

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FULL COURT

SUIT NO. M.101 OF 1994

CORAM: THE HON. MR. JUSTICE MALCOLM  
" " MR. JUSTICE LANGRIN  
" " MR. G. JAMES

BETWEEN CONS. L. W. NICHOLSON APPLICANT  
A N D COMMISSIONER OF POLICE 1ST RESPONDENT  
A N D HONOURABLE ATTORNEY  
GENERAL FOR JAMAICA 2ND RESPONDENT

Mr. Garth E. Lyttle for Applicant

Mr. E. Oniss Asst. Attorney General & Miss Maureen Edwards instructed by the Director of State Proceedings for the Respondents.

HEARD: November 23 & 24, 1995

ORAL JUDGMENT

LANGRIN, J.

This is an application on Originating Motion seeking an Order of Certiorari to quash the order of the Commissioner of Police dated 24th day of October, 1994 discharging the applicant from the Jamaica Constabulary Force by refusing to allow him to be re-enlisted.

The grounds upon which the application is based are stated as follows:

- (1) Where a charge has been preferred by the Director of Public Prosecution, but has been dismissed by a Resident Magistrate the Commissioner of Police cannot arrogate unto himself the guilt of the applicant and thereby used the fact that the allegation was made and charge preferred against him, discharge him from the Jamaica Constabulary Force without giving the applicant a hearing.
- (2) The Commissioner of Police has fallen into error in interpreting an allegation made against the applicant as sufficient evidence upon which he can act in discharging or preventing the applicant from re-enlisting himself in the Jamaica Constabulary Force in breach of Sections 34, 35 and 47 of the Police Service Regulations 1961.

Constabulary Nicholson was enlisted in the Jamaica Constabulary Force on October 29, 1984 and was due for re-enlistment on October

28, 1994 for a further term of five years.

Upon his application for re-enlistment the Commissioner of Police wrote informing him that his application for re-enlistment will not be approved.

The Commissioner of Police stated his grounds for refusing to approve the applicant's re-enlistment. These grounds are stated as under:

"on the 8th of May 1990 while on vacation leave you went to the Sangster International Airport in Montego Bay, St. James and requested Woman Special Constable Monica Johnson who was on duty at the Security Check Point to allow a female passenger to pass through the Security Check Point with ganja.

Woman Special Constable Johnson searched the same passenger and found 8½ pounds of ganja strapped to her body.

You were subsequently charged for Conspiracy to Export Ganja. A "No Order" was made in the St. James Resident Magistrate's Court on December 10, 1991 and the information endorsed "No Order made" (Insufficient Evidence). The Magistrate commented that the Police had acted too quickly in arresting you.

The Director of Public Prosecutions subsequently ruled that "Summons may be issued to have Nicholson (you) brought before the Court (on the same charge) provided the witnesses for the prosecution are available." This however has not yet been done due to the absence from the Island of Witness Monica Johnson.

Your conduct has clearly indicated that you cannot be considered an asset to the Jamaica Constabulary Force and the Commissioner of Police after assessing the facts has directed that your application for re-enlistment should not be approved.

This notice is to formally inform you that your application for re-enlistment for a further five (5) years service at the expiration of your present term on October 28, 1994 has not been approved.

You may if you so desire appear before the Commissioner of Police by yourself or accompanied by your Attorney to show cause why he should review his decision and re-enlist you. If you so wish you should advise your Commanding Officer in writing within seven (7) days of receipt of this notice in order that he can make an appointment on your behalf.

Mr. Little on behalf of the applicant submitted that in refusing the application for re-enlistment the Commissioner of Police gave one reason and that reason was wrong in law. He further argued that it was not open to the Commissioner of Police to use the statement on file which was before the Resident Magistrate Court and upon which the Resident Magistrate dismissed the applicant as the factual basis to disapprove the applicant's re-enlistment.

The material question which the Commissioner of Police has to decide is not whether the applicant is guilty of any charge but instead whether or not he is suitable for continuing his service in the Force.

It appears that a substantial basis for requiring the men to apply for re-enlistment every five years is to give the Commissioner of Police an opportunity to re-assess for suitability.

Mr. Oniss, Counsel for the respondent submitted that the Commissioner of Police is entitled to use any report to inform any decision as to suitability of conduct of an officer who applies to be re-enlisted. So long as the Commissioner of Police is fair, the Court will not interfere with his discretion. We agree with these submissions.

The submission advanced by Mr. Little on behalf of the applicant is wholly misconceived. Since the charges against the applicant were not heard on their merits there can be nothing wrong for the Commissioner to take the statements into consideration when he is considering the question of re-enlistment.

Because the Commissioner of Police had given the applicant a hearing on the refusal for his re-enlistment we hold that the refusal to re-enlist was a proper exercise of the Commissioner's discretion

Accordingly, the application is refused with costs to the respondent to be agreed or taxed.