

Abu Dhabi Supreme Court Judgment: Grievance filed by an employee against an Employer's termination decision

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Background

The Appellant (an individual) filed an action to cancel an administrative decision approving his resignation and terminating his employment on the basis that he did not tender his resignation (he claimed he was forced to resign). The Appellant's employer was a governmental entity (the Respondent). The Appellant argued that the decision was issued in contravention of the law since he was not notified of the approval of his resignation within the time limit prescribed by law. The Appellant thus filed his action before the Abu Dhabi Court of First Instance in order to have the administrative decision cancelled and compensation to be awarded to him in the amount of AED 10 million.

The Court of First Instance held that it did not have subject-matter jurisdiction to hear the application to cancel the termination decision, referring the matter to the Court of Appeal in order to be heard as a grievance in accordance with Article 81 of the Abu Dhabi Civil Service Law while staying proceedings in respect of the compensation claim pending a decision on the application.

The matter proceeded before the Court of Appeal as a grievance. The Respondent pleaded that the application to cancel the termination decision should not be entertained for being time barred pursuant to Article 81 of the Abu Dhabi Civil Service Law No. 1 of 2006 which states that an employee has 30 days from the date of receiving notice of the decision terminating his employment to file a grievance before the Court of Appeal whose decision on the matter will be final.

The Court of Appeal refused to entertain the Appellant's grievance filed against the termination decision on the basis that the application [for cancellation] was not filed within the period prescribed under Article 81 of the Abu Dhabi Civil Service Law.

The Appellant appealed to Cassation Court of Abu Dhabi, seeking to overturn the Court of Appeal's decision and for the case to be reconsidered by a different panel of the Court of Appeal.

The Appellant highlighted three points, arguing that the Court of Appeal erred in its reasoning and evaluation of the evidence. Filing a grievance against an administrative decision before the Court of Appeal under Article 81 of the Abu Dhabi Civil Service Law is optional. By failing to pursue such option, the employee does not forfeit his right to approach the Court of First Instance having general jurisdiction over administrative disputes. There is no general provision of law specifying a time frame for filing an administrative claim, including an action for canceling an administrative decision. The Appellant's assertions were incorrect as explained below.

In the Respondent's counterclaim, he argued that the appeal should not be entertained on the basis of Article 81 of the Abu Dhabi Civil Service Law which states that the Court of Appeal's decision on the grievance filed against the termination decision is final. This was also held to be incorrect. However, the

Respondent won the case on the basis that the Appellant did not file the grievance within the 30 day time limit.

The Cassation Court of Abu Dhabi dismissed the Appellant's Appeal 149 of 2012:

Responding to the Appellant's grounds for appeal, the Supreme Court explained that the expression filing "a grievance before the Court of Appeal" under Articles 76 and 81 of the Abu Dhabi Civil Service Law is synonymous with "filing an appeal before the Court of Appeal", not a grievance in the administrative sense which is filed before the administrative body that issued the decision as the first step of any potential court action (in order to work out a settlement). The Cassation Court thus held that a grievance under Articles 76 and 81 refers to a court appeal. Such grievance leads to a judicial rather than an administrative resolution of the dispute.

Therefore, contrary to the Appellant's assertion, the Court of Appeal had jurisdiction to decide on the validity of the appealed decision as long as it falls within the scope of Article 81. This is not affected by the Appellant's contention that the Employer approving resignation does not equate to a termination decision that effectively terminates his employment. As such, the appealed decision falls under the provisions of that article and can only be appealed if a grievance is brought before the Court of Appeal within the 30 day time limit of that article.

By law, the time limit for appealing administrative decisions starts to run from the date when the decision is notified to the party concerned or he is made aware of it. Once the party against whom the decision was rendered receives absolute knowledge of its terms and is able to assess his legal position, the statute of limitations period for appealing the decision would start to run. Absolute knowledge can be deduced from any relevant fact or presumption without having to follow any particular method of proof. It is for the court to evaluate the significance of such presumptions and facts in judging the sufficiency of knowledge. Notice or service through publication in the press is not an end, per se, but a means of achieving knowledge. Absolute knowledge of the decision, by whatever means, amounts to service and triggers the statute of limitations for appeal.

As correctly held by the lower Court, the decision to terminate was issued on 15.12.11. The Appellant acknowledges in his Statement of Claim that he entrusted a security guard to write his letter of resignation which he then signed. The Appellant was notified that his resignation had been approved the same day. Thus, the Appellant, by his own admission, became aware of the decision approving his resignation on 15.12.11. The Grievant cannot retract a judicial admission and he should have filed a grievance against the decision with the Court of Appeal within the time limit prescribed by Article 81 but he did not as the action he filed in Court of First Instance on 09.02.12 was out of time.

As a result the Appellant's resignation effectively terminated his employment when it was accepted on 15.12.11.

Comments on the Decision:

As mentioned above with regards to the Cassation Court's dismissal of the Respondent's plea that the appeal should not be entertained pursuant to Article 81 of the Abu Dhabi Civil Service Law which provides that a decision of the Court of Appeal on a grievance arising from a termination decision is final, the Court clarified which decisions are subject to appeal to the Supreme Court by stating that a final decision of the Court of Appeal is capable of being appealed to the Supreme Court.

On this matter, Dr. Ahmed Abu Al Wafa, states in his book "Usool Al Muhakamat Al Madaniya", that two forms of review are available for judicial decisions:

- Ordinary means: Objection, appeal etc.
- Extraordinary means: Supreme Court appeal, request for re-examination etc.

While Appeal Court decisions are of course final they can still be appealed to the Supreme Court provided they satisfy all of the requirements for such appeal.

A grievance within the meaning of Articles 76 and 81 of the Civil Service Law (grievance before the Court of Appeal) is an appeal, not a grievance in the administrative sense. A grievance, as conventionally understood in the context of jurisprudence and law, is filed before the administrative body that issued the decision.

The Supreme Court held that the option available under Article 81 of the Civil Service Law is not the option of bringing an appeal before the Court of Appeal or bringing an action before the Court of First Instance having jurisdiction over appeals from administrative decisions. The option expressed here is simply the option of contesting a termination decision as opposed to choice of forum. The option to contest can only be pursued in the court possessing jurisdiction which is the Court of Appeal according to Article 81 of the Abu Dhabi Civil Service Law.

The Cassation Court cited other Federal Supreme Court judgments which provide:

“After enumerating grounds for termination, Article (81) of Law No. 1 of 2006 concerning civil service in Abu Dhabi states, that the public officer has 30 days from the date of receiving notice of the termination decision to file a grievance before the competent Court of Appeal. The decision on the grievance shall be final.” – Administrative Appeal No. 306-22

“The law has made the filing of a grievance against a termination decision before the Court of Appeal optional, not mandatory and should he pursue the option he must file his grievance within said time limit. Indeed, an employee can leap- frog the grievance stage and approach the competent court directly to seek judicial protection against the termination decision given that grievance is not a pre-condition to legal action.”

It is therefore recommended that the Cassation Court’s approach is followed as explicit provisions leave no room for interpretation. A terminated employee clearly has the option under Article 81 of the Abu Dhabi Civil Service Law to file a grievance against the termination decision before the competent Court of Appeal and if he chooses the option of going to court to request that the termination decision be cancelled, he must proceed to the court possessing jurisdiction which is the Court of Appeal within the time limit specified in the law.