

Full Court - 11 - Order dismissing application from Jamaica Constabulary Force - whether order ultra vires - whether void for breach of principles of natural justice - Reg. 24(b)(a) & (b) Police Service Regulations. Application for an order of certiorari dismissed. No case referred to.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FULL COURT

SUIT NO. M.127 OG OF 1993

CORAM: THE HON. MR. JUSTICE THEOBALDS J.

THE HON. MR. JUSTICE LANGRIN J.

THE HON. MR. JUSTICE PITTER J.

REGINA VS. COMMISSIONER OF POLICE

EXPARTE LAUREL SMITH.

IN THE MATTER OF AN APPLICATION by
LAUREL SMITH for LEAVE to apply for
Order of Certiorari.

Mr. Dennis Daly Q.C. instructed by Daly, Thwaites & Campbell for Applicant.

Mr. E. Onis and Mr. Coleman instructed by Director of State Proceedings for Respondents.

Heard: December 2, 3 1993

LANGRIN, J.

This is an application on Motion for an Order of Certiorari to quash a decision made in Jamaica Constabulary Force Order number 2411 dated 19th day of August, 1993 whereby it was ordered that the Applicant be dismissed from the said Force.

BACKGROUND

The applicant was enlisted in the Jamaica Constabulary Force on the 18th February, 1991 and was placed on probation for a period of two years. The probation period was due to expire on 17th February, 1993. On or about 3rd December, 1992 the applicant was served with a notice signed by Superintendent Jasper Jones alleging misconduct on the part of the applicant and warned him that unless there was improvement the Officer would recommend his dismissal at the end of the probationary period.

On the 6th December, 1992 the applicant responded in writing to the Notice.

Deputy Commissioner Leslie Harper deponed in an affidavit that he conducted a hearing with the applicant on 19th January, 1993

and as a result of the hearing which presumably relates to the applicant's misconduct recommended to the Commissioner of Police that the applicant's probationary period be extended for a further period of six months to allow for further assessment of the Constable.

The following letter was directed to the applicant.

"Constabulary Station
Norman Manley Airport Police
Kingston.

February 25, 1993.

NO. 5320 CONSTABULARY LAUREL R. SMITH

Please be advised acting on the instructions of the Commissioner of Police your Probationary period has been extended for six (6) months effected from the 17th February, 1993.

A19/S1258

for: Snr. Superintendent of Police
i/c Ports Division.

c.c. Sub Officer i/c Norman Manley
File"

This letter was not sent directly by the Commissioner of Police to the Applicant but had an address at Norman Manley Airport Police, presumably where the applicant was stationed and bears the date February 25, 1993 some 7 days subsequent to the termination of the probationary period. Essentially, the letter was a notification to the applicant that the Commissioner of Police had extended his probationary period for 6 months effective from the 17th February 1993. Commonsense dictates that in view of the method of communication utilized by the Commissioner there would be a time lapse between the act of the Commissioner in extending the probationary period and the notification to the applicant.

Deputy C.P. Harper, conducted a second hearing with the applicant on the 13th August, 1993 after which he was dismissed from the Constabulary Force by the then Commissioner of Police Roy Thompson.

It is only at this latter stage of dismissal some 6 months later that the applicant is complaining that his probationary period ought not in law to have been extended since his enlistment was deemed to have been confirmed on 17th February, 1993.

GROUND'S FOR THE APPLICATION

The grounds upon which the application is sought are that the purported dismissal is ultra vires and void for breach of the principles of Natural Justice and in particular Regulation 24(6) (b) of the Police Service Regulations and unreasonableness.

The question which the Court must determine is whether or not by operation of Reg. 24(6) (a) & (b) the applicant was duly confirmed as respects to the procedure laid down under Regulation.

Mr. Daley submitted on behalf of the applicant that the said Regulation cannot be breached retroactively since the moment the applicant's services were not dispensed with it, then his enlistment must have been confirmed. The extension of the probationary period can only come about before the applicant is deemed to be an enlisted constable.

Regulation 24(6) of the Police Service Regulation provides as follows:-

- "(6) On first appointment to the Force a Constable shall -
- (a) during the period of his training be deemed to be on probation, and if during that period he is in the opinion of the Commissioner found wanting in any such qualities as are likely to render him a useful member of the Force, his services may forthwith be dispensed with by the Commissioner; and
 - (b) at the end of the period aforesaid, if his services have not been dispensed with, he deemed to have been duly confirmed as respects his enlistment."

The Force Orders exhibited by the Commissioner of Police provides for a probationary period of 2 years and in exceptional circumstances may be extended.

The only clear evidence, if one can frankly say so, as to whether the act of extending the period was made before the end of the 2 years period is stated at para.4 of Roy Thompson's affidavit.

- "4. That I granted to Laurel Smith an extension of his Probationary period for six months from 17th February, 1993, as provided for in the Jamaica Constabulary Force orders number 2300 dated 4th July, 1991.

Attached hereto and marked "KT 1" is the Force order mentioned herein."

WAS THERE ANY ILLEGALITY?

On a true construction of Reg. 24(6) if the Commissioner of Police fails to act before the end of the period of training by dispensing with the services of the applicant or by extending the period then the deeming provision would apply and the constable would be confirmed as enlisted.

The notice of extension of the Probationary period relied on by the applicant does not prove in any way that the extension of the probationary period was not done before the end of that period. There is nothing advanced by the applicant to refute the fact that the Commissioner acted within the relevant period of training. The Notice to the applicant dated 25th February, 1993 demonstrated in my view the delay in notifying the applicant of an act done previously by the Commissioner in extending the probationary period.

The regulation gives the Commissioner of Police power to take drastic action if during the period of training he is of the opinion that the Constable is lacking any of the qualities to make him a useful member of the Force. The Commissioner of Police should however obey all the elementary rules of fairness before he finds that the applicant is unsuitable or before he takes the action to dismiss him.

The Commissioner of Police has lawfully given the applicant notice of the charge of impropriety and a fair opportunity of dealing with it. I am glad to see that the Commissioner of Police did

so in this case. He had before him the response of the applicant and indeed he gave the applicant an opportunity of improving his conduct.

The only reasonable inference to draw is that the applicant failed to make the necessary improvement.

In all the circumstances there was no illegality nor breach of the principles of Natural Justice and accordingly the application for an order of certiorari is dismissed.

The Judgment is unanimous. Costs awarded to Respondents to be agreed or taxed.

No case referred to.