

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN FULL COURT
SUIT NO. M.98 OF 1997

BEFORE: THE HONOURABLE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE COOKE
THE HONOURABLE MR. JUSTICE G. JAMES

IN THE MATTER OF AN APPLICATION BY
WOMAN CONSTABLE JUDITH EVANGELINE
FOSTER FOR LEAVE TO APPLY FOR ORDERS
OF CERTIORARI AND MANDAMUS.

Arthur Kitchen, instructed by H.G. Bartholomew and Company for the Applicant.

Nicole Foster and Nicole Simmons, instructed by the Director of State Proceedings for the Respondent.

HEARD: February 17, 1998

JUDGMENT DELIVERED BY GRANVILLE JAMES, J.

On 17th February, 1998 it was ordered that the motion herein be dismissed with costs to the Respondent, we now deliver our reason.

The applicant, Judith Evangeline Foster, was a member of the Jamaica Constabulary Force stationed at the St. Ann's Bay Police Station in the parish of St. Ann. In her affidavit, the applicant states that she has been a member of the Jamaica Constabulary Force since the 1st day of July, 1985.

The circumstances leading up to the instant case are that the applicant applied for re-enlistment for a term of five years. This application was made on 5th April, 1995. On 8th October, 1996 the applicant was informed that her application for re-enlistment was approved for a period of two (2) years with effect from 1st July, 1995. On 1st April, 1997, the applicant sought to be re-enlisted in the Force for a further term of five (5) years. By letter dated 15th April, 1997 the applicant was informed by the Superintendent of Police in charge of the St. Ann Division that any application made by her for re-enlistment would not be recommended and he gave reasons for his decision. Eventually, by letter dated 10th July, 1997, the applicant was informed that her application for re-enlistment in the Jamaica Constabulary Force for a further term of five years was not approved.

The applicant through her Attorney-at-Law, Mr. Arthur Kitchen, sought and obtained a hearing before the Commissioner of Police 'to show cause why the application should not be refused.' That hearing took place on 12th November, 1997. At the hearing Mr. Kitchen stated the position that the applicant was not due for re-enlistment until the year 2000. Mr. Kitchen contended that the Commissioner was obliged, if he re-enlisted, to re-enlist for a period of not less than five (5) years. Therefore when the applicant was re-enlisted for a period of two (2) years that was unlawful. It was indicated to the Commissioner that the matter was before the Court to determine this issue, whereupon the Commissioner adjourned the hearing until the matter before the Court was determined.

The relief now sought is:-

An Order of Mandamus to command or compel the Commissioner of Police to reinstate the applicant to the ranks of the Jamaica Constabulary Force and to pay her all salary due and outstanding from the 1st day of July, 1997.

The relief of certiorari, originally sought, was quite rightly abandoned.

Mr. Kitchen proceeded to challenge the competence of the Commissioner of Police, in Mr. Kitchen's words, "to re-enlist for a period in excess of or less than a period of five years." He now seeks relief in terms of his prayer for mandamus.

The Book of Rules for the Guidance and General Direction of the Jamaica Constabulary Force sets out the procedure to be followed when applying for re-enlistment in the Force. The relevant rule reads as follows:

[1.10 RE-ENLISTMENT]

- (i) Sub-Officers and Constables may be enlisted for a term of five (5) years and no sub-Officer or Constable so enlisted shall be at liberty to withdraw himself from the Force until the expiration of that term, and no Sub-Officer or Constable who has not been enlisted for a term shall be at liberty to withdraw himself from the Force until the expiration of six (6) months from the time he shall have given notice in

writing of his intention so to do to
the Commanding Officer

- (ii) Sub-Officers and Constables desiring to be re-enlisted for a further term of five (5) years must make an application at least fourteen (14) weeks before the expiration of the current term and must be medically examined at least twelve (12) weeks before the current term expires.

We see nothing in the abovementioned Rule that makes it mandatory that the Commissioner of Police in dealing with re-enlistment is compelled to re-enlist for a period of five years and no less. It is to be noted that Rule 1.10 (i) states that Sub-Officers and Constables may be enlisted for a term of five years, certainly, the word 'may' equally applies to the term of re-enlistment. The word 'must' when used in Rule 1.10 (ii) relates to the time for making an application for re-enlistment.

The Commissioner is entitled to re-enlist for any period of five (5) years or less or, of course, he might refuse the application for re-enlistment. This power to re-enlist for a period less than five years is particularly useful and appropriate where the Commissioner of Police deems it wise, for example, to allow a Sub-Officer or Constable to re-enlist for a 'trial period' of less than five (5) years. If it is supposed that the Commissioner of Police is bound by the five year period, then the question is what would be the position in respect of a Sub-Officer or Constable aged fifty-seven (57) years who applies for re-enlistment, bearing in mind that the age of retirement is sixty (60) years. Would the Commissioner be bound to re-enlist for a period of five years which would take him beyond the age appointed for retirement. Mr. Kitchen's response that such a person would be bound to retire at age 57 is untenable. It would mean that a fifty seven year old Sub-Officer or Constable of exemplary conduct would be denied his legal right to work up to age sixty, the time appointed for retirement.

As stated at the outset, the motion is dismissed with costs to the Respondent to be taxed if not agreed.