

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

Scan

SUIT NO. C.L. G147 OF 1995

IN THE MATTER OF MAISIE GORE, THE
ATTORNEY-GENERAL AND THE WORKERS
SAVINGS & LOAN BANK

AND

IN THE MATTER OF THE WORKERS
SAVINGS AND LOAN BANK ACT,
SECTION 21 (2)

AND

IN THE MATTER OF THE PENSIONS ACT

BETWEEN	MAISIE GORE	PLAINTIFF
AND	THE ATTORNEY -GENERAL	FIRST DEFENDANT
AND	WORKERS SAVINGS & LOAN BANK	SECOND DEFENDANT

Dr. R.B. Manderson-Jones for plaintiff

Lennox Campbell and Audley Foster instructed by Director of State Proceedings
for first defendant

Mrs. Valerie Alexander for second defendant

HEARD: July 17, 18 , 19 and October 5, 1995.

WALKER J.

In these proceedings begun by originating summons dated June 9, 1995,
the plaintiff claims declarations as follows:-

1. "Sub-section (2) of Section 21 of the Workers Savings And Loan Bank Act does not entitle the Public Service Commission to impose any requirement on Workers Savings & Loan Bank as a condition of the Public Service Commission making a recommendation to the Governor-General for approval of the appointment of the plaintiff to the bank under that section.
2. Sub-section (2) of Section 21 of the Workers Savings And Loan Bank Act does not confer any power on the Governor-General to impose conditions on Workers Savings & Loan Bank in his approval of the appointment of any public officer to any office within the bank pursuant to that sub-section or at all.
3. Neither the Workers Savings And Loan Bank Act nor the Pensions Act contains any provision prohibiting the plaintiff or any officer from obtaining full pension benefits under the Pensions Act as well as full benefits (sic) under the Workers Savings & Loan Bank Act superannuation scheme for the same period of service."

On or about November 17, 1990 the plaintiff retired from the Government Service of Jamaica. No one has suggested that during her period of service the plaintiff was ever less than dedicated and efficient in the performance of her duties. But the plaintiff has a grouse. It arises in this way. Prior to July 1, 1974 the plaintiff had been employed to the Government Savings Bank and had been on a Government scholarship at the University of the West Indies pursuing studies leading to a B.Sc. degree in Economics. According to official records, on that date the plaintiff assumed duty at the Workers Savings and Loan Bank without prior approval from the Public Service Commission. Subsequent to the dissolution of the Government Savings Bank in 1973 several of its former employees were transferred to the Workers Savings and Loan bank pursuant to section 21 (2) of the Workers Savings and Loan Bank Act. The bone of the plaintiff's contention is that she was entitled to have been similarly transferred which would have made her eligible upon retirement for full pension benefits under the Pensions Act. The plaintiff has pressed her claim relentlessly. She has written in turn to the Chief Personnel Officer of Government, to the Chairman of the Public Service Commission and also to the Minister of the Public Service. Finally the plaintiff sought and was granted audience with the Chairman of the Public Service Commission on October 6, 1993. In addition to all of this the Personnel Officer of the Workers Savings and Loan Bank wrote to the Chief Personnel Officer concerning the plaintiff's retirement, and in fact several letters relative to that subject matter passed between these two officers.

It has always been the position of the Chief Personnel Officer that the plaintiff was never transferred to the Workers Savings and Loan Bank pursuant to the provisions of section 21 (2) of the Workers Savings and Loan Bank Act. The Chief Personnel Officer has at all times maintained that she was in actual fact transferred from the Government Savings Bank to the Ministry of Finance, and that this was done in order to facilitate her in continuing her course of study at the University of the West Indies since the Workers Savings Loan Bank was not prepared to pay her emoluments during the period of her studies. The Chief Personnel Officer further contends that upon the successful completion of her studies the plaintiff assumed duty in the Workers Savings and Loan Bank on July 1, 1974, and did so without the prior

approval of the Public Service Commission. In a letter to the plaintiff's attorney dated December 5, 1994 the Chief Personnel Officer advised of this position and went on to say:

"I am to inform you also that Mrs. Gore was granted audience with the Chairman of the Public Service Commission on the 6th of October, 1993, at which no new grounds were advanced to alter the decision previously taken by the Public Service Commission that, as a condition to any recommendation to the Governor-General that Mrs. Gore's appointment on the staff of the Bank should be made retroactive under Section 21 (2) of the Workers Savings and Loan Bank Act, the Bank would be required to pay pension contribution at the prescribed rate of twenty-five percent (25%) of salary earned by Mrs. Gore during the period of her service at the Bank. This was communicated to the Bank by letter dated the 13th of October, 1993. To date nothing further has been heard from the bank."

Previously, by letter to the Personnel Officer of the Workers Savings and Loan Bank dated April 17, 1991, the Chief Personnel Officer had explained the reason for insisting on this payment of pension contribution. In that letter the Chief Personnel Officer wrote inter alia:

"In this connection, it should be understood that it was never intended that officers who were transferred from the former Government Savings Bank under Section 21 (2) of the Workers Savings and Loan Bank, should obtain full benefits under the Pensions Act as well as benefits under the Bank's Superannuation Scheme for the same period of Service."

By letter dated January 9, 1995 the plaintiff's attorney replied to the Chief Personnel Officer's letter dated December 5, 1994. In his letter Dr. Manderson-Jones was at pains to point out that the plaintiff was not maintaining that she had been transferred from the Government Savings Bank to the Workers Savings and Loan Bank pursuant to section 21 (2). Her sole objective, the attorney said, was to urge the Public Service Commission to recommend to the Governor-General that she be appointed retroactively on transfer from the one bank to the other under the provisions of section 21 (2). It is the pith of the plaintiff's present complaint that to date the Public Service Commission improperly withholds this recommendation while at the same time requiring as a pre-condition for making such a recommendation that the Workers Saving and Loan Bank should pay a pension contribution at a prescribed rate of 25% of the salary earned by the plaintiff during the period of her service at the

bank. It is against this background that the plaintiff asks for the assistance of the Court by way of declarations relating to section 21 (2) of the Workers Savings and Loan Bank Act and the Pensions Act.

Looking then at section 21 (2) it provides as follows:-

"The Governor-General may, subject to such conditions as he may impose, approve of the appointment of any public officer in the service of Jamaica to any office with the Bank and any public officer so appointed shall, in relation to pension and to other rights as a public officer, be treated as continuing in the service of the Government."

These provisions are, in my view, clear and unambiguous. They invest the Governor-General with a discretionary authority to approve, subject to such conditions as he may impose, the appointment of a public officer in the service of Jamaica to any office with the Workers Savings and Loan Bank; and they also prescribe that a public officer so appointed shall be treated as continuing in the service of the Government for the purpose of pension and other rights according to the entitlement of a public officer. Section 21 (2) does not apply to the Public Service Commission. It does not empower nor does it prohibit the Public Service Commission as regards the imposition of conditions for making a recommendation to the Governor-General for approval of the transfer of a public officer in the service of Jamaica to the Workers Savings and Loan Bank. Accordingly, the plaintiff is entitled to the declaration sought at paragraph 1 of her summons.

With regard to the declaration sought at paragraph 2 of the plaintiff's summons it is abundantly clear that to date the Governor-General has not imposed, nor indicated an intention to impose, any condition on the Workers Savings and Loan Bank relative to the proposed retroactive transfer of the plaintiff from the Government Savings Bank to the Workers Savings and Loan Bank. Indeed, the fact of the matter is that such a transfer has never been effected so as to result in the Governor-General being seized of the plaintiff's case in that way. Whether or not, if properly seized of the matter, the Governor-General may impose on the Workers Savings and Loan Bank a condition as a pre-requisite to the exercise of his powers under section 21 (2) is, therefore, of academic interest only and no more than sheer speculation at the present time. Against this factual background it is my opinion that a

declaration as to the powers of the Governor-General under section 21 (2), as those powers affect the plaintiff, does not arise and would avail the plaintiff nothing in the context of her case. For these reasons in respect of the declaration sought at paragraph 2 of this summons, I would exercise my discretion in favour of declining to make any declaration, and I make none.

Next comes the question whether or not the plaintiff is entitled to the remedy sought in paragraph 3 of her summons. A determination of this question must necessarily involve an examination of section 9 of the Pensions Act. So far as is relevant to the plaintiff's case section 9 provides as follows:-

"Except in cases provided for by subsection (2), a pension granted to an officer under this Act shall not exceed two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his service in this Island."

Again, these provisions are clear and unambiguous. They touch and concern the maximum pension which may be granted to a public officer under the Act. Upon a true construction of section 9 (1) I am of the view that the provisions contained therein do not prohibit a public officer from obtaining full pension benefits under the Pensions Act as well as full benefits under the Workers Savings and Loan Bank Act superannuation scheme for the same period of service so long as the total sum of such benefits does not exceed two thirds of the highest pensionable emoluments drawn by such public officer at any time in the course of the service of such officer in Jamaica. Nor does the Workers Savings and Loan Bank Act prescribe any such prohibition so far as I have been able to ascertain from a close examination of that Act. Accordingly, the Court declares that neither the Workers Savings and Loan Bank Act nor the Pensions Act contains any provision prohibiting the plaintiff or any officer from obtaining full pension benefits under the Pensions Act as well as full benefits under the Workers Savings and Loan Bank Act superannuation scheme for the same period of service so long as the total sum of such benefits does not exceed two thirds of the highest pensionable emoluments drawn by such public officer at any time in the course of the service of such officer in Jamaica.

With respect to the question of the costs of these proceedings, such costs to be taxed if not agreed are awarded to the plaintiff.