Janina Leo v Christian Outreach Centre & Brian Mulheran [2024] QCAT 91

Queensland Civil and Administrative Tribunal, Snr. Member Fitzpatrick, 27 February 2024

An application to summarily dismiss a complaint of religious, sexuality, and association discrimination by a school operated by a religious organisation.

Key words: Discrimination, Queensland, Political or Religious Beliefs, School, Abuse of Process

1.   The matter was heard on the papers.

2.   Christian Outreach Centre (COC) operated a school, Citipointe Christian College, Carindale (school), with Brian Mulheran as principal.

3.   COC was a member of the International Network of Churches, which revised its declaration of faith in 2020 to include statements regarding gender identity and sexuality. This was communicated to parents in 2021 and, in 2022, formed part of the enrolment contract. This enrolment contract was withdrawn within five days.

4.   Ms Leo was the mother of four children who had previously enrolled at the school.

5.   Ms Leo filed a complaint with the Human Rights Commission about late 2021 and early 2022 events.

6.   One issue involved Ms Leo's child, Emmey, born Elijah Leo, who now identifies as female, and sought to attend the grade 12 formal in female attire. The principal required Emmey to wear male attire, and later requested a gender-neutral outfit.

7.   Another issue was the School's contract for the 2022 year, as Ms Leo does not hold the religious belief she was expressly required to accept in the College's contract.

8.   Ms Leo claimed that direct discrimination occurred based on her religious beliefs and association with a transgender child (s10 Anti-Discrimination Act 1991 (Qld) (AD Act)), as well as indirect discrimination (s 11 AD Act), and victimisation in the area of goods and services under s 129 and s 46 of the AD Act.

9.   Section 39 of the AD Act provides that an educational authority must not discriminate, relevantly, in any variation of a student's enrolment terms, or by treating a student unfavourably in any way in connection with the student's training or instruction.

10. Section 46 of the AD Act provides that a person who supplies goods or services must not discriminate against another person, relevantly by failing to supply the goods or services, in the terms on which goods or services are supplied, in the way in which goods or services are supplied, or by treating the other person unfavourably in any way in connection with the supply of goods and services.

11. The School requested that the application be struck out under s 47 of the Queensland Civil and Administrative Tribunal Act 2009 (Qld) (QCAT Act) on the basis that it is vexatious, misconceived, lacking in substance, and otherwise an abuse of process because the applicant's complaint was about an amended contract of enrolment which was not received by her. Therefore, she could not be the subject of any direct or indirect discrimination referred to in that amended contract.

12. The School claimed that Ms Leo's children were not enrolled at the time the amended contract was sent, and thus the amended contract was not sent to Ms Leo.

13. Further, there was no requirement to hold the same religious beliefs as the School, but rather to support the beliefs that informed its teachings and practice.

14. It was argued that the formal attire issues were the subject of a complaint made by Emmey, which has not been accepted by the Commission as it is out of time, and was therefore not justiciable by the Tribunal in this proceeding.

15. Further, Emmey was permitted to wear a formal dress to the school, and was treated no differently than any other graduate at that event.

16. The Tribunal noted that its approach was not to weigh up such evidence as may be before the Tribunal at an interlocutory stage, but rather to consider whether the respondent had shown that the complaint was absolutely hopeless.

17. The Tribunal found that the complaint and materials provided a rational cause of action, and was unable to find on any basis that the case was frivolous, vexatious, misconceived, lacking in substance, or otherwise an abuse of process.

18. The application was dismissed.

COMMENT

This matter raises the question of the meaning of a religious belief and whether the absence of a religious belief is a protected attribute under the AD Act.

Unless the matter is settled or otherwise discontinued, these issues may be discussed in further judgments.

VIEW THE CASE

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