



IN THE SUPREME COURT OF JUDICIATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M82 of 2000

*Regina v. The Police Service Commission
Ex parte John Luke Davis*

*Arthur Kitchen instructed by
Arthur Kitchen and company for Applicant.*

Lackston Robinson and Miss Analesia Lindsay for Respondent.

Heard: August 23, 2000 and November 10, 2000

HARRIS, J.

REASONS FOR JUDGMENT

A Summons, issued on August 14, 2000 in which the Applicant sought orders, was couched in the following terms: -

- “1. For an extension of time to apply to quash the Order and/or advice of the Police Service Commission as contained in the letter dated the 16th day March, 2000 from Kings House and signed by Mr. Geoff Madden, His Excellency the Governor-General’s Secretary, that, inter alia, the Applicant be reduced to the level of Sergeant notwithstanding that the time limited by the (Judicature Civil Procedure Code) Law for making this Application has passed.
2. For leave to apply for an Order of Certiorari to quash the Order and/or advise of the Police Service Commission as contained in

the letter dated the 16th day of March 2000 from King's House and signed by Mr. Geoff Madden, His Excellency the Governor-General's Secretary as aforesaid.

3. Apply for an Order that all necessary and consequential directions be given."

The Applicant had been a member of the Constabulary Force since 1971. In 1993 he was promoted to the rank of Inspector. He was the subject of Disciplinary Inquiry pursuant to four charges laid against him. The holding of the Inquiry was conducted on November 16, 1999, January 10, 26 and 28, 2000.

A letter dated March 16, 2000, which, he declared he received on the or about May 9, 2000, was sent to him informing him that the Police Service Commission had advised the Governor General that he should be reduced in rank consequent on the disciplinary charges against him being found to be established. He was also informed of his right to apply to the Governor General for reference of his case to the Privy Council. He submitted an application to the Privy Council on May 12, 2000.

I will first make reference to the application for extension to time for leave to issue the Writ of Certiorari. The Applicant averred that upon receipt of the letter he retained the services of Mr. Arthur Kitchen.

Attorney-at-law who advised him that it was necessary for him to obtain the Notes of Evidence prior to the filing of the Application. He was informed

by Mr. Kitchen sometime in June that the Notes of Evidence were received by him, that the time limited for the making of the Application would expire on June 15, 2000 and he would endeavour to complete the application "as soon as was reasonably possible". The application was not submitted until August 14, 2000 despite his making regular enquiries of his Attorney-at-law whether the application had been filed.

The Judicature Civil Procedure Code S564D (1) and (2) provides: ----

"564D –

- (1) An application for leave for apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.
- (2) Where the relief sought is an order of certorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding."

March 16, 2000 was the date on which the grounds for the application first arose. The application ought to be made promptly. In any event, such application must be made within 3 months from the date when the grounds for the application first arose. In this case, time began to run from March 16, 2000. This application was made 5 months after the date on which the grounds first arose.

The Applicant received the letter advising him of the ruling based on the outcome of the disciplinary proceedings on May 5, 2000. This was within 3 months from the date on which the grounds had arisen.

Counsel was retained by him on May 12, 2000. He was advised by his attorney-at-law that the expiration date for the filing of the Application was June 15, 2000. This notwithstanding, the Attorney at law required the Notes of Evidence which he did not receive until sometime in June. It would have been expedient for the Attorney-at-law to have obtained the Notes of Evidence in order to satisfy himself that the applicant's case is one which should be the subject of judicial review before the application could be made. Application could not have been made promptly.

However, the applicant's attorney-at-law failed to make the application within 3 months in spite of regular checks on him by the applicant. The applicant ought not to be penalised for the negligence on the

part of his attorney-at-law to have filed the application within the prescribed period. I am satisfied that he has submitted a plausible excuse for the delay in applying.

Although he has proffered an acceptable explanation for the tardiness in the presentation of the application, it is necessary to determine whether he has a meritorious case, that is, one by which he ought to be permitted to move the court for Judicial Review.

The remedy which he seeks is that of Certiorari. 'This relief is sought to quash the Order and or advice of the Police Service Commission.

The grounds upon which he relies are as follows: -

- "A. The said Order of the and/or advise of the Police Service Commission is unlawful and in breach of the principles of natural Justice and the Constitution of Jamaica, and is unjust capricious, arbitrary, null and void, in that:
- (i) The Applicant was never given a fair hearing or any hearing at all by the Police Service Commission.
 - (ii) No reasons for the said Order and/or advise were ever given by the Police Service Commission.
 - (iii) No evidence was presented by anyone at the said Enquiry to establish any misconduct by the Applicant, or any breach of any law or regulation.
- B. The Police Service Commission erred in law by finding that the Applicant's conduct was improper and the disciplinary charges were established.
- C. The advice of the Police Service Commission to reduce the Applicant to the rank of Sergeant in the Jamaica Constabulary

Force is excessive, harsh, and/or unreasonable in view of all the circumstances of the case.”

Authority for the removal or exercise of disciplinary control over police officers above the rank of Inspector is vested in the Governor General by virtue of sections 125 and 130 of the Constitution. Such authority he exercises, acting on the advice of the Police Services Commission.

Under section 31(2) of the Police Service Regulations 1961 the Commission may make recommendations to the Governor General that disciplinary proceedings be instituted against any member of the Constabulary Force above the rank of inspector. The Applicant was an Inspector at the material time. Initiation of proceedings against him would fall within the purview of section 125 and 130 of the rank of the Constitution and 31(2) of the Regulations.

As a matter of law, the Commission is not empowered to make orders touching disciplinary matters of persons of the Applicant's rank and above. The Commission is endowed with power only to advise the Governor General and make recommendations. It has no power to make orders. It is the Applicant's complaint that he was never given a fair hearing, or any hearing at all by the Police Service Commission and that no evidence was presented at the Enquiry to establish any misconduct on his part. The commission never presided over the hearing. A sole Enquirer, the

Honorable Mr. Justice C. Orr was appointed president of the Tribunal which heard the matter. There is no evidence to establish that the Commission was in anyway instrumental in Mr. Justice Orr's appointment.

The applicant was informed of the charges against him. He so asserts in paragraph 3 of his affidavit. A full hearing was conducted as demonstrated by the Notes of Evidence. Evidence was presented by witnesses. The applicant was represented by Counsel. His complaint therefore, is devoid of merit.

It was also declared by him that no reasons were given by the Police Service Commission for its Order and or advice. No order with respect to the Applicant was ever made by the Commission. The role of the Commission is exclusively advisory. In submitting its recommendations to the Governor General it would not be enjoined to give reasons. It had not participated in the trial process. It was under no obligation to give any reasons to the Applicant.

A further ground of the Applicant is that the Commission erred by finding that the Applicant's conduct was improper and that the charges were established. Any finding made would have been done by the sole Enquirer, and not by the Commission.

As to the ground with respect to the assertion by the applicant that the advice to reduce him to the rank of Sergeant being excessive, S47 (K) of the Police Service Regulations empowers the Commission to recommend to the Governor General the penalty to be imposed on persons of the rank of Inspector and above. The applicant was an Inspector. In giving the advice, the Commission had acted within the constraints of the Constitution.

The remedy of certiorari does not operate to quash a recommendation see *Regina v Statutory Visitors to St. Lawrence's Hospital Caterham; Ex parte Pritchard WLR 1953 1158*. It follows that certiorari would not lie to quash any recommendation or advice given by the Commission.

Section 42 (1) of the Police Service Regulations bestows a right of reference of the Commission's recommendation of imposition of a penalty, to the Privy Council. The Applicant had been informed of that right and has referred the matter to the Privy Council, which is still pending.

The Jurisdiction of the Courts to inquire into the validity of the Commission's function is specifically excluded by S136 of the Constitution, which provides: -

"The question whether ...

- a. Any commission established by this constitution has validly performed any function vested in it by or under this constitution.
- b. Any member of such a Commission or any other person or authority has validly performed any function delegated to such member, person or authority in pursuance of the provisions of section 113 or, as the case may be, or section 127 or of section 131 of this Constitution: or
- c. Any member of such Commission or any other person or authority has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in paragraph (b) of this section,

shall not be enquired into any Court.”

The foregoing notwithstanding, the courts may interfere where it is shown that the tribunal had acted ultra vires. In this case, the Commission exercised the powers, which were conferred on it. It validly exercised those functions vested in it by law. The Courts would therefore be precluded from conducting any inquiry into the validity of its power.

The reliefs sought by the Applicant are not maintainable. The remedy of certiorari is not available to him. There is no decision, or recommendation or advice, or determination of the Commission to be quashed. It follows therefore that this application must be dismissed.