

# Teacher Fired for 'Tapping' Gets His Job Back

■ Ex-principal's termination unlawful, unjustified, rules court  
 ■ Ministry ordered to reinstate teacher, pay all lost wages from date of dismissal



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The termination of a former school principal's contract for allegedly using corporal punishment was unlawful and unjustified, a court has ruled in a landmark decision.  
 The Employment High Court

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## Teacher fired for 'tapping' gets his job back

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Judge, Madam Justice Anjala Wati, ordered that Shandil Mukesh Prasad, former principal of Duavata Secondary School in rural Labasa, be reinstated to his former position or to a position which is no less advantageous to him within 21 days from March 1.

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 of Education, Heritage and Arts has been 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. It was reported that he had slapped six students during lunch time for having glitters on their face. He was being investigated for slapping six students.

The termination letter signed by then Permanent Secretary Alison Burehell 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 (FTU) general secretary, Agnie Doo, who subsequently engaged Suva lawyer Damodaran Nair, to file a case challenging the summary dismissal in court.

### 'Tapping'

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 face 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".

When he saw the glitters, he told them to wash them off. Then he used his handkerchief to wipe off the remaining glitters.

Before the termination, Mr Prasad was informed that there would be an investigation after it received complaints.

In a face-to-face interview he denied the alleged offence after which he was terminated.

In the originating summons which Mr Nair filed on Mr Prasad's behalf it sought:

- A declaration that the termination was unfair, unlawful, unjustified and manifestly harsh
- A declaration that the decision to terminate was procedurally unfair, lacked impartiality and manifestly harsh, and
- An order that Mr Prasad be reinstated without any loss of benefits and entitlements.

### 'No Prejudice'

Madam Justice Wati said she was concerned with the defendant's position that they could not bring the students to give evidence as it would be prejudicial to them.

She said there was no prejudice because Mr Prasad was no longer teaching at the school or any other school to victimise the students.

She did not endorse the ministry's submission on why the students, their parents or any else could not be brought in to test the veracity of the allegation.

On a ministry submission that Mr Prasad did not go through the mediation process before filing his case in the Employment Court, she ruled that a person could bypass the mediation process and go straight to the Employment Relations Tribunal, he or she had to go through the mediation services unit.

"Therefore I do not feel that mediation is a prerequisite for adjudication of matters in the Employment Court. There is no provision close to requiring this although it is desirable that parties consider settling employment grievances before coming to court," she said.

She said it was not clear from the allegation that one or six students were victims. She also said that Mr Prasad was not given clear, specific reasons for the termination.

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

The ministry said tapping 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.

There was no element of force. Tapping was in a very fatherly, friendly and non-hostile way.

Madam Justice Wati said she found Mr Prasad to be a credible witness and 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.

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".