

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 56/97

**BEFORE: THE HON. MR. JUSTICE RATTRAY, P
THE HON. MR. JUSTICE PATTERSON, J.A.
THE HON. MR. JUSTICE HARRISON, J.A.**

**BETWEEN JAMES MUNROE APPELLANT
AND THE ATTORNEY-GENERAL RESPONDENT**

Lord Anthony Gifford, Q.C., Gayle Nelson & Heron Dale instructed by Heron Dale & Co., for Appellant

Lennox Campbell, Senior Assistant Attorney-General instructed by Director of State Proceedings for Respondent

**July 13, 14, 15, 16, 17, October 5, 6, 7, 8, 1998
& March 1, 1999**

RATTRAY, P.

The appellant was at all material times the Commissioner of Lands, a public office established by section 3 of the Crown Property (Vesting) Act. He was appointed to the post in 1989. The relevant legislation reads as follows:

"3 -(1) The Governor-General may from time to time appoint a fit and proper person to be Commissioner of Lands.

(2) The Commissioner for the time being shall be a corporation sole by the name of the Commissioner of Lands and shall have power to acquire, hold and dispose of land and other property of whatever kind."

Subsection 4 reads

"(4) Except in accordance with the provisions of any enactment or under any power or directions contained in any transfer, conveyance, will or other instrument, the Commissioner shall not, without either

general or special authority in writing from the Minister -

- a) sell, convey, exchange, grant, assign, surrender or yield up, mortgage, lease or let any land vested in him by or under this Act; or
- b) sell, transfer, assign or otherwise dispose of any right or interest in any minerals or petroleum vested in him under section 5."

Section 4 reads:

"4-(1) All lands which immediately before the commencement of this Act were vested in or held by the Chief Secretary are hereby transferred to and vested in the Commissioner and shall be held by him and his successors in the said office for the like estate and interest and to the like extent as such lands were vested in or held by the Chief Secretary.

(2) All lands acquired, by whatever means, on or after the commencement of this Act, for the use of the Government of this Island, other than lands acquired by the Minister of Housing for the purposes of the Housing Act, shall be vested in the Commissioner for the time being and held by him and his successors in the said office in trust for Her Majesty, her heirs and successors -

- a) for the purposes for which such lands are purchased, taken or held under any enactment; or
- b) in accordance with the terms of the transfer, conveyance, lease, will or other assurance executed in relation thereto."

Consequent on certain allegations made against the Commissioner of Lands he was formally charged and a hearing proceeded with in a disciplinary enquiry before the Honourable Miss Justice McKain, (retired) Mr. K.K. Walters and Mr. Herman Ricketts into the relevant charges. The evidence was presented by officers of the Attorney-General's Department and Counsel appeared at the hearing on Mr. Munroe's behalf.

For the purposes of this appeal the relevant charges were as follows:

"You are charged with having committed the following acts of misconduct while attached to the Lands Department as the Commissioner of Lands.

CHARGE 1

That in respect of Government land situated at Lot 38 Shettlewood, in the parish of Hanover, you JAMES MUNROE, being the Commissioner of Lands, caused the said land to be allotted to your wife, HERMINE LAYNE, by directly making a recommendation to that effect to the Minister of Agriculture and without disclosing her identity as your wife in a situation in which there was conflict of interest and duty, and in preference to other applicants who were either ordinary residents in the parish of Hanover or occupiers of the land.

...

CHARGE 111

That in respect of the divestment of Government land situated at Lot 41, New Hope in the parish of Westmoreland, you, JAMES MUNROE, being the Commissioner of Lands caused the said land to be allotted to your wife, HERMINE LAYNE, by directly making a recommendation to that effect to the Minister of Agriculture without disclosing her identity as your wife in a situation in which there was a conflict of interest and duty and in preference to other applicants who were either residents of Westmoreland or occupiers of the New Hope property.

...

CHARGE V

That in respect of the divestment of Government land situated at Lot 27, Chudleigh House Reserve, in the parish of Manchester, you, JAMES MUNROE, being the Commissioner of Lands by directive No. K49/07 of the 30th May, 1994, caused the said land to be sold to Mr. Leonard Henry, for One Hundred and Seventy-four Thousand Dollars (\$174,000.00), notwithstanding a valuation of the said land in 1991, by the Deputy Commissioner of Lands for Three Hundred and Fifty Thousand Dollars (\$350,000.00) and before the receipt of a current valuation which was requested by the Deputy Commissioner on the 2nd May, 1994, and at a price significantly below its current value.

In respect to charge V, Mr. Patrick Robinson, the Deputy Solicitor General who marshalled the evidence stated before the Disciplinary Enquiry:

"But Charge V has presented some difficulty because the essence of it is that the Commissioner caused the land to be sold to Mr. Leonard Henry for \$175,000.00. The question is, do we really have evidence that he had any role in the sale to Mr. Henry? I have deliberated on it and I have come to the conclusion that as best it is doubtful and that he should have the benefit of that doubt. There is no clear evidence that the Commissioner made any recommendation to the Minister in respect of the sale of the Chudleigh Property, and so in our view that charge fails."

The disciplinary hearing was terminated on the 19th of February, 1996 and a report duly made to the Public Service Commission which had appointed the Committee. Consequent on this report the Chief Personnel Officer in the Offices of the Services Commissions wrote to Mr. Munroe by letter dated the 20th of March, 1996 communicating the Commission's determination made by virtue of the findings of the Disciplinary Enquiry inter alia in the following terms:

- a) in Charges 1 and 111 you had no legal obligation to make any disclosure, but that you are guilty of a breach of ethics in not making a full disclosure of your interest in the land allotted to your wife;
- b) Charges 11 and 1V were misconceived and, therefore, not established; and
- c) Charge V was established.

Subsequently, the Public Service Commission agreed to recommend to the Governor-General that the penalty of dismissal should be imposed on you, effective the 1st April, 1996.

The Governor-General has accepted the advice of the Commission.

If it is your intention to request a reference of your case to the Privy Council, such application, setting out the grounds on which your reference is based, should be submitted through the Permanent Secretary, Ministry of Environment and Housing, to reach the Office of the Services Commissions within fourteen (14) days of the receipt of this letter.

You will be suspended from duty without salary, with effect from the 1st of April, 1996 if you apply for a reference of your case to the Privy Council, pending the decision of the Privy Council.

If no reply is received within the period stated, action will be taken to implement the decision."

Consequent on the receipt of this letter Mr. Munroe, through his Attorneys-at-law made a written submission to the Privy Council that the penalty of dismissal should be reversed and that he should be reinstated without penalty in his office of Commissioner of Lands. He maintained that in relation to Charges 1 and 111 the finding of the investigation did not constitute a finding that the Charges had been established "and therefore it could not be the basis of dismissal." Alternatively and additionally he challenged the conclusion that any evidence existed before the enquiry which could support the findings that the Charges referred to had been established. In relation to Charge V he further relied on the abandonment by the Deputy Solicitor-General marshalling the evidence, of that particular Charge and maintained that as a consequence the matter was not pursued further before the investigating panel by his legal representatives.

By letter dated October 18, 1996 the Chief Personnel Officer informed the Attorneys-at-law for Mr. Munroe as follows:

"...
I am to inform you that the Privy Council, after giving long and careful consideration to Mr. Munroe's case, came to the view that having regard to all the circumstances, the more appropriate sanction would be to retire Mr. Munroe in the public interest instead of his dismissal from the Public Service.

The Governor-General, on the advice of the Privy Council, made the Order that Mr. Munroe should be retired in the public interest and on the advice of the Public Service Commission, has given approval for:

- a) Mr. Munroe's retirement from the Public Service in the public interest to take effect as from the 15th of October, 1996;

- b) his pension under the Pensions Act to be reduced by seventy-five percent (75%);
- c) him not to be paid the three-quarters (3/4) salary withheld from him during his interdiction, that is, from the 11th of July, 1995 to the 14th of October, 1996; and
- d) him to be paid for the vacation leave for which he is eligible up to the 10th of July, 1995."

Consequent upon this, Mr. Munroe applied to the Supreme Court for an Order of Certiorari and Mandamus to remove into the Supreme Court and quash the decisions made by the Governor-General on the advice of the Privy Council and of the Public Service Commission which was notified to the applicant by letter dated October 18, 1996. He maintained that the retirement in the public interest was ultra vires and void because:

- "(a) There has been no finding that Charges 1 and 111 have been established; and
- (b) Charge V had been abandoned at the disciplinary enquiry by counsel appearing on behalf of the Attorney-General and so the applicant has made no submission in relation to it and had been deprived in breach of natural justice of the opportunity to be heard in relation to it.
- (c) There was no evidence on which any finding of guilt in relation to the charges could reasonably be made."

The report of the Disciplinary Committee inter alia was:

"The Commissioner was under no legal obligation to make any disclosures in respect to Charges 1 and 111. However, we are of the view and find that he was guilty of a breach of ethics in all the circumstances in not making a full disclosure of his interest in the land allotted to his wife, under whatever name she may have made application. Further, given the RADA policy of one (1) lot to each applicant except where the applicant has made such improvement and wishes to extend his holding he may receive additional allotment, the Commissioner's explanation that his wife could not develop the first lot because it could not be identified so she applied and

was given the second allotment is not persuasive. That alone should have made it more imperative that on the aspect of her second allocation without having started development of the first it was necessary that the Minister ought to have been advised."

Further:

"We consider the Commissioner to be guilty of gross mis-conduct in the exercise of his duty bearing in mind the importance of his position, the aims and object of his department in the Ministry and a standard of performance required by the holder of this post in that department."

The application to the Full Court challenged the decision of the Privy Council as being in breach of the Public Service Regulations and ultra vires and void. It sought an Order of Mandamus for the Public Service Commission to reinstate the applicant as Commissioner of Lands and pay to the applicant all salary withheld from him from July 11, 1995 until the judgment of the Court.

The application came before the Full Court of the Supreme Court (Panton, Reid & G. James JJ) and after a hearing the Motion was dismissed on the 17th April, 1997 with costs to the respondent to be agreed or taxed. It is this determination of the Full Court which is now before us on appeal.

The judgment of the Full Court delivered by Panton J stated that:

"So far as charge V is concerned, Mr. Patrick Robinson, Deputy Solicitor-General, who preferred the charges indicated to the Committee that having deliberated on the matter he had concluded that the charge had failed. The Committee did not then state its disagreement with learned counsel; nor did it advise the applicant or his attorneys-at-law of its disquiet with the position adopted by Mr. Robinson.

As a result, the applicant relied on Mr. Robinson's view that the charge had failed.

Lord Gifford submitted that there was breach of natural justice in this regard as the applicant had not been given an opportunity to properly answer the charge.

We agree with that submission so far as charge V is concerned."

In relation to Charges 1 and 111, the judgment of the Full Court stated:

"There are clear rules by which the Commissioner of Lands is expected to operate in the situation that faced the applicant. The rules relate specifically to the place of residence of an applicant for a lot being within a certain radius; and, no allottee being the beneficiary of more than one lot. In addition, section 4 (2) of the Crown Property (Vesting) Act cannot be ignored where it clearly states that the Commissioner is a trustee in respect of the lands held by him for Her Majesty, her heirs and successors. In short, he holds the land in trust for the people of Jamaica. It is our view that the Committee was very generous to the applicant when it stated that he had no legal obligation to make any disclosures with respect to charges 1 and 111. The Committee seems to have overlooked the provisions of section 4(2) referred to above."

And further:

"The Committee had before it evidence that the Commissioner's wife used her maiden name in applying for the lots, and that she did not qualify for the lots by residence. That information was not communicated to the Minister and this was not due to an oversight by the Commissioner. He took a conscious decision not to inform the Minister. The Committee considered the reason he gave for his failure to inform the Minister. Clearly, the committee was not impressed by it.

In finding that the applicant was guilty of a breach of ethics, the Committee alluded to the very particulars that were laid in the charges. It is clear that the Committee found the applicant guilty as charged. There is no magic in the use of the word 'ethics', as Lord Gifford would have the Court believe. In any event, the matter is beyond doubt although we see no doubt when in the penultimate paragraph, the Committee stated that the Commissioner was guilty of 'gross misconduct'."

Was there evidence on which the Disciplinary Committee could have come to its conclusion that the Commissioner of Lands was in breach of duty by not disclosing to the Minister that an applicant for lands being distributed by RADA was his wife who had made the application in her maiden name?

With respect to Lot 41 New Hope, Westmoreland the evidence was that in 1992 the property was advertised having been sub-divided into 22 lots, and a date set for the allotment. The RADA lands officer for Westmoreland interviewed the applicants. Among them was Ms. Hermine Layne, who in fact was the wife of the Commissioner of Lands Mr. Munroe. She was an employee of the Ministry of Agriculture and a co-worker of the interviewer who knew her to be the Commissioner's wife. The name normally used by her and by which she was known by her co-workers was Mrs. Munroe. The application was however made in her maiden name. Her address was given as Little London, P.O. in the parish of Westmoreland. The interviewer knew that she resided elsewhere. There is a rule that a qualified applicant should live in the parish in which the lot applied for is situated. The applicant, the Commissioner's wife in fact resided in Spanish Town, St. Catherine.

The information received from the applicants at the interview was then sent to the Parish Advisory Committee which makes the selection. The selected names were then sent to the Commissioner's office for approval by the Minister. The evidence as given by the RADA Lands Officer went as follows:

With reference to the list -

"Q. What did you do after you saw that paper?

A. I have to compile it in a proper manner for it to be typed so that it can be sent to the Commissioner's office for approval by the Minister and whatever.

Q. So you have that list typed?

MS. NUNES: Yes.

MR. ROBINSON: To be sent to the Commissioner's Office?

A. With the selected names for his final approval."

That list contained the name Ms. Hermine Layne. The final approval came back to the RADA's office , Llandillo, Westmoreland for collection of deposit from the approved applicants.

"Q. Can you look at that and tell me if you see the list that you received from the Commissioner of Lands of the approved applicants?

A. Yes, this is the list of approved applicants.

Q. Is there a letter from the Commissioner?

A. Yes, the covering letter."

On the basis of Ms. Layne's name being on that list, lot 41 was awarded to her. The witness knew the applicant as Mrs. Munroe and did not know the reason why she used the name Layne.

With respect to the Shettlewood property, evidence was also given that Ms. Hermine Layne had applied for lot 38 on the Shettlewood property. The procedure was the same as with regard to the New Hope lot. Ms. Layne applied for a lot which was sent up to the RADA Board and the RADA Board's recommendation was sent to the Commissioner of Lands. The Commissioner of Lands sent back the list to the Parish Office with the approval.

The relevant Minister of Agriculture at the time Hon. Seymour Mullings gave evidence inter alia as follows:

"There was a process whereby lands which are divested on a Land Process Scheme were advertised, the applicants would submit their applications to the Rural Agricultural Development Authority parish office, they would set up a Committee, they would make recommendations for the persons who would receive lands, the Commissioner would recommend:

Q. They make recommendation to whom?

A. To the Minister and I would authorise the sale of of those lands."

The Minister gave evidence that the procedure would be that the list is then passed to the Member of Parliament for the area for his recommendations:

"Q. Could you generally say what was your practice in relation to authorising and not authorising the names on the list?

A. Generally I would approve, authorise the sale or divestment of land based on the recommendations that came from the Commissioner.

Q. Why is this so, why would you generally authorise the sale of land in respect of people recommended by the Commissioner?

A. Unless I have reason to believe that there is some thing amis and I would approve according to the submissions from the Commissioner of Lands."

What are the responsibilities of the Commissioner of Lands under the RADA Act? The Rural Agricultural Development Authority Act establishes by law a Rural Agricultural Development Authority (RADA) for the purpose of inter alia providing an efficient agricultural extension service and its participation in:

"the formulation and implementation of appropriate rural development projects with a view to stimulating and facilitating the development of agriculture in Jamaica."

To this end RADA is involved in several schemes for the distribution of lands owned by the Government to suitable persons applying to purchase such lands for Rural Agricultural Development.

These lands are owned by the Government of Jamaica. As such they are vested in the Commissioner of Lands. It is to be noted with respect to the Regulations made under the RADA Act, Regulation 9 reads as follows:

"A member of the Authority who is directly or indirectly interested in any matter which is being dealt with by the authority -

(a) shall disclose the nature of his interest at a meeting of the Authority, and

(b) shall not take part in any deliberation or decision of the Authority with respect to that matter."

Although no such specific regulation is made in reference to the Commissioner of Lands, as a trustee of the lands vested in him under the Crown Property (Vesting) Act similar principles would apply.

In respect to lot 38 Shettlewood in the parish of Hanover, application was also made by Hermine Layne in respect of that lot. The parish lands officer Mr. Vernon Vassell gave evidence to that effect. There were other applicants in respect of the very same lot. Indeed, the application came in late and the name Hermine Layne was written in ink on the relevant documents. The same process was undergone as in relation to the Westmoreland lot. The address given by Ms. Layne was an address in the parish of Hanover. The Commissioner's wife was already the owner of a lot in the New Hope subdivision. There was evidence that she would not be entitled to another lot until such time as she had developed the lot already awarded to her. There was further evidence that the lot awarded to her had not been developed. The Commissioner in his evidence stated that she was unable because of its nature to develop the lot previously awarded to her and therefore this made her eligible to be awarded the additional lot.

The submission on behalf of the appellant was that the Commissioner of Lands played no part in the procedure which resulted in the recommendation by the Parish Committee that the lands should be awarded to his wife. When the recommendation came to him from the Parish Committee he was a mere conduit whose only function was to pass on the recommendation to the Minister of Agriculture. He had no duty to vary the list in any way to remove her name from the list or to bring to the attention of the Minister that Ms. Hermine Layne who was awarded the lot was his wife, Mrs. Munroe. He was aware that she was an applicant recommended in respect of both lots but his only function was to pass on the list as he got it to the Minister.

The Full Court of the Supreme Court rejected this submission and so must have the Disciplinary Inquiry. It is clear that the use by the applicant of her maiden name and a parish address which was the same as the parish in which the land was situated and a parish in which she did not reside was a subterfuge engaged in for the purpose of ensuring that she was awarded the land for which she had applied. By this subterfuge she intended to enhance her chances of being awarded these particular lots of land. The Commissioner knew or ought to have been aware of the use of this subterfuge for the purpose for which it was used.

The Commissioner of Lands in whom the lands were vested in trust for the Government and people of Jamaica aided and abetted the indulgence in the subterfuge and guaranteed the success of it by submitting his wife's name, and the Parish Committee's recommendations in respect of her application to the Minister without comment, when he well knew or should have known of his duty of disclosure in this regard. He was no mere post box or conduit, he was the direct link in the process with the Minister. The Minister quite correctly regarded the list forwarded to him by the Commissioner as having the Commissioner's recommendation in relation to the names on the list and in respect of the lots for which the applicants had applied. The Commissioner in his position of trustee should have been aware of the irregularity of his wife's application and his duty of disclosure concerning his relationship to the applicant. He turned a blind eye, and his failure to alert the Minister ensured the success of the subterfuge. In essence the finding of the Disciplinary Committee was that:

"He was guilty of a breach of ethics in all the circumstances in not making a full disclosure of his interest in the land allotted to his wife under whatever name she may have made the application. Further, given the RADA policy of one lot to each applicant except where the applicant has made such improvement and wishes to extend his holding he may receive additional allotment, the Commissioner's explanation that his wife could not develop the first lot

because it could not be identified, so she applied and was given the second allotment is not persuasive. That alone should have made it more imperative that on the aspect of her second allocation without having started development of the first, it was necessary that the Minister ought to have been advised."

That finding is fully supported by the established facts, and the misconduct of the Commissioner established.

As a Senior Public Officer falling under the jurisdiction of the Ministry of Agriculture for which the Minister holds the political responsibility and is therefore answerable to the people, Mr. Munroe had a duty to disclose to the Minister the fact that the applicant Ms. Layne was in fact his wife. In forwarding the list to the Minister with her name included, he was approving her application for the lots and confirming her eligibility. There was then a clear conflict of interest and duty which undisclosed to the Minister was in breach of the Commissioner's duty as a trustee for the people of these particular parcels of land.

There was therefore clear evidence on which the Committee of Enquiry appointed by the Public Service Commission could have found as it did that he was in breach "in not making a full disclosure of your interest in the land allotted to your wife" whether described as a breach of ethics, or a breach of duty is immaterial. In the carrying out of his duties, the Commissioner of Lands is required to be ethical.

The finding in respect of the lot at Shettlewood in Hanover that RADA policy makes an allocation of only one lot to each applicant in a Scheme except where the applicant has developed the previous lot allotted to him and wishes to expand his holding is supported by the evidence and the Commissioner knew that his wife had not satisfied that requirement. The Commissioner's explanation was rejected by the Committee of Enquiry.

We support the determination of the Full Court as to the standard of conduct required of public servants generally and the Commissioner of Lands in particular as well as its conclusion that:

"the findings of the Committee in relation to Charges 1 to 111 were well within its competence."

The Committee of Enquiry recommended, in its Report to the Commissioner, that the Commissioner be retired in the public interest and that his pension be reduced by one-third. The mandate of the Disciplinary Committee is clearly fact finding and recommendatory and the process thereafter finds its way into the jurisdiction of the Public Service Commission and the Privy Council for the purpose of advising the Governor-General who makes the final determination on the fate of the Commissioner. Although the Commissioner is required to answer formal charges the proceedings conducted is that of an enquiry and the Deputy Solicitor General Mr. Robinson was correct in maintaining that he was not prosecuting charges but marshalling the evidence for the benefit of the Committee. The duty of the Committee was to determine on the facts produced whether there was any misconduct on the part of the Commissioner.

The Public Service Commission which had established the Enquiry recommended to the Governor-General the penalty of dismissal effective from the 1st of April, 1996. This advice was accepted by the Governor General and the Commissioner was duly informed by letter dated 20th November, 1996.

The Public Service Commission is established by Section 124 of the Constitution of Jamaica. Section 125(1) of the Constitution provides that:

"... power to make appointments to public offices and to remove and exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor-General acting on the advice of the Public Service Commission."

Section 125(3) gives the officer the right to apply:

"for the case to be referred to the Privy Council"

and the Governor-General shall then act accordingly.

Section 125(4) states that:

"Where a reference is made to the Privy Council under the provisions of subsection (3) of this section, the Privy Council shall consider the case and shall advise the Governor-General what action should be taken in respect of the officer, and the Governor-General shall then act in accordance with such advice."

The appellant duly applied for the case to be referred to the Privy Council. This was done and written submissions made to that body by the legal representatives of the appellant. Consequently, by letter dated October 18, 1996 the Attorneys-at-law for the appellant were informed by the Public Service Commission of the determination by the Privy Council that:

"... the more appropriate sanction would be to retire Mr. Munroe in the public interest instead of his dismissal from the Public Service."

The Governor-General therefore on the advice of the Public Service Commission gave approval for:

- "(a) Mr. Munroe's retirement from the Public Service in the public interest to take effect as from 15th October, 1996;
- (b) his pension under the Pensions Act to be reduced by seventy-five percent (75%);
- (c) him not to be paid the three-quarters (3/4) salary withheld from him during his interdiction, that is from the 11th of July, 1995 to the 14th October, 1996; and
- (d) him to be paid for the vacation leave for which he is eligible up to the 10th of July, 1995."

It has been submitted that Regulation 43(2)(f) of the Public Service Regulation has been breached by the Commission. this Regulation reads as follows:

"(f) if during the course of the enquiry further grounds of dismissal are disclosed, and the Commission thinks fit to proceed against the officer upon such grounds the Commission shall cause the officer to be furnished with a written charge and the same steps shall be taken as those prescribed by this Regulation in respect of the original charge:..."

No new charges arose during the hearing and Charges 1 and 111 of which Mr. Munroe was found to be guilty of misconduct were established on the evidence. It is clear that the Commission found those charges proved.

re: Breach of the principles of natural justice - Ground V

It is true that the officer presenting the evidence during the disciplinary proceedings had withdrawn the charge relating to lot 27 Chudleigh House Reserve (Charge V). Nevertheless, the Commission found the applicant guilty of that charge. Before the Full Court counsel for the applicant submitted that the charge having been withdrawn, the applicant would no longer have the need to present any evidence in respect of it or to address it in any way and was therefore not required further to answer that charge. Counsel for the appellant has urged that this breach of the principles of natural justice in regard to that charge tainted the whole proceedings. We cannot agree that this is so. The charges were separate and unrelated and any error of the Public Service Commission in finding him guilty on this specific charge would not vitiate the finding of guilt on Charges 1 and 111 in respect of which the punishment was imposed by the Governor-General acting on the advice of the Privy Council and the Public Service Commission. Reliance has been placed on the judgment of Lord Reid in *Ridge v. Baldwin* [1963] 2 All E.R. 66 to support the principle that since on Charge V there was a breach of the principles of natural justice and as indeed so found by the Full Court, this vitiates the whole proceedings in particular with respect to Charges 1 and 111 of which he was found guilty. I find no support for this proposition in *Ridge v. Baldwin* in which the appellant was not charged at all with any breach by the Watch Committee and was indeed dismissed without a hearing. In this case the appellant was specifically charged in respect of Charges 1 and 111, was defended fully in relation to those charges and was found guilty of misconduct in relation to them.

Grounds 6 and 7 challenged the findings of the Full Court that there was no error of law in the decision of the Governor-General acting on the advice of the Public Service Commission that the appellant's pension be reduced by 75% and that he be not paid the three-quarters salary withheld from him during his interdiction. Regulation 32(1) of the Public Service Regulations provides for the interdiction from duty in the public interest of a public officer against whom disciplinary proceedings have been instituted. Regulation 32(2) permits such officer to receive such proportion of the salary of his office as the Commission may recommend to the Governor-General. It is by virtue of Regulation 32 that the interdiction from duty of Mr. Munroe was effected and the withholding from him during the interdiction of three-quarters of his salary. Regulation 32(4) is relevant and reads:

"Where disciplinary proceedings against an officer under interdiction from duty result in his exculpation he shall be entitled to the full amount of the salary which he would have received had he not been interdicted, but where the proceedings result in any punishment other than dismissal the officer shall be allowed such salary as the commission may in the circumstances recommend". [Emphasis mine]

Retirement in the public interest is a punishment other than dismissal. The order of the Governor-General therefore on the advice of the Public Service Commission that Mr. Munroe should not be paid the salary held during his interdiction is fully in keeping with this Regulation. We cannot therefore agree with the submission of Counsel for the appellant that the proceedings resulted in exculpation and not in punishment.

With regard to the reduction of Mr. Munroe's pension by 75% and the submission by Counsel in respect thereto, it is necessary to examine certain provisions of the Constitution of Jamaica as well as of the Pensions Act.

In this regard the following provisions of the Constitution are relevant:

"134.- (1) The power to grant any award under any pensions law for the time being in force in Jamaica (other than an award to which, under that law, the person to whom it is payable is entitled as of right)

and, in accordance with any provisions in that behalf contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law is hereby vested in the Governor-General.

(2) The power vested in the Governor-General by subsection (1) of this section shall be exercised by him -

(a) ...

(b) ...

(c) in the case of an award payable to any other person, on the recommendation of the Public Service Commission."

Section 136 reads as follows:

"136. The question whether -

(a) any Commission established by this Constitution has validly performed any function vested in it by or under this Constitution;

(b) ...

(c) ...

shall not be enquired into in any Court."

With respect to the Pensions Act the following provisions are relevant. Section 3(1)

and (4) of the Act reads as follows:

"3.- (1) Pensions, gratuities and other allowances may be granted by the Governor-General, in accordance with the Regulations contained in the Schedule, to officers who have been in the service of this Island.

(2) ...

(3) ...

(4) Any pension, gratuity or other allowance granted under this Act shall be computed in accordance with the provisions in force at the actual date of an officer's retirement."

Section 5 reads as follows:

5. - (1) No officer shall have an absolute right to compensation for past services or to pension, gratuity, or other allowance; nor shall anything in this Act affect the right of the Crown to dismiss any officer at any time and without compensation.

(2) Where it is established to the satisfaction of the Governor-General that an officer has been guilty of negligence, irregularity, or misconduct, the pension, gratuity, or other allowance, may be reduced or altogether withheld."

It is to be noted that Mr. Munroe was found guilty of misconduct. Section 6 provides:

"6. - (1) Subject to subsection (3), no pension, gratuity, or other allowance, shall be granted under this Act to any officer except on his retirement from the public service in one of the following cases -

- (i) ...
- (ii) ...
- (iii) ...
- (iv) ...
- (v) ...

(vi) in the case of service in this Island, on retirement in the public interest as provided in this Act ...".

It is to be noted therefore that although retired in the public interest the discretion still exists for him to have been granted a pension on such retirement. Indeed, he was granted a pension but a reduced one. That reduction is permitted under Section 5(2) of the Act already cited.

It is clear therefore that retirement in the public interest does not compulsorily deny the officer who has been retired from receiving a pension and the provisions of Section 6 provides for the grant of pensions to the categories of persons mentioned in that section. Even when retirement is desirable in the public interest and the "pension, gratuity or other allowance cannot otherwise be granted to the officer under the provisions of the Pensions Act, the Governor-General may, if he thinks fit, grant such pension, gratuity, or other allowance as he thinks fit and proper." The provisions of Section 7 of the Pensions Act support this. It reads -

"Where an officer's service is terminated on the ground that, having regard to the conditions of the public service the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise

be granted to him under the provisions of this Act, the Governor-General may, if he thinks fit, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (v) of subsection (1) of section 6 and was not eligible for an additional pension under regulation 29 of the Regulations contained in the Schedule."

Section 6 subsection (v) relates to retirement consequent upon the incapability of the officer by reason of any infirmity of mind or body to discharge the duties of the office and that such infirmity is likely to be permanent.

The discretionary nature of the grant of the pension is evident. The right to the pension is not absolute and it is clear that where misconduct is established the pension "may be reduced or altogether withheld." This misconduct having been established, the Governor-General therefore on the advice of the Public Service Commission acted intra vires when on the advice of the Commission he reduced the pension of the appellant.

With respect to the withholding of salary not paid during the Commissioner's interdiction from duty, the provisions of section 32(4) of the Public Service Regulations 1961 are clearly pertinent to that determination. The proceedings having resulted in the punishment imposed, that is, retirement in the public interest other than dismissal - "the officer shall be allowed such salary as the circumstances recommend."

This appeal has been fully argued but there was the question of jurisdiction raised with respect to whether the Court could inquire into the reduction of Mr. Munroe's pension. This arose because of the provision in section 32(4) of the Constitution that:

"32. -(4) Where the Governor-General is directed to exercise any function in accordance with the recommendation or advice of, or with the concurrence of, or after consultation with, or on the representation of, any person or authority, the question whether he has so exercised that function shall not be enquired into in any court."

It is in our view and indeed well established that despite clauses of this nature referred to in some cases as "no certiorari" clauses, found in the statutory instruments or in the Constitution of the nation if the determination made affecting the rights of the subject is challenged on the ground that it is a nullity, the existence of a "no certiorari" clause cannot debar the aggrieved person from questioning in a court of law a decision adverse to him.

It is no longer doubted that prerogative powers are capable of being subject to judicial review once they are justiciable (see ***Council of Civil Service Union and Others v. Minister of the Civil Service*** [1984] 4 All E.R. 935.) Nor can it be now arguable that "no certiorari" clauses in a statute or a Constitution can in an appropriate case debar the court from having jurisdiction, and prevent it from embarking upon the determination of an issue involving a breach of the principles of natural justice. These principles are well established in the cases cited to us including ***Anisminic Ltd v. The Foreign Compensation Commission And Another*** [1969] 1 All E.R. 208; and ***Thomas v. Attorney-General*** [1981] 32 W.I.R. 375. We have to examine the circumstances of each case to determine whether jurisdiction is ousted or not. In our view the jurisdiction in this appeal is not ousted and full argument has been allowed.

We therefore conclude that the determination of the Governor-General acting on the advice of the Public Service Commission was not wrong in law as misconduct was proved as required by the Pensions Act. Furthermore the Governor-General's decision on the advice of the Public Service Commission not to pay the appellant the salary withheld from him during his interdiction was likewise not wrong in law as the proceedings against him had not resulted in his exculpation but in the imposition of a punishment.

For all these reasons we uphold the decision of the Full Court and dismiss the appeal with costs to the respondent.