



Summary of Judgment

**Tam Yuk Fun Toffee (“Applicant”) v
Secretary for the Civil Service (“Secretary”)
CACV 203/2024, [2026] HKCA 389**

Decision : **Secretary’s appeal allowed**
Date of Hearing : **10 June 2025**
Date of Judgment : **6 March 2026**

Background

1. This is the Secretary’s appeal to the Court of Appeal (“**CA**”) against the Judgment of the Court of First Instance (“**CFI**”) dated 26 April 2024 allowing the judicial review lodged by the Applicant (a former civil servant employed as a Certificated Mistress since 1995) to challenge the decision of the Secretary made on 10 July 2023 (“**Dismissal Decision**”) in dismissing the Applicant under section 10 of the Public Service (Administration) Order (“**PS(A)O**”) for posting highly improper Facebook posts between mid-June and September 2019 that contained obscene, hatred, cursing, biased, provocative, insulting and defamatory elements and foul language directed against the Police.
(Full text of the CFI’s judgment at https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=159668)
2. An inquiry into the Applicant’s misconduct under section 10 of the PS(A)O were held in January 2022. The Inquiry Committee found the Applicant’s conduct had fallen short of the standards expected of a teacher and had brought the Government into disrepute, and that she had misconducted herself as a result of having committed the misconduct as particularized in the statement of alleged misconduct.
3. Having considered the Applicant’s representations in mitigation, the Education Bureau recommended dismissal, a punishment thereafter endorsed by both the Secretariat on Civil Service Discipline and the Public Service Commission. The Secretary approved the dismissal recommendation after considering the further and final representations submitted by the Applicant’s legal representative.
4. The Applicant mounted the judicial review challenging the Dismissal Decision by raising four grounds:-



- (a) The Secretary erred in accepting the finding of the Inquiry Committee that she had misconducted herself (“**Ground 1**”);
 - (b) The Dismissal Decision constituted a disproportionate interference of her right to freedom of expression and/or her right to privacy (“**Ground 2**”);
 - (c) The Dismissal Decision was oppressive and irrational (“**Ground 3**”); and
 - (d) The Dismissal Decision was tainted with procedural impropriety for lack of reasons (“**Ground 4**”).
5. The CFI, in allowing the judicial review, rejected Ground 1 and Ground 2 but accepted Ground 3. The CFI did not deal with the substance of Ground 4 in light of the holding on Ground 3 after expressing some queries about the adequacy of the reasons. In consequence, the CFI quashed the Dismissal Decision.
6. The Secretary appealed to the CA contending, in gist, that the CFI had wrongly assumed the role of the decision maker and substituted his own views on what was the proper punishment. The Applicant filed a respondent’s notice arguing that CFI’s decision should have been affirmed on Grounds 2 and 4 (but relying on right to freedom of expression only) as well.

Department of Justice’s Summary of the CA’s rulings

(Full text of the CA’s judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=178114&QS=%2B%7C%28CACV%2C203%2F2024%29&TP=JU)

7. The CA found it convenient to deal with Grounds 3 and 4 first. The CA held the following.

Ground 3 (rationality challenge)

8. Recognizing that the disciplinary authority is best equipped with the requisite judgment and expertise in relation to the professional standard of its discipline to conduct the assessment and weighing exercise in arriving at the most appropriate sanction, the court will not lightly interfere with the sanction



imposed by a disciplinary authority. To succeed on the irrationality ground, the aggrieved party must satisfy the court that the sanction is so unduly oppressive and out of proportion to the occasion that it falls outside the bounds of any decision open to a reasonable authority [§§41-42].

9. On evidence, the Secretary did not adopt dismissal as the starting point and had considered a range of lesser sanctions, but concluded that dismissal was appropriate given the gravity of the misconduct and the public interest. Dismissal, though harsh, remained within the reasonable range, so there was no basis for the court, in exercising its supervisory jurisdiction in judicial review to interfere. The fact that the Secretary did not opt for a lesser sanction does not somehow involve some unidentified errors as held by the CFI. Deterrence was a weighty consideration (which the Secretary is in the best position to make the call), and that the Secretary had adequately considered the Applicant's mitigation. The Secretary had correctly approached the question of sanction [§§52-60].
10. The CFI erred in wrongly assuming the role of the decision-maker and substituting his own assessment for that of the decision maker [§§61-62]. The CA also refused the Applicant's attempt to advance on appeal a new irrationality case on the Secretary's reasoning [§51].

Ground 4 (reasons challenge)

11. The Applicant's argument that the Secretary had failed to give adequate reasons for imposing dismissal instead of a lesser sanction was rejected. Viewed in context, the extended correspondence over some 8 months before the Dismissal Decision showed the Secretary had considered the Applicant's full mitigation but concluded that her very serious misconduct, its impact on public confidence, and her lack of remorse justified dismissal [§§77-80].

Ground 2 (constitutional challenge)

12. The CA shared the CFI's inclination that the relevant standard of scrutiny is more towards "manifestly without reasonable foundation" test. The CA also endorsed the CFI's proportionality analysis and held that a fair balance has been struck. The CA also rejected the argument that a four-year lapse of time (between the publication of the Facebook posts and the Dismissal Decision)



diminished the necessity of the disciplinary sanction [§§90-97].

Disposition

13. The CA allowed the Secretary's appeal, dismissed the Applicant's respondent's notice, set aside the CFI's order and dismissed the judicial review. The Applicant was ordered to pay the Secretary's costs of the appeal and below, with a certificate for two counsel.

Civil Division

Department of Justice

July 2026