain"* that her employment had not been terminated in the six months before she lodged her complaint. Whilst the appellant references April 2010 in this regard, I am taking it that her intention was to reference April 2019 being the month she lodged her pension complaint in issue here with the WRC. Either way, I reject the interpretation the appellant seeks to put on the Labour Court's determination of her 1990 Act complaint. For the appellant to ask the Court to interpret the Labour Court's determination as somehow confirmatory of her own view of her employment status is not tenable in circumstances where firstly, what the Labour Court did was to address the substance of the appellant's pension complaint and not her employment status, and secondly, where, patently, in its determination under the heading *"Background"*, the Labour Court states

(albeit noting the appellant's submission that her employment continued after that date) that the appellant *"was removed from office by the Minister in June 2015".*

Ground 4

135. At Ground 4, the appellant asserts that the Labour Court's promised substantive hearing into her pension complaint never happened and that as a result she had no opportunity to make written submissions on the substantive issues.

136. Contrary to the appellant's argument, her substantive complaint under the 1990 Act was in effect considered by the Labour Court. Having satisfied itself that her complaint was *"misconceived"* from the outset, there was, thereafter, no issue in respect of which the Labour Court was required to afford the appellant a further opportunity to make submissions. Palpably, the determination issued by the Labour Court illuminates why such further hearing never took place and indeed why such futher hearing would have been entirely futile.

137. Finally, insofar as the appellant maintains that she was precluded by the Labour Court from challenging the submissions made by Ms. O'Sullivan, I note from the transcript of the Labour Court hearing that following Ms. O'Sullivan's submissions, the appellant was invited to make her response, which she duly made.

138. Ground 4 is not made out.

Other complaints

139. In her written and oral submissions, the appellant asserts that the Judge erred in *"shutting her down"* in respect of her two statutory appeals. I reject this assertion. There is no question of the Judge having prevented the appellant from making her submissions in the High Court. On the contrary, from my perusal of the High Court transcript, I note the urgings of the Judge on 22 and 23 March 2022, in an endeavour to get the appellant to set out her arguments in respect of her two statutory appeals. As I referred to earlier, after

much urging by the Judge, the appellant finally commenced her submissions on 23 March 2022 (High Court transcript 22 March 2022, pp. 8-14).

140. I also reject the claim that the Judge wanted to strike out the appellant's appeals. Insofar as the Judge opined during the High Court hearing that such a course might be warranted, it was in the face of the appellant's recalcitrance on 22 March 2022 to advance her points of law. As I have already alluded to, such scenario was ultimately averted by the appellant ultimately, on 23 March 2022, advancing her submissions.

141. The appellant also suggests that the Judge disregarded her claim that all matters were interconnected. In the first instance, I note that the Judge was conscious of the appellant's claim in this regard– he noted it on 23 March 2022 (see p.28 of the High Court transcript line 6). The fact of the matter, however, is that, as para. 26 of his judgment effectively demonstrates, the Judge did not agree that various matters which the appellant sought to advance at the High Court hearing were interconnected with the asserted points of law upon which he had to decide. In my view, the Judge's conclusion that many of the submissions the appellant sought to advance were *"impermissible*" in the context of the asserted points of law before him was both reasonable and rational. That being the case, and in circumstances where, as both the transcript of the High Court hearing and para. 26 of the judgment show, the appellant in fact advanced her various arguments, it is not open to the appellant to say she was unfairly treated at the High Court hearing.

142. The appellant also contends that the Judge failed to look at or acquaint himself with her written submissions to the Labour Court regarding post-employment discrimination and victimisation and the significance of those submissions, and that he never gave her the opportunity to present her evidence of what she describes as *"green victimisation".* She says that her alleged *"green victimisation"* began after the Equality Officer's decision of 2012 when people were *"tricked"* into thinking that she had withdrawn her sexual

harassment claim for all purposes such as if her claim had never existed. She further says that the High Court should have looked at the report of Mr. Cahalane.

143. Contrary to the appellant's argument, I am satisfied from my perusal of the High Court transcript that the Judge was aware of the appellant's complaints and submissions in relation to alleged post-employment discrimination and victimisation including *"green victimisation"*. As I have alluded to earlier, during the High Court hearing, the Judge duly noted the appellant's explanation of what *"green victimisation"* constituted (see especially High Court transcript 23 March 2022, p. 122, lines 10-24). Again, as I have already stated above, the Judge properly found that the appellant's submissions on *"green victimisation"* and other issues raised by her were outside of the points of law contained in the pleadings.

144. Insofar as the appellant makes complaint about the fact that her two statutory appeals were dealt with in a single judgment, there is no merit in this complaint in circumstances where the points of law upon which the appellant sought to rely were identical in the two appeals.

145. Finally, the appellant contended that the High Court judgment did not reflect her complaints (as set out in her affidavit) about the Labour Court's alleged departure from fair procedures, which the appellant says constituted an error of law on the part of the Labour Court. In advocating that this Court should remit the appellant's complaints under the 1998 Act and the 1990 Act back to the Labour Court, the appellant relied on the approach of Meenan J. in *Coyle v. The Labour Court* [2020] IEHC 111 (at para. 22).

146. In my view, the appellant's argument is not borne out having regard to paras. 22-25 of the judgment, where the Judge specifically addresses her complaint of unfair procedures. As earlier referred to, the Judge found that the appellant's complaint of unfair procedures by the Labour Court was *"simply not borne out by the contents of the transcript of the [Labour Court] hearing"*, a finding with which I agree for the reasons already

stated. There is no comparison here with what occurred in *Coyle* and which persuaded the trial judge in that case to remit the matter back to the Labour Court. In short, there is no basis upon which this Court should remit the appellant's complaints under the 1998 Act and the 1990 Act back to the Labour Court.

Summary

147. For all the reasons set out herein, I would dismiss the appellant's statutory appeals 2021/37/MCA and 2021/38/MCA.

148. Whelan J. and Binchy J. have indicated their agreement therewith and with the orders I have proposed.