

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CIV-2020-055-000043
[2020] NZDC 22624**

BETWEEN

**MATHEWKUTTY JOSE
MANGALASSERY**
Appellant

AND

**SOCIAL WORKERS REGISTRATION
BOARD**
Respondent

Hearing: 23 October 2020

Appearances: Mr Mangalassery in Person
S Waalkens for Respondent

Judgment: 16 November 2020

DECISION OF JUDGE G M HARRISON

[1] Mr Mangalassery appeals against a decision of the Social Workers Registration Board of 16 December 2019.

[2] The chairperson of the Social Workers Complaints and Disciplinary Tribunal appointed a Professional Conduct Committee (PCC) pursuant to s 66 of the Social Workers Registration Act 2003 (the Act) to investigate a complaint about Mr Mangalassery.

[3] Mr Mangalassery obtained full registration as a social worker on 10 May 2012. Between 18 September 2017 and 31 May 2018 he was a social worker for Ms P's three children.

[4] On 31 May 2018 the respondent, the Social Workers Registration Board (SWRB) received a notification of complaint from Ms Dianne Te Tau about Mr Mangalassery's conduct as a social worker.

[5] Ms Tau is a registered social worker and Ms P was her client at the time the complaint was made. Although Ms Tau filed the complaint essentially she had only passed on the complaint which was that of Ms P.

[6] The PCC identified four particular complaints with regard to the manner in which, and conduct by which Mr Mangalassery dealt with the children.

[7] It is unnecessary to go into any detail regarding the complaints because the PCC concluded that Mr Mangalassery did not breach his ethical duties and the Code of Conduct in any aspects of the complaint.

[8] Notwithstanding the dismissal of the complaints the PCC went on to be critical of the manner in which Mr Mangalassery carried out his duties and it therefore recommended pursuant to s 71(1)(b)(v) of the Act that he receive monitoring and/or counselling to develop his social work practice in the following areas:

- (a) effective and appropriate communication: when emails are suitable for dialogue/conversational exchanges and when, instead, he should seek opportunities for face to face meetings;
- (b) critical and reflective practice: including Mr Mangalassery's understanding of the role of line management and legal support within the work that he performs, and reflection on his own practice (para 78 PCC report).

[9] The PCC does not have the power to impose sanctions. It reported its conclusion to the Social Workers Registration Board. By letter of 16 December 2019 the Registrar of the Board advised Mr Mangalassery that at its meeting on 5 December 2019 the Board decided to implement the PCC's recommendation.

[10] That had the effect of empowering the Board to implement the PCC's recommendation.

[11] In its letter the Board said:

The Board has a number of options available to it in order to implement the PCC's recommendation. The Board's preference is to work with your employer and your supervisor, with your consent, to identify training opportunities to address the PCC's recommendation, with your employer or supervisor providing a report to the Board on your progress in six months' time. Alternatively, the Board could review your competence under s 39 of the Act, which may involve a competence assessment. The Board is of the view that this latter option would be more onerous for you.

[12] The Board then invited Mr Mangalassery to agree for the Board to work with his employer and supervisor to address the PCC's recommendation.

The appeal

[13] Mr Mangalassery has filed notice of appeal against the decision of the Board to accept the recommendations of the PCC.

[14] Section 88 of the Act provides a right of appeal to this Court from decisions of the Board.

[15] As relevant it provides:

- (1) A person may appeal to the District Court against any decision or direction of the Board under this Act that adversely affects him or her (not being a decision or direction affecting a person only because he or she is a person of a particular kind or description).
- (2) A person may appeal to the District Court against the whole or any part of the decision or order made in relation to him or her under Part 4 (other than a determination of a Professional Conduct Committee).

...

[16] When this matter came before Judge R J McIlraith at an appeal conference on 6 March 2020 Mr Waalkens raised a preliminary issue to be addressed before the hearing of the appeal. That is, whether this Court has jurisdiction to hear the appeal

by reason of the exclusion in subs (2) of s 88, where it excludes a determination of a Professional Conduct Committee.

[17] That issue came before me. It was Mr Waalkens' submission on behalf of the Board that this Court does not have jurisdiction to hear an appeal involving a determination of the PCC.

[18] I do not accept that submission. The actual decision as it affects Mr Mangalassery was made by the Board when it adopted the PCC's recommendation. The PCC does not have jurisdiction to enforce its decision. Indeed the Board may reject the recommendation of the PCC or request it to investigate further, the particular issue referred to it.

[19] It is quite possible that the PCC may conduct an investigation and reach conclusions but decide not to refer any recommendation to the Board. That in my view is the purpose of subs (2), namely to confer a right of appeal in respect of a decision of the Board, but to exclude that right in a case where a matter has been considered by the PCC but not referred to the Board.

[20] In my view it is clearly open to Mr Mangalassery to appeal against the direction of the Board as to his future supervision and reconsideration perhaps of his fitness to continue as a social worker.

[21] The essence of Mr Mangalassery's appeal was that once the PCC had determined that all four complaints against him should be dismissed, the PCC had no jurisdiction then to make its recommendation to the Board about his future supervision.

[22] There is a further issue which may require determination. The complaint was made on 31 May 2018. The Act was amended as of 28 February 2019. The amendments including s 71 and in particular the introduction of s 71(1)(b)(v) pursuant to which the PCC made its recommendations to the Board, then came into force but that section was not in force at the time of the complaint.

[23] That issue is however for determination at the substantive hearing.

Conclusion

[24] After discussion with Mr Waalkens it was apparent that the appeal could be concluded within one half day, the issues being matters of law, without the need to investigate the factual material relied upon by the PCC.

[25] I accordingly direct that a half day fixture be allocated for the hearing of the appeal.

[26] Mr Mangalassery is to file his submissions 10 days before the allocated date, and the Board is to file its submissions 5 days prior to that date.

[27] In view of the relatively brief hearing time now allocated for the appeal, Mr Waalkens, very responsibly, did not seek an order for security for costs.

[28] Directions accordingly.

G M Harrison
District Court Judge