

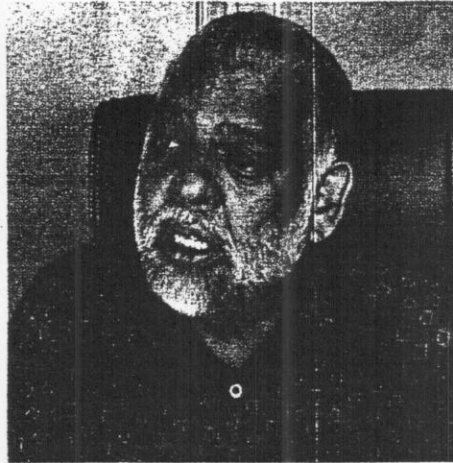
SCHOOL DISCIPLINE

# Lack of Understanding Of Corporal Punishment Leads to Different Interpretations of the Law Against It

Fiji Sun  
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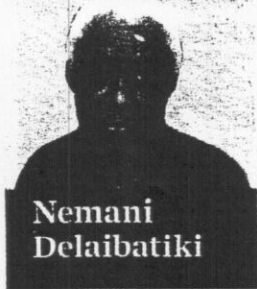


Suva lawyer Damodaran Nair.



Fiji Teachers Union general secretary Agni Deo.

## Analysis



Nemani Delaibatiki

**T**apping and touching are not forms of corporal punishment.

That is clarified by Employment Court judge Justice Anjala Wati in her landmark ruling in favour of a former principal who was sacked by the Ministry of Education for allegedly using corporal punishment.

She ruled that the termination of Shandil Mukesh Prasad, a former principal of Duavata Secondary School in rural Labasa, was unlawful and unjustified.

She ordered that Mr Prasad, be reinstated to his former position or "to a position which is no less advantageous to him within 21 days from the 1st of March.

She also ordered that Mr Prasad be paid all lost wages from the date of the dismissal to the date of reinstatement within six months from March 1.

The ministry was ordered to pay costs of the proceedings of \$3500 within 21 days.

Mr Prasad's employment was terminated on September 6, 2018 on the grounds that he inflicted corporal punishment on a student.

slapped six students during lunch time for having glitters on their faces. He was investigated for this.

### Termination letter

The termination letter signed by then Permanent Secretary Alison Burchell said the "Government has a zero tolerance approach to corporal punishment and your actions are a breach of the Code of Conduct and the terms of your employment contract".

She ordered him to vacate the school accommodation quarters with immediate effect.

He vehemently denied any wrongdoing and referred the matter to the Fiji Teachers Union general secretary Agni Deo who subsequently engaged Suva lawyer Damodaran Nair to file a case challenging the summary dismissal in court.

Mr Prasad argued that a teacher on duty had informed him at lunch time about students flying rubber bands. On investigation, he saw glitters on the faces of six students.

He touched their faces in a very fatherly, friendly and non-hostile way to see where the glitters were. He described the friendly touch as "tapping".

The Oxford dictionary defines tapping as the action of striking against something with a quick light blow or blows, or a sound made in this way.

### Tapping

A soft touch or light tap was what Mr Prasad meant by tapping. It wasn't a blow or a series of blows. A blow suggests an action applied with force. There was no evidence.

Justice Wati said the use of the word "tapping" by Mr Prasad caused alarm and concern to the ministry.

meant hitting or slapping and that constituted corporal punishment.

Mr Prasad said he turned the students' faces by touching them to see whether there were glitters on them after they were reported to be playing with rubber bands. There was no element of force.

Tapping was in a very fatherly, friendly and non-hostile way.

Justice Wati said she found Mr Prasad to be a credible witness and she accepted his account.

"In the circumstances, it would be very wrong and unfair to suggest and accept that Mr Prasad's touching the students amounts to corporal punishment for which he can be deemed to have breached the ministry's policy on child protection and corporal punishment."

She said Mr Prasad's care and concern could not be "equated to corporal punishment although there was a physical act of touching the students' faces".

When he saw the glitters, he told them to wash them off.

Then he used his handkerchief to wipe off the remaining glitters.

The ministry did not bring the students or their parents to court to give evidence.

### Corporal punishment

For corporal punishment charges to be laid, the ministry needs solid evidence. It fell short.

This case also highlights that the ministry needs to understand that the relationship between a principal of a boarding school and its students is slightly different to that of a principal of a non-boarding school and its students.

Mr Prasad was a father figure to the students and this was displayed in the way he responded to a report about the students.