

JAMAICAIN THE COURT OF APPEALSUPREME COURT CIVIL APPEAL NO. 50/86

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A. (AG)

BETWEEN: SUPERINTENDENT OF POLICE
I/C KINGSTON CENTRAL DIVISION

COMMISSIONER OF POLICE

A N D : ATTORNEY GENERAL - DEFENDANTS/APPELLANTS
A N D : HUGH CAMPBELL ... - PLAINTIFF/RESPONDENT

Douglas Leys and Oswald Burchenson for Appellant

Garth Lyttle for Respondent

June 24 and July 13, 1987

ROWE P.

We allowed the appeal herein on June 24 and we now keep our promise to put our reasons in writing.

The respondent enlisted in the Jamaica Constabulary Force on March 17, 1980 and was promoted an Acting Corporal. On January 2, 1985 he applied by letter to the Sub-officer I/c Kingston "C" for re-enlistment for a further five years from March 18, 1985. The Superintendent of Police I/c Kingston Central Division interviewed the respondent and then caused a Notice dated February 16, 1985 to be served on him. It was captioned: "Re Your Discipline and Conduct" and was in these terms:

" NOTICE

This serves to inform you that your discipline and conduct are regarded as unsatisfactory.

You are inclined to ignore instructions from your seniors and resent corrections.

Due to your poor discipline, you were placed before Orderly Room and was convicted on the following charges:

- (a) Disobeyed the lawful command of a senior in rank in failing to hand over s/revolver & twelve rds. .38 ammo. on the 19.5.81 on completion of your tour of duty. Deprived of one day pay.
- (b) Failed to hand over s/revolver & 12 rds. ammo. on completion of your tour of duty 25.11.84. Deprived of one day pay.
- (c) Disrespectful to a senior in rank at the Guard Room at Kgn. Central on 27.12.84 at about 5:30 p.m. Deprived of two days pay.

Conduct of this nature cannot be tolerated in the Constabulary Force and as a result you are to take further notice that your application for re-enlistment may not be considered.

You are required to reply to the above within seven (7) days from which this notice was served on you."

This Notice drew a reply from the respondent dated March 4, 1985

as under:

" Constabulary Station,
Kingston Central.

4th March 1985

Sub-Officer,
i/c Central Station

Reply to Notice Served on me -
Re: Discipline and Conduct

On the 4.3.85, a notice re my discipline and conduct was personally served on me from the Divisional Officer, Kingston Central.

I have read the contents and acknowledged certain aspect especially the conviction pointed out.

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" However, throughout my service in the force, I have never been spoken to about my conduct until recently as I have always been in conformity with the laid down principles of the force.

I regard these as my error in the job which of course, I will take to remind me from time to time to exercise the best standard of discipline.

Since I was taken before Orderly Room and convicted, I have found myself a different person and this was also told to me by my seniors.

I am now asking that a chance be given me to improve myself not only to the force but to my family and the general public I serve.

This experience cause me to be able to enlighten my juniors and encourage them to maintain the good discipline of the force we serve.

/s/ H.G. Campbell
A/Cpl. 4844 "

Prior to the Issue of the Notice dated February 16, 1985, the Superintendent of Police I/c Kingston wrote to the Assistant Commissioner I/c Area 4 transmitting the respondent's application for re-enlistment, setting out therein four adverse entries against the respondent and under the sub-title "General" he wrote:

"This Sub-Officer is of average intelligence and performs his duties fairly well.

His health is good, discipline and conduct poor.

He has been spoken to regarding his conduct and it is expected that he will turn over a new leaf and improve on his standard.

His application is recommended, please."

Then on March 4, having received the reply from the respondent, the Superintendent of Police I/c Kingston Central Division again wrote to the Assistant Commissioner I/c Area 4 again recommending the re-enlistment of the respondent. He said in that Minute:

" Minute 9 seen and action was taken in respect to paragraph 1. See enclosure 11.

2. A/Cpl. Campbell has also replied to the notice served on him, such reply is at enclosure 12.

3. Since taken to Orderly Room, he has shown a marked improvement in his discipline and conduct.

4. I have personally spoken to this Sub-Officer recently and has discovered certain aspects which could have been resulted in his past behaviour, and quite satisfied that he is in the process of turning over a new leaf to be an asset to the Force.

5. He is very much concerned of the type of discipline displayed for which he was convicted and has shown areas of improvement.

6. I therefore ask that consideration be given for him to be re-enlisted and improve himself, please."

The respondent's application for re-enlistment and the supporting documents were transmitted to the Commissioner of Police on March 12, 1985, and he, after reviewing the same, deponed that "despite the favourable recommendations of the Superintendent in charge of Kingston Central Division I decided that Acting Corporal Hugh Campbell would not be an asset to the Jamaica Constabulary Force and consequently he was not permitted to re-enlist."

By an Originating Summons dated May 18, 1985, the respondent claimed to be entitled to re-enlist himself in the Jamaica Constabulary Force for a further period of five years and submitted four questions for determination of the Court and sought five Declarations as hereunder.

"(1) Whether the Superintendent of Police in charge of Kingston Central Police Division could validly make a further determination of matters that were already adjudicated on and penalty imposed thereon and thereby advise the Commissioner of Police to prevent the Plaintiff re-enlisting himself in the Jamaica Constabulary Force for a further period of five (5) years.

"(2) Whether the Superintendent of Police in charge of Kingston Central Police Division was competent to determine an appeal from his own judgment and thereby advise the Commissioner of Police not to permit the

- " Plaintiff re-enlisting himself in the Jamaica Constabulary Force for a further term of five (5) years.
- (3) Whether the Superintendent of Police in charge of Kingston Central Division could validly make a determination about matters that were generally adverse to the Plaintiff, without first giving the Plaintiff a fair hearing and thereby advise the Commissioner of Police not to permit the Plaintiff's re-enlistment in the Jamaica Constabulary Force for a further period of five (5) years.
- (4) Whether the Commissioner of Police could validly act on an erroneous advice and thereby prevent the Plaintiff from re-enlisting himself in the Jamaica Constabulary Force for a further period of five years.

AND FOR THE FOLLOWING DECLARATIONS:

- (a) That the Superintendent of Police in charge of Kingston Central Division could not make a further determination of matters that were already adjudicated on and penalty imposed thereon and thereby advise the Commissioner of Police to prevent the Plaintiff from re-enlisting himself in the Jamaica Constabulary Force.
- (b) That the Superintendent of Police in charge of Kingston Central Division could not validly make a determination of matters that he considered adverse to the Plaintiff and thereupon advise the Commissioner of Police not to permit the Plaintiff's re-enlistment in the Jamaica Constabulary Force without first giving the plaintiff a fair hearing.
- (c) That the Superintendent of Police in charge of Kingston Central Division could not, in law, make a further determination of his own judgment and thereby validly advise the Commissioner of Police not to permit the Plaintiff's re-enlistment in the Jamaica Constabulary Force for a further period of five years.
- (d) That the Commissioner of Police could not validly act on the erroneous advice of the Superintendent of Police in charge of Kingston Central Police Division and thereby prevent the Plaintiff from re-enlisting himself in the Jamaica Constabulary Force for a further period of five years.
- (e) That the Plaintiff is entitled to re-enlist himself in the Jamaica Constabulary Force from the effective date of the N O T I C E without any loss of pay to him."

Downer J. granted two Declarations in favour of the respondent. He declared that the respondent's application for re-enlistment should be re-considered by the Commissioner of Police and that the respondent be accorded a fair hearing on that occasion as the original decision of the Commissioner was null and void. He declared further that the respondent was entitled to his emoluments from the date when the Commissioner purported to reject his application to be re-enlisted. The learned trial judge found that by virtue of paragraph 575 of the Jamaica Constabulary Force Rules, 1939 the respondent had a legitimate expectation that the Commissioner would give approval for his re-enlistment and that if the Commissioner was minded to disapprove, the Commissioner was then obliged to give the respondent a fair hearing before he made an adverse decision.

The factual basis upon which the respondent sought Declarations was wholly misconceived. That drove Mr. Lytle to argue that in so far as the Superintendent of Police i/c Kingston Central Division conducted the enquiry he gave the respondent a fair hearing, but he argued that the Commissioner could not act contrary to the recommendation of the Superintendent without giving the respondent a further hearing. I think that the short answer to this submission is that the Commissioner of Police could not be expected to personally interview or personally write to every member of the Jamaica Constabulary Force in respect of whom he proposes to make an adverse finding. In the matter of the respondent's re-enlistment a clear procedure was followed. He was interviewed, he was sent a written Notice which specifically brought to his attention the fact that having regard to his disciplinary record his re-enlistment may not be approved; he was asked to give his comments in writing and he complied.

I think it to be quite impermissible for the respondent to put forward one case in his Summons and then to come to Court and argue an entirely different case without any attempt to amend his Summons. The respondent had a duty to raise the precise questions which he wanted the

Court to determine and on the evidence contained in the affidavits none of the questions raised by him could be determined in his favour.

In Punton v. Ministry of Pensions (1963) 1 All E.R. 275,

Upjohn L.J. said at p. 279:

"As normally there are no pleadings in proceedings by originating summons, it is of course essential that the summons should be so framed as to raise quite clearly the points at issue. The summons must be framed to make it clear that the plaintiff is challenging the validity of the decision of an inferior tribunal. It must be made clear on what grounds he does so and, where he is relying on the construction of some Act or statutory instrument, it must point out with the necessary particularity the sections which are relevant and the questions of construction that arise."

This dictum is apposite to the instant appeal.

It is unnecessary for me to deal with issues raised by Downer J. in his judgment touching the adequacy of the Notice to the respondent or the contents of the submission made to the Commissioner as to whether it contained more charges than the Notice sent to the respondent as these were not questions raised in the Originating Summons for the determination of the Court. The questions raised in the Summons proceeded on the basis of incorrect information in the hands of the attorney for the respondent. As the evidence unfolded, those questions became irrelevant and could not form the basis for any Declaration whatever. In my view, therefore, Downer J. had no material before him on which he could proceed to find as he did and for this reason, the Declarations made by him were set aside, and the Summons dismissed with costs to the appellant to be agreed or taxed.

CAMPBELL J.A.:

I AGREE

BINGHAM J.A. (AG.):

I AGREE