

Extracts from the judgment:

KO HON YUE (高翰儒) v Management Committee of Fung Kai No. 1 Secondary School
for the year 2001 (FACV No. 8 of 2011)

Court of Final Appeal: 23 February 2012

Paragraph	Chief Justice Ma
5	“By a “Letter Offering Employment” dated 20 June 1990, the plaintiff was offered an appointment as a teacher at the School. The offer was made subject to the Conditions of Service which were attached to the letter, and the plaintiff was asked to sign copies of these Conditions as well as a letter of acceptance.”
6	“The letter of acceptance stated that the plaintiff accepted the appointment in accordance with the Conditions of Service, the Education Ordinance and its subsidiary legislation and also the applicable COA.”
7(3)	“the last clause in the Conditions referred to other applicable provisions (under the heading “Other Conditions”):- “Conditions other than what are listed above are provided in the Education Ordinance and the subsidiary legislation and the relevant Code of Aid.”” “One of the important effects of this clause was that the terms of the COA were incorporated as contractual terms in the plaintiff’s contract of employment. ”
13	Chu J described the Code of Aid (COA) as being of “pivotal importance” and with respect, I agree with this view.
14	“Clearly, with regard to the contractual documentation as a whole, the terms of the COA (as they affected both parties) were incorporated into the contract between the plaintiff and the defendants (subject of course to the defendants’ argument that where there was any conflict, the express terms of the Conditions of Service would prevail over the terms of the COA)”
23	Conditions of Service regarding termination of contract must be read together with the applicable provisions in the COA.
58	COA: Clause 54(b): “Such contract of service or letter of appointment shall not be subject to annual renewal , but may specify a period of time to which its terms and conditions shall refer.” Clause 55: “A teacher on first appointment to an aided school shall serve a probationary period of two years, after which the employment of such teacher shall be permanent , subject to such provisions regarding termination of employment as may be contained in such teacher’s contract of service or letter of appointment.””
61	COA Clause 56(g): “A school Management Committee shall only dismiss a teacher for good and sufficient reasons (see Appendices 17 and 18). A teacher shall be liable to summary dismissal if it appears to the Management Committee that he has been convicted of a criminal offence or has committed a grave breach of duty.” <u>“Appendix 17</u> <u>Procedure to be followed in case of Dismissal or Termination of Appointment of a Teacher</u> The procedure to be followed by the School Management Committee should be as follows : (a) The teacher concerned should be given a warning , or warnings that his work is unsatisfactory. This should be recorded in the school of files. (b) If no improvement in the teacher’s work is noticeable after an appropriate period then a formal written warning embodying relevant criticisms should be given to the teacher, <u>and a copy of this letter should be forwarded to the Director for information.</u> This should be recorded in the school files. (c) On receipt of this letter the Director of Education shall investigate the circumstances.

	<p>(d) If the teacher after receiving the warning letter still shows no improvement after an appropriate period, normally not less than one month, and the Management Committee intends to dismiss him or not to renew his contract after the date of expiry, the Supervisor shall so inform the Director.</p> <p>(e) In each case of dismissal of a teacher, a sufficient period of notice of termination of employment must be given in accordance with Section 56.”</p>
67	“there cannot be any termination by effluxion of time (only as far as the school is concerned) unless the terms of Appendix 17 are complied with.”
68	“As to Mr Chan’s (Fung Kai’s lawyer) alternative argument that even if the contract did not terminate by effluxion of time, it could nevertheless be determinable by giving three months’ notice under clause 56(c) of the COA, this argument is not valid in light of the position that clause 56(c) is not a self-standing provision. It must seen together with clause 56(g): see para 65 above.”
71	“I am fully aware that the effect of the above construction of the employment contract is to provide a substantial measure of protection to the plaintiff and other teachers in his position. This appears to me, however, to be the policy behind the COA: teachers are afforded a sizeable measure of security in their employment. ”
78	“I would repeat my view that the contract of employment could only be terminated with reference to the procedures in clause 56(g) and Appendix 17 of the COA (unless the summary dismissal provisions applied).”
79	“the proper order to make would be to remit the matter to the trial judge for a determination”:- “(1) As to whether the contract of employment had been lawfully terminated by the defendants. This would mean an investigation as to whether the terms of clause 56(g) and Appendix 17 of the COA were complied with by the defendants (including whether he had been summarily dismissed). If there had been a lawful termination by the defendants, the action must be dismissed. (2) If there was a wrongful termination, as to the damages that should be awarded to the plaintiff. Here, as with all such exercises, the assessment of damages must necessarily be on a somewhat speculative basis.”
91	“the plaintiff has largely been successful in this appeal. While recognizing that the defendants have had to appeal to this Court, for my part, I would make an order nisi (暫准命令) that the defendants pay to the plaintiff 75% of his costs,”
	Mr Justice Chan PJ
94	“Teaching is an honourable vocation and teachers play a vital role in the education and upbringing of our younger generations. There are many who consider that it is important to provide greater protection for teachers in their employment in order to attract high quality people to join the profession. This concern is apparently shared by the education authority and is, to some extent, reflected in the relevant provisions of the Code of Aid as discussed in this appeal.”
95	“any school which chooses to receive government subsidy is obliged to abide by the provisions in the Code, including those which touch on the relationship between the school and its teachers, such as the protection offered by the Code.”