

A/MLP

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2010 HCV 0366

BETWEEN	REGINA ex parte JOY STREETE	CLAIMANT
AND	THE POLICE SERVICE COMMISSION	1 ST DEFENDANT
AND	THE PUBLIC SERVICE COMMISSION	2 ND DEFENDANT
AND	THE ATTORNEY GENERAL FOR JAMAICA	3 RD DEFENDANT

Mr. H. Charles Johnson for the Claimant

Ms. Marlene Chisholm for the Defendants

Heard: January 31 and February 10, 2011

Straw J

*Judicial Review –
Reduction of Pension*

1. The applicant Joy Streete is a retired Corporal of the Jamaica Constabulary Force (JCF). She was retired in the public interest pursuant to Regulation 26 of the Police Service Regulations (PSR), 1961 as of the 28th July 2007 on the recommendation of the Police Service Commission (PSC) by the Governor General.

She was born May 11, 1966. She is now 44 years old and had previously been a member of the Island Special Constabulary Force (ISCF) between 1991 to 1997. She served in the JCF from April 9, 1997 until the date reflected above. She would therefore

have a combined service totalling 16 years, and ten years in the Jamaica Constabulary Force.

2. Ms. Streete was notified of the intention to recommend retirement in the public interest by way of letter dated November 16, 2005 from the Office of the Services Commission.

A statement was attached setting out the grounds on which her retirement was contemplated.

Suffice it to say that, the report implicated her in corrupt activities at the Donald Sangster International Airport and in particular, by facilitating drug couriers in by-passing the security measures in place at the said airport.

She was further told the following in the said letter:

"Under the circumstances, your actions have led to a loss of confidence in your ability to discharge your functions as a Police Officer to serve and protect and further, that your usefulness to the Police Force has been considerable impaired."

3. Having replied by letter on December 27, 2005 and again on March 12, 2009, in accordance with the procedure set out in Rule 26, she was subsequently informed by letter dated February 3, 2009 and signed by the Governor General's Secretary that the PSC had advised the Governor General that she be retired from the JCF in the public interest in accordance with Regulation 26 of the PSR (1961).

She was then informed of her rights to request that the matter be referred to the Privy Council for its consideration and recommendation.

4. This was done and on November 19, 2009, the applicant was informed that the Privy Council had considered the reference submitted by her and "agreed to advise the

Governor General that her application lacked merit and that she should be retired in the public interest.”

5. It is at this time (i.e. by the letter of November 19, 2009) that she was told that her pension benefits would be reduced. The relevant section of the letter reads as follows:

“Accordingly, the Governor General, acting on the advice of the Privy Council, has given approval for Woman Corporal Streete to be retired from the Jamaica Constabulary Force in the public interest in accordance with Regulation 26 of the Police Service Regulations, 1961, with effect from the 28th July 2007 and for her retiring benefits to be reduced by seventy-five percent (75%).”

6. Ms. Streete has cried foul and has applied and received leave to apply for Judicial Review in relation to the reduced pension. Her counsel, Mr. H. Charles Johnson has submitted that the first and second defendants were in breach of the principles of natural justice as the applicant was neither notified of the intention to reduce her benefits nor was she given any opportunity to be heard on the matter. He also submitted that no reasons were given for the actual computation leading to the reduction and that the failure to do so may suggest that the decision was arbitrarily taken and was procedurally unfair.

7. Counsel for the defendants, Ms. Marlene Chisholm, has submitted that Ms. Streete has no legal entitlement to a pension under the relevant Act, the Constabulary Force Act (hereinafter referred to as CFA) and therefore there was no breach of the principles of natural justice on the part of the Commission in making the recommendation to the Governor General.

The Applicable Law

8. It is necessary to examine certain provisions of the Constitution of Jamaica, the Police Service Regulations, 1961 (hereinafter referred to as PSR), as well as of the CFA in order to make a proper determination of the issues. Section 134 (1) of the Constitution reads as follows:

"(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) In the case of an award payable to a person, who, having been a public officer, was, immediately before the date aforesaid, serving as a police officer, on the recommendation of the Police Service Commission; and

(c) ---."

The Constitution therefore empowers the Governor-General to reduce the pension of an officer in accordance with the provisions set out in the relevant law on the recommendation of the Police Service Commission.

9. Regulation 29 of the PSR, 1961 reads as follows:

"Where the appointment of a member is terminated under regulation 25, 26 or 28 his service shall terminate on such date as the Commission may recommend and the question of his pension shall be dealt with in accordance with the provisions of the Act."

10. The Act would be the Constabulary Force Act. Part III of that Act regulates the issue of pensions, gratuities and disability allowances.

Section 66 (a) (1) states that the provisions of Part III shall apply to every constable appointed to the Force after the 21st day of November 1947.

11. A perusal of Part III reveals that no constable has an absolute right to compensation for past services or to pension *inter alia* (Section 55 (i)). Section 53 (i) provides that pensions may be granted by the Governor General in accordance with the regulations contained in the first schedule.

Section 55 (2) reads as follows:

"Where it is established to the satisfaction of the Governor General that a constable has been guilty of intemperance, negligence, irregularity or misconduct, the pension, gratuity or other allowance, may be reduced or altogether withheld."

12. There are no other circumstances outlined in the above Act that would vest powers in the Governor General to reduce a police officer's pension.

It is clear from Section 134 of the Constitution that he has the power to withhold or reduce the pension on the recommendation of the PSC if he does so in accordance with any such provisions contained in any such law (i.e. the relevant law – the Constabulary Force Act).

Section 56 (1) outlines the eligibility for pension. This reads as follows:

"Subject to subsection (2), no pension, gratuity or other allowance, shall be granted under this Part –

(a) to any Constable except on his retirement from the Force in one of the following cases-

(i) subject to sub-paragraph (iii) on or after attaining the age of fifty-five years or, with the approval of the Governor-General, fifty years;

(ii) on medical evidence, to the satisfaction of the Governor-General, that he is incapable of discharging his duties efficiently by reason of any infirmity of body that is likely to be permanent, or any infirmity of mind;

(iii) at his option, after completing not less than thirty years of service; or

(b) to any person except on his retirement from public service in circumstances in which he is eligible for pension, gratuity or other allowance under any law or regulations which are applicable to such public service and where that person left the Force for the purpose of entering public service.

13. None of these categories in Section 56(1) would apply to Ms. Streete at the time of her retirement. In comparison to the CFA, Section 6 (1) of the Pensions Act allows for pension to be granted to one who has been retired in the public interest as provided for in the said Act.

14. It would appear therefore that Ms. Streete would not be entitled to a pension at the time she was retired in the public interest under Regulation 26.

However, Section 56 (2) of the CFA provides as follows:

(2) "A person who left the force in circumstances in which, having regard to the provisions of subsection (1), he was not entitled to a pension, gratuity or other allowance, may on such terms and conditions as may be prescribed, be granted a pension ---- on attaining the age of sixty years ---."

15. The first schedule of the said Act sets out details of the qualifying service and rate of computation for pension. In that regard, Regulation 3a – (1) and (2) would be relevant to Ms. Streete:

3a – (1) "This regulation applies to every person who had been a Constable in the Force.

(a) For a continuous period of not less than ten years; or

(b) ----

(c) having left the force is not, other than pursuant to this regulation, eligible for pension, gratuity, or other allowance under these Regulations;

(2) Subject to the provisions of this Act and of these Regulations, a person to whom this regulation applies may be granted, on attaining the age of 60 years, a pension –

(a) where he has served in the same rank for a period of not less than three years immediately preceding the date on which he left the Force, at the rate of one five-hundred and fortieth of his pay at the date on which he left the Force, for each complete month of his service; or

(b) in any other case, at the rate of one five-hundred and fortieth of his average annual pay during the three years immediately preceding the date on which he left the Force, for each complete month of his service."

16. Section 65 is also of some relevance as it entitles an officer who has been struck off the strength of the force to make a request at his option for the return of any deductions from his pay in relation to pension benefits.

Ms. Streete therefore would have been eligible for consideration of a grant of pension at the age of 60 years or to request a refund of the amount of the deductions made from her pay.

Legal Issues for Determination

17 The first issue to be determined is whether there was authority under the CFA for the PSC to recommend to the Governor General that the applicant's pension should be

reduced in the circumstances of her retirement in the public interest. As indicated previously, this could only be authorized under Section 55 (2) of the CFA where it is established to the satisfaction of the Governor General that a constable is guilty of intemperance, negligence, irregularity or misconduct.

18. It may be argued that there were no disciplinary proceedings or any court trial where she was found guilty of any of the named categories or a criminal offence.

I am of the opinion, however, that Section 55 (2) is not linked particularly to a determination under disciplinary proceedings nor does it restrict the Governor General to court proceedings where a determination of guilt has been made. It would appear therefore that the intention of Parliament was to repose a fairly wide discretion within the bosom of the Governor General.

19. Based on the report and the applicant's response which would have been considered by the Police Service Commission, the Governor General and Privy Council, it could not be said that there was no basis for the application of the discretion or that it was wrong in law.

20. The report spoke to her involvement in drug dealing and trafficking by facilitating drug couriers in by passing the security measures in place at the Donald Sangster International Airport.

It spoke to a particular date when she conspired with others including named police officers to facilitate one Mr. Nurdin boarding an international flight with contraband. Mr. Nurdin was, however, intercepted and found to be in possession of 25¾ pounds of ganga. He subsequently pleaded guilty in the Montego Bay Resident Magistrate's Court.

21. The last two paragraphs of the letter sent to the applicant to which the above report was attached read as follows:

"Under the circumstances, your actions have led to a loss of confidence in your ability to discharge your function as a police officer to serve and protect and further, that your usefulness to the police force has been considerably impaired. Accordingly, the Police Service Commission, having considered the Commissioner of Police's report and your usefulness to the Police Force has agreed to make steps toward your retirement from the Jamaica Constabulary Force in the public's interest ----"

22. As was indicated previously, the applicant denied the allegations and actually requested more details of the alleged conspiracy. Apparently, none were forthcoming.

23. In a related case of retirement in the public interest, **Regina ex parte Mullings (Dwayne) et al v The Police Service Commission et al**, SCCA no. 18/2007, the allegations against several police officers were of the same ilk and tenor as in the present case.

Cooke J, in delivering the judgment of the Court of Appeal made the following remarks (paragraph 7 pages 14 and 15):

"Retirement in the public interest is essentially that such a person is unsuitable to continue to be a member of the Jamaica Constabulary Force. This unsuitability is not solely to be determined in a situation where strict proof is forthcoming but also in circumstances where there is material above mere suspicion that the behaviour of a member of the force is unacceptable."

"This indicates to me that retirement in the public interest is quite different from dismissal on specific charges. Whereas the latter is confined within defined parameters, the former is subject to a great latitude, subject only to a pending caveat that such retirement must be for reasonable cause."

24 The Police Service Commission, having considered the report, made the recommendation for retirement to the Governor General. On referral to the Privy Council, he was advised by that body that the applicant's appeal lacked merit. Both bodies would have considered the report and the applicant's response. There was no question of mala fides raised and the retirement under Rule 26 has not been challenged in light of the Court of Appeal's decisions in **Ex parte Mullings** (supra).

The inference to be drawn is that there was robust acceptance that the material impugning her conduct was above mere suspicion. Under these circumstances, the Governor General would certainly have latitude to consider her unsuitability within the context of the provisions in Section 55 (2) of the Constabulary Force Act.

Breach of the Rules of Natural Justice

25. The court must now consider the second issue as to whether the Police Service Commission breached the rules of natural justice, firstly, by failing to inform the applicant of the intention to reduce her pension and secondly by failing to give reasons for the actual computation of 75 percent.

26. The applicant is contending that the decision was arbitrary, procedurally unfair and without reason.

In **Russell v Duke** of Norfolk, 1949 (1ALL ER 109 at pg 118), Tucker LJ, while examining the principle of natural justice stated as follows:

"There are in my view, no words which are of universal application to every kind of inquiry, and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth."

27. In **Regina v Race Relations Board, ex parte Selvarajan** (1975) 1 WLR 1986,

Lord Denning MR at pages 1639H – 1964D, said:

*“In recent years we have had to consider the procedure of many bodies who are required to make an investigation and form an opinion. Notably, the Gaming Board for Great Britain, ex parte Benaim and Khaida (1970) 2 QB, 417; inspectors under the Companies Act 1948 who have to investigate the affairs of a company and make a report: See In re Pergamon Press Ltd., (1971) ch 38; and Commissioners of Inland Revenue who have to determine whether there is prima facie case: See **Wiseman v Borneman** (1971) AC, 297. In all these cases it has been held that the investigating body is under a duty to act fairly, but that which fairness requires depends upon the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subject to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given.”*

28. The applicant in the present case was informed of the case made against her and afforded an opportunity of answering it.

The issue of the reduction of her pension was a consequential penalty in the exercise of the discretion of the Governor General. It is ludicrous to argue that in a situation where a case against a person is being considered, notification should be given of the potential penalties that may be enforced (one possible exception would be the

death penalty). Certainly, it is in the body of the law (in this case, The Constabulary Force Act) and available for her examination.

29. What then of the argument advanced for reasons for the application of the discretion to reduce the pension benefits?

Counsel for the applicant cited **Stefan v General Medical Council**, 1999 1WLR 1293 for the court's consideration.

This case concerned a doctor who had been subject to suspension of her registration for varying periods following decisions of the Health Committee of the General Medical Council that her fitness to practice was impaired.

At the last hearing, preceding her appeal to the Judicial Committee, it was decided that her registration should be suspended indefinitely.

The appeal against that decision was allowed. It was held that there was no express or implied obligation on the Health Committee to give reasons for its decision within the relevant Act or procedural rules, but that in light of its judicial character, the framework in which it operated and the provision of a right of appeal against its decisions, there was a common law obligation to give at least a short statement of reasons for its decision sufficient to tell the parties in broad terms why the decision was reached.

It is to be noted that Lord Clyde, who delivered the judgment referred to the case of **Rai v General Medical Council** (unreported) 14th May 1984, appeal no. 54/1983 PC where Lord Scarman made the following observation (per page 1296 E):

"Though there is no obligation, the committee has the power to give reasons and their Lordships suggest that giving reasons can be beneficial, and assist justice: (1) in a complex case to enable the doctor to understand the committees' reasons for finding against him; (2) where guidance can

usefully be provided to the profession, especially in different fields of practice --- (3) because a reasoned finding can improve and strengthen the appeal process."

Lord Clyde then went on to make these remarks (per page 1296 G-H):

"These observations were subsequently recognized as related to the giving of reasons for a finding of serious professional misconduct and not the imposition of a particular penalty, the reason for which would usually be apparent from the transcript of the evidence (Rodgers v General Medical Council (unreported) 19th November 1984, Appeal no. 46/1984, PC) and the giving of which have been said to be neither necessary nor desirable (Evans v General Medical Council (unreported) 19th November 1984, Appeal no. 40/1984 PC)."

30. One could say 'ditto' in relation to the present case under consideration.

It is also to be noted that there is no appeal process in relation to the reduction of the pension. This would not, of course, prevent the court from exercising jurisdiction in relation to a determination as to whether the decision to reduce the pension was *ultra vires* (see **James Munroe v Attorney General** SCCA no. 56/97).

31. The Court also considers the case of **Curtis v London Rent Assessment Committee 1999, the Law Reports**, page 92. This case was cited also by Counsel, Mr. Johnson, in support of his arguments for reasons associated with the computation of the pension.

This case concerns an appeal against the determination of a Rent Assessment Committee which was challenged by the landlord on both substantive and procedural grounds.

The substantive issue dealt with the determination of rents which the Court of Appeal held had to involve, if rational, *inter alia*, some arithmetical explanation. It is in light of these circumstances that the statement of reasons was held to be inadequate.

It is clearly distinguishable from the present case and does not advance the case for the applicant.

The court has taken all the above issues into account and considers that there is no merit in the case for the applicant. The court is of the view that the reduction of the pension is neither erroneous on a point of law or in the application of the law (see **Edwards v Bairstow and Another** 1956 AC 14).

The applicant can be left in no doubt as to why the decision was taken to reduce her pension.

32. Accordingly, the findings of the court are as follows:

- i. The Police Service Commission was entitled to recommend to the Governor General that the applicant's retirement benefit be reduced.
- ii. There was no breach of the principles of natural justice.

Costs to the defendant to be agreed or taxed.