

J A M A I C A

SUIT NO. M.141/93

On Friday, the 11th December, 1992 an Inspector of Police ordered her to perform escort duties, but she bluntly refused to do so. The matter was reported to the Commissioner of Police who preferred three charges against the applicant and ordered an investigation with a view to her dismissal. The Commissioner of Police appointed a court of enquiry consisting of one person Mr. C.A. Rose, Superintendent of Police, to enquire into the matter. On the day appointed for the hearing of the enquiry, the applicant appeared before the court of enquiry and pleaded guilty to all three charges. The result of the enquiry was reported to the Commissioner of Police,

and by letter dated September 22, 1993, the applicant was dismissed from the Jamaica Constabulary Force. The letter of dismissal reads as follows:-

"C O N F I D E N T I A L"

THE JAMAICA CONSTABULARY
OFFICE OF THE COMMISSIONER
101 - 105 OLD HOPE ROAD
KINGSTON 6.

September 22, 1993

No. A19/G842

Woman Constable Z. Griffiths
c/o Superintendent of Police
Portland.

Be informed that you are dismissed from the Jamaica Constabulary Force with effect from October 1, 1993 consequent on the findings of a Court of Enquiry which investigated disciplinary charges preferred against you. The Court of Enquiry found that your conduct was improper and the charges proven. The Commissioner of Police confirmed this and has directed that you be so dismissed. The charges were:-

- Charge 1. That you being a member of the Jamaica Constabulary Force conducted yourself contrary to the Discipline, Good Order and Guidance of the Force by being disrespectful to your senior in rank Inspr. L.E. Glennie, when he warned you for escort duty to Forte Augustus Prison, St. Catherine, you replied "I don't think I will be going anywhere. I am not going anywhere", at or about 11 a.m. on Friday December 11, 1992 at Port Antonio Police Station in the parish of Portland.
- Charge 2. That you being a member of the Jamaica Constabulary Force conducted yourself contrary to the Discipline, Good Order and Guidance of the Force by disobeying a lawful order given you by Inspr. L.E. Glennie to wit: Woman Constable Griffiths you are to report in the Guard Room of the Port Antonio Police Station now and prepare prisoner Sharon Corney to be taken to Forte Augustus Prison now, and you will be the escort, failure to comply will result in disciplinary action being taken against you", at or about 11 a.m. Friday December 11, 1992 at Port Antonio Police Station in the parish of Portland.
- Charge 3. Conduct contrary to the Discipline, Good Order and Guidance of the Jamaica Constabulary Force in refusing to perform escort duty, escort of female prisoner Sharon Corney to Forte Augustus Prison, St. Catherine at or about 11 a.m. on Friday December 11, 1992 from the Port Antonio Police Station in the parish of Portland.

Should you therefore desire to apply for reference of your dismissal to the Privy Council in accordance with Regulation 42 (1) of the Police Service Regulations, 1961, (i.e. TO APPEAL THE DISMISSAL) you have fourteen (14) days from the receipt of this notice within which you may do so. Your application together with the grounds of Appeal should be submitted to the Commissioner of Police through the Divisional Officer, Portland.

(Sgd.) ? ?

Commissioner of Police"

It does not appear that the applicant exercised her right to apply for a reference of her dismissal to the Privy Council. Instead, she sought and obtained leave of the Supreme Court to apply for an order of certiorari to quash the decision of the Commissioner of Police. Her application to this Court by motion was dismissed, and as promised, I now give my reasons for so doing.

The applicant sought relief on three grounds, namely:-

- "(1) That the Court of Enquiry established by the Commissioner of Police under Sections 47 (2), 48 (2), 55, 57, 58 and 59 of the Police Service Regulations, 1961 comprised a President only without Members was improperly constituted and therefore had no jurisdiction to accept the plea of guilty and therefore could not properly advise the Commissioner to punish the Applicant.
- (2) That the offences for which the Applicant was dismissed are classified as non-dismissable offence and fall under Section 46 Part 1 of the Second Schedule of the Police Service Regulations, 1961 and therefore such dismissal was in excess of the jurisdiction of the Commissioner of Police and therefore void.
- (3) That the trial of the Applicant by one Commissioner of Police pursuant to Section 47 of the Police Service Regulations, 1961 and the dismissal by the other is wrong and therefore void."

In arguing the first ground, Counsel for the applicant contended that the intent of regulation 47 of the Police Service Regulations, 1961, is that the court of enquiry must be comprised

of a president and at least one other member, and although that regulation may not expressly say so, by implication (as borne out in regulations 48(2), 55, 57, and 59) other 'members' are required to sit with the president.

The procedure to be followed when proceedings are instituted against a Constable with a view to dismissal, is prescribed by regulation 47 of the Police Service Regulations 1961. Regulation 47(2)(c) empowers the Commissioner of Police to appoint a court of enquiry "(constituted as under sub-paragraph (b) to enquire into the matter." Sub-paragraph (b) provides that the court of enquiry constituted thereunder shall consist "of one or more persons (who may include the Commissioner, or other Officer)". I am of the view that these provisions are clear and unambiguous, and there can be no doubt that the court of enquiry, appointed by the Commissioner of Police and consisting of one person only, an Officer of the Jamaica Constabulary Force, namely, Mr. E.A. Rose, Superintendent of Police, was properly constituted in accordance with the relevant regulation mentioned above. The fact that mention is made in the said sub-paragraph (b) and in other succeeding regulations to "members of the Court" does not, in my view, alter or detract from the clear provisions of regulation 47 nor do references to the "president" of the Court assist the arguments put forward by Counsel. The regulations must be read in light of Sec.4 of the Interpretation Act which provides that (in regulations such as these), "unless there is something in the subject or context inconsistent with such construction, or unless it is therein otherwise expressly provided (b) words in the singular include the plural, and words in the plural include the singular." I saw no merit in this ground.

I turn now to the second ground argued by Counsel. The Police Service Regulations, 1961 Part V, sets out the general provisions governing discipline in the Force, and provides that:-

"32(1) Any report of misconduct on the part of member shall be made to the Commissioner and dealt with under this Part as soon as possible thereafter."

A distinction is made between disciplinary proceedings taken against a member of the Constabulary Force of or above the rank of Inspector and a member below that rank, e.g. a constable. A distinction is also made between charges of misconduct which are not so serious and do not warrant proceedings with a view to dismissal, and those which warrant proceedings under regulation 47 with a view to dismissal. Charges of misconduct which are classified as minor offences, are specified in Part 1 of the Second Schedule to the regulations, and those offences may be dealt with summarily and do not warrant dismissal. But charges of misconduct may be so serious that they attract proceedings with a view to dismissal, and the procedure to be adopted in such a case is set out in regulation 47. The charges in the instant case were preferred with a view to dismissal, and the applicant was so informed. She was not tried summarily; the procedure followed was in accordance with the requirements of regulation 47. The applicant pleaded guilty to all three charges preferred, and while it may be argued that the first charge could be classified as a minor offence, the other two charges are serious indeed. The Constable was not only disrespectful to her senior in rank, an Inspector, but she flatly refused to carry out his lawful order and to perform duty that she was bound to do. If law and order is to be maintained, then we must have a disciplined constabulary force, and it is best to weed out at an early stage, those who are not willing to abide by the tenets of the Force. The despicable misconduct of the constable cannot be condoned, and I consider her dismissal fully justified.

As regards the third ground, I understood Counsel to be saying that the charges were preferred by Commissioner of Police Roy Thompson, and it was he who ordered that a court of enquiry be convened. He submitted that by so doing, Commissioner of Police Roy Thompson was acting judicially, and that Commissioner of Police Trevor McMillan was never a party to the judicial process, and "therefore he is categorised by law as a stranger to the proceedings and cannot take part in the dismissal of the applicant." It appears

to me that Counsel may not have had in mind the provisions of Sec.5 of the Interpretation Act. That section reads:-

"5. A reference in any Act to any public officer by the usual title of his office shall, if there be such an office customarily in Jamaica and unless the contrary intention appears, be read and construed as referring to the person for the time being holding or carrying out the duties of that office in Jamaica."

It is the Commissioner of Police for the time being to whom report of misconduct is made; and it is the Commissioner of Police for the time being who appoints the court of enquiry. The court of enquiry furnishes the Commissioner of Police for the time being with a report of its findings together with a copy of the evidence and all material documents relating to the case. It is the Commissioner of Police for the time being who is required to take the decision as to whether the constable should be dismissed. The name of the person holding or carrying out the duties of that office is of no moment, and the fact that various persons held the post and carried out duties pertaining to the preferment and final disposal of the disciplinary proceedings does not, in my view, invalidate the proceedings or the dismissal. There is no complaint, and there could not be, of a failure on the part of the Commissioner of Police to observe the regulations or any procedural requirement thereunder. The powers which are entrusted to the Commissioner of Police were exercised correctly and fairly, and I see nothing wrong with the exercise of the Commissioner's decision to dismiss the applicant.

In my view, all three grounds were without merit, and for those reasons, I agreed that the motion should be dismissed.

ELLIS, J.

The facts which found the charges against Woman Constable Zerica Griffiths and her subsequent dismissal from the Jamaica Constabulary Force on the recommendation of the Commissioner of Police, have been amply dealt with by Patterson J.

In relation to the conclusion arrived at by Patterson J. on those facts, I have nothing to add. There is one point however, which for my part I think should be addressed.

I understood Mr. Lyttle, in argument, to say that the offences against the woman constable, coming within the Second Schedule, Part I, are not attractive of the penalty of dismissal.

I am of opinion that Mr. Lyttle was prompted to so state from a misunderstanding of the regulation 47 and Part I of the Second Schedule of the Police Service Regulations. His statement seems also to ignore the provision of The Second Schedule Part III.

Regulation 47 sets out the procedure to be adopted in proceedings for dismissal. Part I of The Second Schedule designates and enumerates offences which may be tried summarily, that is to say, by the usual "Orderly Room" hearing, with the penalties on proof thereof, set out at Part II. However, at Part III of the said Second Schedule, those offences may be tried by Regulation 47 procedure with the penalties on proof thereof outlined.

It is therefore not the designation "Minor Offence" which per se dictates the penalty for that offence but the nature of the proceedings and the reason for such proceedings which do so.

The offences were dealt with with a view to dismissal strictly within the terms of regulation 47 and Part III of the Second Schedule of The Police Service Regulations.

I also agreed that the Motion should be dismissed.

SMITH, J.

I agreed that the Motion should be dismissed. I concur with the reasons set forth in the Judgments of Patterson J. and Ellis J.