

IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
(CIVIL)
A.D. 1991

SUIT NO: 300/1988

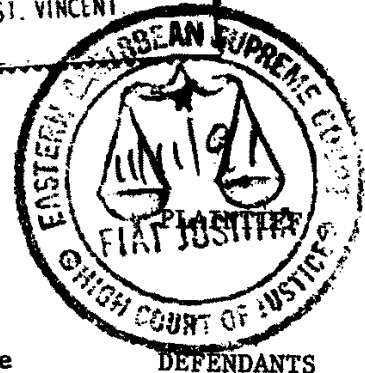
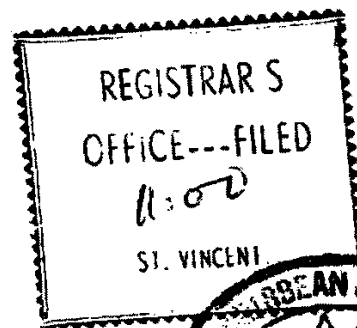
BETWEEN:

FELIX DA SILVA of Kingstown

and

HERMINE P. GRIFFITH
KINGSLEY LAYNE of New Montrose

DEFENDANTS



Mr. O. Sylvester, Q.C., and Mr. Mark Williams for Plaintiff
Attorney General for defendants.

(8th July, 1991)

(Delivered July, 1991)

JUDGMENT

JOSEPH, MONICA J.

The Plaintiff was a Civil Servant employed by the Government of St. Vincent and the Grenadines having joined the Service in 1968.

The first defendant is Chief Personnel Officer and the second defendant at the material time was Permanent Secretary, Ministry of Tourism, Aviation and culture.

On 9th October, 1978 the Plaintiff was appointed Superintendent of Airports, Airport Department, Ministry of Communications, Works and Labour with effect from 1st July, 1977.

By letter of 15th January, 1988, the Plaintiff wrote the first defendant informing him that he was to proceed on one month's leave from 16th January, 1988, to 15th February, 1988. The Plaintiff had not made a request for leave and he was not informed of the circumstances surrounding the direction to proceed on leave.

The Plaintiff, by letter dated 28th January, 1988, to the Chief Personnel Officer sought clarification of the circumstances surrounding the decision that he should proceed on leave. The only response he had to that letter was a letter from the Chief Personnel Officer dated 4th February, 1988, informing him that the comments in his letter had been noted.

Then followed a copy of a memorandum dated 29th March, 1988, from the Chief Personnel Officer to the Permanent Secretary, Ministry of Tourism, Aviation, Culture and Women's Affairs, advising that the plaintiff should report for duty at that Ministry.

By letter of 6th April, 1988, to the Chief Personnel Officer, the plaintiff stated that it was not clear to him what was intended in the memorandum of 29th March, 1988, and indicated that he had "no interest in or training in Aviation

The second defendant by memorandum dated 6th April, 1988, to the plaintiff wrote:

"The Public Service Commission has approved your transfer to the post of Assistant Secretary, Ministry of Tourism, Aviation and Culture. I am directing you to make all necessary arrangements for a smooth and thorough handing over to Mr. Alistair Alexander who will be carrying out duties as Superintendent of Airports in an acting capacity.

The entire process should be completed by April 18th when you will be expected to report to the Ministry to assume your new post."

The plaintiff, by letter to the second defendant, referred to his letter of 6th April, 1988. He protested his transfer and asked that his protest be conveyed to the relevant authorities. The past paragraph of this letter read:

"In the light of the foregoing it would be impractical to act in accordance with your memorandum."

The first defendant addressed a letter dated 16th May, 1988, to the Plaintiff, the text of which follows:

"I have been directed to inform you that the Public Service Commission has given careful consideration both to the oral representations you made to the Commission and to the written submission you gave to the Commission, when the Commission met you on 10th May, 1988 following its invitation to you to meet with them, to consider your objection to your proposed transfer.

Taking everything into consideration, the Commission has decided to adhere to its previous decision to transfer you to the position of Assistant Secretary, Ministry of Tourism, Aviation and culture.

Your transfer will be effective 24th May, 1988. I am further directed to inform you that the Commission expects you will comply fully with the directives previously given to you by the Permanent Secretary, Ministry of Tourism, Aviation and Culture in his memorandum of 6th April, 1988.

A formal letter of appointment will follow in due course."

On 24th May, 1988, the plaintiff went to work and met another officer in his office. He was informed by the defendants that he should leave the premises, and subsequently policemen went to the office to remove him from the office. He was called to the office of the Commissioner of Police who had a conversation with him. Following this conversation, the plaintiff did not return to his office.

The plaintiff fell ill. When his health improved he desired to return to work but the defendants threatened to prevent him from returning to his job.

The Plaintiff appealed against the decision to transfer to the Public Service Board of Appeal. This appeal was not proceeded with.

The plaintiff filed a writ of summons on 27th June, 1988, seeking an injunction to restrain the defendants and each of them whether by themselves or himself or herself or their or his or her servant or agent from performing his duties as Superintendent of Airports.

On 12th December, 1989, a statement of claim was filed in which the plaintiff alleges that the first defendant, in a memorandum dated 29th March, 1988, instructed the second defendant to make arrangements for the plaintiff to assume duties in a post of lower rank as an Assistant Secretary, Aviation in the Ministry.

The Plaintiff also alleges that on the 24th May, 1988, the defendants, their servants or agents caused policemen to go to his office thereby intimidating him and forcing him to leave his work place.

Further, that the second defendant accompanied by policemen went to the plaintiff's office thereby humiliating him and showing a desire to physically remove the plaintiff from the premises.

There is a denial by the defendants that the post to which the plaintiff was being transferred was of a lower rank and a claim that both posts are in the same grade scale 20-14. The defendants claim that Civil Service Order 2. states that officers are liable for transfer to any post of equivalent grade in the service.

The defendants allege that the plaintiff refused to leave the office of Superintendent of Airports after being transferred, and as a result reasonable steps had to be taken for him to leave for the Acting Superintendent of Airports to take over. They deny that they caused, personally or by their servants or agents, policemen to go to the office of the plaintiff and intimidate him thus forcing him to leave his work place.

The Plaintiff alleges, and the defendants deny, that consequent on the above events which had taken place he had to leave his work place never to return that he fell ill, lost weight and had to attend the doctor and undergo medical treatment.

The plaintiff claims special damages, an injunction restraining the defendants, costs and further and other relief.

The defendants claim that any acts done relative to this matter were carried out in their respective capacities as Acting Chief Personnel Officer and Permanent Secretary, Ministry of Tourism, Aviation and Culture and not in their personal capacities.

Further, the defendants allege that when the plaintiff filed this suit he was a public servant: that he applied for and was granted permission by the Public Service Commission to take legal proceedings against the Chief Personnel Officer and the Permanent Secretary, Ministry of Tourism, Aviation and Culture and that, contrary to Civil Service Orders, he took proceedings against the above mentioned officers in their personal capacities.

The defendants allege that the plaintiff has failed to comply with the provisions of section 3 of the Public Officers Protection Act, 1981 (No. 4 of 1981) (The Act) in that he failed to serve notice on the defendants of his intention to bring this suit.

The Attorney General submitted in limine that -

- (1) the plaintiff has brought this action without complying with the mandatory provision for the giving of notice under the Act, as on the face of the pleadings, there is no mention of service of notice as required, and the Court should say to the plaintiff "Where is your notice?"
- (2) the plaintiff in his statement of claim reiterated the relief sought in the writ of summons which relief seeks injunction: damages, costs and further or other relief.

Section 3 of the Act is as follows:

No action shall be brought against any public officer for anything done or purporting to be done in the exercise of his office unless and until two calendar months after notice in writing shall have been delivered to him or left at his usual place of residence with some person there, by the party who intends to bring such action or his attorney or agent, and in every such notice shall be clearly and explicitly stated -

- (a) the cause of action;
- (b) the name and address of the person who is bringing the action; and
- (c) the name and address of his attorney or agent if any;

and no evidence of the cause of such action shall be produced, except in so far as the cause of action has been spelt out in the notice.

The question to be determined is whether the defendants can shelter under the umbrella of the Act. To succeed in convincing the Court that the defendants are not protected by the Act, the plaintiff has to show that the defendants acted outside of or in excess of their jurisdiction.

Counsel for the plaintiff submitted that the act of which the plaintiff complains is the fact of police officers being sent to the plaintiff's office to remove him physically from that office.

Paragraph 12 of the plaintiff's affidavit reads:

On 24th May, 1988, when I turned up for work I met another officer in my office and I was informed by the defendants that I am to leave the premises and policemen were subsequently brought into the office to remove me therefrom.

The plaintiff had a conversation with the defendants and, following this conversation, police officers arrived in his office. There is no allegation here that the first defendant sent police officers to the plaintiff's office.

The question of acting in excess of jurisdiction or without jurisdiction on the part of the first defendant does not therefore arise. It follows that the first defendant has the protection of the Act.

I find that the plaintiff brought this action against the first defendant without complying with the Act in that notice was not served on the first defendant as required by the Act. The suit against the first defendant is dismissed.

The affidavit of the plaintiff (which recited the facts as agreed) shows that the second defendant, accompanied by police officers, visited the office of the Superintendent of Airports. From a reading of paragraphs 12 and 13 of

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the plaintiff's affidavit, I find that the second defendant attempted to have the plaintiff removed by police officers from the office of the Superintendent of Airports.

By whose authority was the second defendant acting? Was he acting on the authority of the Public Service Commission? There is no counter affidavit to show that he was so acting and I conclude that he was therefore acting on his own authority.

Can the second defendant act on his own authority and do what he did? I think not. I consider that he was acting "without jurisdiction" when he went with police officers to the office of Superintendent of Airports to remove the plaintiff. He cannot therefore seek the shelter of the Act.

With regard to the submission made by Attorney General, that no permission was obtained from the Service Commission for the institution of legal proceedings, counsel for the plaintiff submitted that there was the possibility of proceedings being brought against the public officers for acts done which appeared quite likely to be done "within the jurisdiction, but in excess of jurisdiction," but of the abundance of caution permission was sought under Civil Service Order paragraph 3.19.

Counsel argued that that permission does not prevent the plaintiff from bringing this action against the defendants in their personal capacity, as there is no regulation that provides that if you obtain permission to institute proceedings against a Permanent Secretary or Chief Personnel Officer that you cannot institute proceedings against them in their personal capacities.

Paragraph 3.19 of the Civil Service Orders reads:

"No steps may be taken by public officers to institute civil proceedings in any Court in connection with matters arising out of the discharge of their public duties, or against a Minister, a Permanent Secretary or other public officer, for anything done in the performance of his duty, unless, and until the sanction of the Service Commission has been obtained."

There are two limbs in this paragraph. It would seem to me that the second limb, which is, that no steps may be taken by public officers to institute civil proceedings in any Court against a Minister, a Permanent Secretary or other public officer for anything done in the performance of his duty unless and until the sanction of the Service Commission has been obtained, affords a measure of protection to public officers in the same way that the Public Officers Protection Act affords protection.

I am of the view that the reasoning that applies to the application of the Public Officers Protection Act should apply to the application of this limb. If a public officer was performing his duty as a public officer when the act complained of took place permission must be obtained from the Service Commission before proceedings can be instituted against him.

The question to be answered is - was the second defendant in accompanying police officers to the office of the Superintendent of Airports for the purpose of removing the plaintiff, performing a duty of his office? On a reading of the plaintiff's affidavit, I think not. He therefore cannot successfully seek the protection under this limb of the paragraph.

The other limb provides that no steps may be taken by public officers to institute civil proceedings in any court in connection with matters arising out of the discharge of their public duties.

The question to be posed here is - was the plaintiff doing anything which was connected with the discharge of his public duty? The plaintiff, in his affidavit, claims that he was in the office of the Superintendent of Airports to perform a duty of that office, and that he was prevented from so doing.

I find that he was doing an act in the discharge of his public duty. He cannot therefore institute civil proceedings in any court against anybody - whether that person is or is not a public officer - unless he obtains permission from the Service Commission.

The plaintiff did obtain permission from the Public Service Commission to institute proceedings. The dispute relates to the fact that, having obtained permission to institute proceedings against the Chief Personnel Officer and the Permanent Secretary, he instituted proceedings against these officers in their personal names. I am of the view that that does not affect the position. The fact is that the plaintiff did obtain the permission to institute proceedings in a matter arising in connection with the discharge of his public duty.

The submission in limine in respect of the first defendant succeeds. The submission in limine in respect of the second defendant fails for the reasons given.


.....
Monica Joseph

PUISNE JUDGE

20.7.91.