

Full Court + Affidavit for execution of writs of Habeas Corpus (Bills) remain on file - with the original ones less such powers. 2 P.R. 412 Chapter 4 Book of Bills. Jamaica Law Library Case No. 526 1993. Page 100-101. Court ordered writs to be issued to the effect of Commissioner of Police.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FULL COURT

SUIT NO. M-142 OF 1993

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MONA, KINGSTON, 7, JAMAICA

BEFORE: HONOURABLE MR. JUSTICE ZACCA, CHIEF JUSTICE
HONOURABLE MR. JUSTICE PATTERSON, J.
HONOURABLE MR. JUSTICE HARRISON, J.

REGINA

VS.

COMMISSIONER OF POLICE

EX PARTE LESLIE HARPER

APPLICATION FOR ORDER OF CERTIORARI

Ian Ramsay, Enos Grant and Carlton Williams, instructed by Williams, Palmer and McKay for applicant.

Douglas Leys, Assistant Attorney General and Carlton Coleman, Assistant Crown Counsel, instructed by Department of State Proceedings for the Respondent.

HEARD: JANUARY 24, 25 & 28, 1994

ZACCA, C.J. :

Colonel Trevor MacMillan assumed duties as Commissioner of Police on September 1, 1993. Prior to his assuming duties, an announcement was made as to his being appointed Commissioner of Police. It is alleged that the applicant made certain public statements with respect to his appointment.

On August 31, 1993 a meeting was held, the participants being, the Honourable K.D. Knight, Minister of National Security and Justice, the applicant and Colonel Trevor MacMillan.

The Commissioner contends that this meeting was held to discuss the public statements made by the applicant. On the other hand the applicant contends that the meeting was held to discuss an alleged report that Colonel MacMillan had intimated his intention to send the applicant on leave as from September 1, 1993.

In any event the applicant applied for 14 days departmental leave to commence on the 1st September, 1993. This was granted by the then Commissioner of Police, Mr. Roy Thompson. Subsequently, the applicant applied for fifteen days recreational leave with effect from September 21, 1993. This leave was approved by Colonel MacMillan. The applicant was due to return to his duties on October 12, 1993 not having applied for any further leave.

On October 11, 1993, the Commissioner of Police sent a letter to the applicant. The letter is set out in full :

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

To: Mr. L.D. Harper, LL.B.
Deputy Commissioner of Police

Whereas it appears to me as Commissioner of Police that it is in the interest of the Force that you do not perform any duties with the Jamaica Constabulary Force for the time being ;

This therefore is to direct that you remain on leave from your duties with effect from Tuesday 12th October, 1993 and until further orders.

You will hand over all Government properties etc. to an Officer to be named by me at an appropriate time.

You should not leave the island without prior approval from me and I shall be notified of any change in your address.

(sgd.) T. MacMillan
Commissioner of Police. "

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In an affidavit sworn to on the 20th January, 1994 the Commissioner of Police explains the reason for sending the applicant on leave. At Paragraphs 7 and 8 of his affidavit, he states :

- " (7) On the eve of the expiration of his recreational leave I did not receive any further extension and having regard to the position the applicant had adopted regarding my incumbency, my personal integrity and my past career in the Jamaica Defence Force, that he would not be supporting my administration; and the fact that I was about to seek legal advice as to the legality of making a representation to the Police Service Commission that the applicant be retired in the public interest, I took the view that the applicant should remain on a further period of recreational leave pending the outcome of advice sought.
- (8) I therefore decided that it would be in the best interest of the Force that he remains on further recreational leave pending the outcome of the advice sought and I wrote the letter of October 11, 1993. "

The applicant had not applied for further recreational leave or for vacation leave. In any event he was not entitled to any further recreational leave and so stated in an affidavit. In reply the Commissioner of Police stated that the applicant was not in fact entitled to any further recreational leave and what was intended was that he was to be sent on vacation leave.

It is clear that the applicant was not sent on vacation leave for the purpose of him enjoying vacation leave but was sent on leave in order to give the Commissioner an opportunity as he put it "to take legal advice" with a view to recommending to the Police Service Commission that the applicant be retired in the public interest. The applicant was at the time entitled to 130 days vacation leave.

Under the Law and the Regulations the Police Commissioner has no power to suspend, discipline or dismiss any police officer above the rank of Inspector. This power rests in the Police Service Commission.

By notice of motion the applicant sought an order of certiorari to quash the order of the Commissioner of Police contained in his letter of the 11th October, 1993, whereby the applicant was ordered to remain on leave with effect from Tuesday, 12th October, 1993, until further orders.

Mr. Ramsay for the applicant submitted that the action of the Commissioner of Police amounted to an interdiction of the applicant. He argued that the Commissioner could not use the provisions for leave as a device to interdict from duty for an indefinite period, an officer of the Jamaica Constabulary Force. He further submitted that it could never have been the intention of the Statute or the Rules, that the leave provisions should be used other than for the purpose for which leave is to be granted.

Mr. Leys for the Commissioner contended that under the provisions in the Book of Rules for the guidance and general direction of the Jamaica Constabulary Force, the Commissioner was entitled to send the applicant on leave. He refers in particular to Rule 4.3 under Chapter 4.

The present Rules came into existence on the 7th September, 1988. Chapter 4 makes provisions for leave. The Rules which are relevant are set out hereunder :

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4.1. Leave: A Right

All members are entitled to leave as of right; however, the grant of leave shall be subject to the exigencies of the service and the Rules of the Force governing leave of absence.

4.2 Authority for the grant of leave

Authority for the grant of leave to members is vested in the Commissioner who, subject to any Rules contained herein, is authorised to delegate to officers in charge of Police Establishments, general or specific authority to grant leave.

4.3 The Commissioner may direct any member to proceed on vacation leave at any time.

4.4 Subject to Regulations while on leave

All members on leave of absence shall be subject to the regulations prohibiting misconduct and are liable to the consequence of any breaches of discipline.

4.5 Official Documents

Except in the most urgent circumstances, members will not be allowed leave of absence if they have official correspondence, monthly accounts or returns which have been unduly delayed.

4.7 Application for leave

Application for leave by members should be submitted in writing and with sufficient time to allow for a reply. Applications must not be transmitted by telegraph, telephone or radio, except in case of emergency.

The provisions for leave would seem to indicate that the normal practice is for a member of the Force to make an application for leave and this is to be done in writing. It is conceded that the heading of Rule 4.2 "Authority for the grant of leave" presupposes that an application has been made for leave. Rule 4.3 comes under this heading.

It is not in dispute that the applicant had made no application for vacation leave. It is also not in dispute that the purpose for sending the applicant on leave was to enable the Commissioner to obtain legal advice with the view of recommending to the Police Service Commission that the

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applicant be retired in the public interest. It is clear therefore that the granting of vacation leave for the purpose of enabling the officer to enjoy his vacation leave was not uppermost in the mind of the Commissioner.

No doubt the Commissioner of Police did not wish the applicant to resume duties pending any action he proposed taking.

Sections 46 and 47 of the Police Service Regulations, 1961 make provision for an officer above the rank of Inspector to be punished or dismissed for misconduct.

However, s. 26 of the Police Service Regulations 1961 makes provision for the Police Service Commission, if satisfied that it is desirable in the public interest so to do, recommend to the Governor-General that an officer of the Jamaica Constabulary Force be required to retire. It appears that this is the procedure which the Commissioner of Police wished to seek legal advice on and so ordered the applicant to remain on leave.

The provisions of s. 26 of the Police Service Regulations, 1961 states :

"(1) Notwithstanding the provisions of regulation 46 or regulation 47 where it is represented to the Commission or the Commission considers it desirable in the public interest that any member ought to be required to retire from the Force on grounds which cannot suitably be dealt with by the procedure prescribed by regulation 46 or regulation 47 it shall require the Commissioner to submit a full report.

(2) If after considering the report of the Commissioner and giving the member an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and, having regard to the conditions of the Force, the usefulness of the member thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest so to do, it shall recommend to the Governor-General that the member be required to retire on such date as the Commission may recommend. "

The applicant was on leave from September 1, 1993 until October 11, 1993 - a sufficiently long period during which the Commissioner of Police could have received legal advice as to the procedure to be adopted to have the Police Service Commission retire the applicant in the public interest.

The letter of October 11, 1993 from the Commissioner of Police to the applicant bears repetition. The first and second paragraphs of the letter is instructive. It reads thus :

" Whereas it appears to me as Commissioner of Police that it is in the interest of the Force that you do not perform any duties with the Jamaica Constabulary Force for the time being.

This therefore is to direct that you remain on leave from your duties with effect from Tuesday, 12th October, 1993 and until further orders. "

This letter is clearly not indicating that the applicant is being sent on vacation leave. It is tantamount to the applicant being indefinitely suspended, under the guise of the grant of vacation leave.

The applicant had not applied for vacation leave. If he had applied for vacation leave to commence on a certain fixed date, then having regard to Rule 4.3, it would be open to the Commissioner of Police to direct that he proceed on leave at some other time fixed by him. The exigencies of the service would have to be considered.

Rule 4.3 does give the Commissioner of Police a discretion as to the time when an officer can be granted leave, but we are of the view that this discretion is limited to an application for leave by the officer or in consultation with the officer. This rule cannot therefore be invoked for the purpose for which the Commissioner of Police directed the applicant to remain on leave. The rule is applicable only to the grant of vacation leave.

The provisions of the Police Service Regulations could have been invoked to meet the problem which had already arisen between the Commissioner and the applicant.

For these reasons the Court ordered certiorari to issue to quash the decision and directive of the Commissioner of Police as contained in his letter of the 11th October, 1993.

PATTERSON, J.

I agree.

HARRISON, J.

I agree.