



Summary of Judgment

Woo Tak Yan (“Applicant”) v Secretary for Civil Service

CACV 230/2022 and [2022] HKCA 1624

Decision : **Appeal against refusal of leave for judicial review dismissed with costs**

Date of Judgment : **10 November 2022**

Background

1. The Court of First Instance (“CFI”) refused to grant leave to the Applicant to apply for judicial review of the decision (“**the Decision**”) of the Secretary for Civil Service (“SCS”) that the Applicant be retired from the civil service in the public interest under section 12 of the Public Service (Administration) Order. The Applicant appealed against the order of the CFI.
2. By way of background, the Applicant was a former civil servant. In 2020, the Civil Service Bureau decided to impose a requirement that all civil servants should duly sign and return a declaration (“**the Declaration**”) confirming that they would uphold the Basic Law, bear allegiance to the HKSAR, be dedicated to their duties, and be responsible to the HKSAR Government. The Applicant returned a declaration with his name, ID number and rank printed thereon, and the date (in traditional Chinese calendar) handwritten in Chinese. Against the reference to “Signature” were the handwritten words “天日昭昭” (read from right to left). According to records, the words “天日昭昭” had not been used by the Applicant as his signature in other documents before his submission of the Declaration. SCS declined to accept the Applicant’s Declaration as having been duly signed and took the view that the Applicant had not put forward any reasonable explanation for his failure to duly sign and return the Declaration by the stipulated deadline.
3. As a result, SCS made the Decision on 1 September 2021 and conveyed the same to the Applicant on 3 September 2021.
4. The appeal was disposed of on paper without an oral hearing, with the consent of the Applicant.



Key Issue in Dispute

5. Whether the CFI erred in upholding the SCS' decision to refuse to accept the handwritten words “天日昭昭” used by the Applicant in the Declaration as his signature, and in turn to retire the Applicant from the civil service in the public interest.

Department of Justice's Summary of the Court of Appeal's (“CA”) rulings

(Full text of the CA's judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=148581&QS=%24%28CACV%2C230%2F2022%29&TP=JU)

6. The essential factual issue that had to be determined by SCS then was whether the Applicant had duly signed and returned the Declaration by the stipulated deadline. This was a straightforward question of fact. The CFI Judge was correct in finding that the Applicant was clearly aware of the signature issue from the outset and all relevant documents had been provided to him. His protestation that he lacked sufficient information or documents to address the alleged failure to “duly sign” the Declaration was baseless. (Para. 32)
7. There is no substance in the Applicant's complaint that SCS had made significantly different representations or bases of the recommendation in the process leading to the Decision to retire him from the civil service. (Para. 33)
8. SCS's reasons for the Decision were fully set out in the Civil Service Bureau's letters to the Applicant. The Applicant could not have been left in any doubt as to the reasons for the Decision, namely, that he had neglected, refused or failed to duly sign and return the Declaration by the stipulated deadline without reasonable explanation, by reason whereof the Government had lost confidence in his suitability to continue discharging his duties as a public officer. (Para. 34)
9. The Applicant's conduct can properly be characterised as a “failure” and also a “neglect or refusal” to duly sign the Declaration. The CFI Judge is correct to find that there is no substance in the Applicant's complaint about unequal treatment in respect of a “neglect or refusal” as against a “failure”. (Para. 36)
10. Having regard to the fact that the Applicant was required to duly sign and return the Declaration by the stipulated deadline, the CFI Judge was right to reject the Applicant's contention that “time is not relevant to a signature”. The issue of



the “time” of a signature is relevant as to whether a particular form or style of signature has been adopted by a person as his signature at the time when he/she puts down such “signature” on a particular document. CA found that at the time when the Applicant signed the Declaration, he must have realised that his purported signature in the handwritten words “天日昭昭” was a significant departure from his usual signature for official documents. (Para. 38)

11. The Applicant’s appeal is dismissed, with costs to SCS. (Para. 43)

Civil Division

Department of Justice

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