



HIGH COURT OF AUSTRALIA

29 February 2012

AUSTRALIAN EDUCATION UNION v DEPARTMENT OF EDUCATION AND CHILDREN'S SERVICES

[2012] HCA 3

Today the High Court allowed an appeal from the Full Court of the Supreme Court of South Australia, which had held that the Minister of Education was empowered to appoint temporary "contract teachers" under s 9(4) of the *Education Act 1972 (SA)* ("the Act"). The High Court held that the Minister was empowered to appoint teachers only under s 15 of the Act.

In South Australia, the Minister could appoint persons as "officers of the teaching service" under s 15(1) of the Act. For many years, the Minister also purported to appoint persons as temporary "contract teachers" under s 9(4) of the Act. Section 9(4) provided for the appointment of "such officers and employees (in addition to ... the teaching service)" as the Minister considered necessary "for the proper administration of this Act or for the welfare of the students of any school". Long service leave entitlements of officers and employees appointed under s 9(4) were less favourable than the entitlements enjoyed by officers of the teaching service appointed under s 15. In 2005, the Department of Education and Children's Services advised the South Australian Branch of the Australian Education Union ("the AEU") that contract teachers would, in the future, be appointed under s 15 of the Act, and in 2007, s 9(4) was repealed. However, the parties continued to dispute the long service leave entitlements of persons who had purportedly been appointed under s 9(4) prior to the repeal of that section.

In March 2007, the AEU notified the Industrial Relations Commission of South Australia ("the Commission") of the dispute, asserting that the Minister's power to appoint teachers stemmed from s 15 of the Act, and that all temporary or contract teachers, being officers of the teaching service, were entitled to long service leave entitlements as persons appointed under s 15. The Commission referred two questions of law to the Industrial Relations Court of South Australia ("the IRC"):

1. Did s 9(4) of the Act, at the time that it was in force, authorise the Minister to appoint officers to be engaged as teachers, or did s 15 provide exclusively for the appointment of teachers?
2. In consequence of the answer to question one, are the long service leave entitlements of any teachers purportedly appointed pursuant to s 9(4) governed by the provisions of the *Public Sector Management Act 1995 (SA)*, or Division 3 of Part 3 of the Act?

The Full Court of the IRC concluded that s 9(4) had authorised the Minister to appoint officers to be engaged as teachers independently of s 15. An appeal to the Full Court of the Supreme Court was dismissed. The AEU appealed, by special leave, to the High Court of Australia.

The High Court allowed the appeal, but remitted question two to the Full Court of the IRC for further consideration. In answer to question one, the High Court held that, at the time it was in force, s 9(4) of the Act did not authorise the Minister to appoint officers to be engaged as teachers,

and s 15 provided exclusively for the appointment of teachers. The High Court rejected a submission that the words "in addition to" in s 9(4) meant "as well as" and should be read as supplementary or expansionary, holding that they were words of limitation, used in the sense of "apart from". The High Court held that even if it were possible to characterise the power conferred by s 15 as a specific power carved out of a more general power conferred by s 9(4), the general power should be read as not applying to the subject matter of the specific power.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*