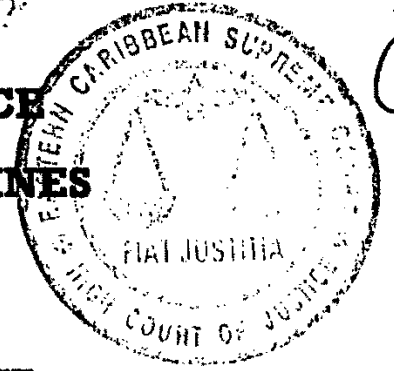


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**IN THE HIGH COURT OF JUSTICE
ST. VINCENT AND THE GRENADINES**



SUIT NO: 311/92

BETWEEN:

NEWLIN DYER

PLAINTIFF

AND

PUBLIC SERVICE COMMISSION

1ST DEFENDANT

DIRECTOR GENERAL

FINANCE AND PLANNING

2ND DEFENDANT

Bayliss Frederick Esq for the Plaintiff

Mrs Jones-Morgan for the Defendants

MITCHELL, J

DECISION

This is a Public Officers' Protection Act matter that came up on 1st May, 1997 on an in limine submission made by Counsel for the Defendants on the hearing of the Summons for Directions filed since 17th December 1992.

The facts alleged on the Statement of Claim endorsed on the Writ of Summons filed on 30 July 1992 are that the Plaintiff was employed by the 1st Defendant as a Customs Guard in 1972. On 23rd October 1989, it is alleged by the Plaintiff, the 2nd Defendant wrongfully terminated the employment, deeming the Plaintiff to have abandoned his employment. The 1st Defendant, the Plaintiff alleges, refused to employ the Plaintiff any longer, and the 2nd Defendant refused to permit the Plaintiff to resume his employment. The Plaintiff claims 33 months' loss of salary of EC\$716.00 or EC\$23,628.00, and a declaration that he is entitled to resume his employment.

The Defence filed on 19th August 1992 is that the Plaintiff failed to report on 23rd October 1989 following a period of sick leave and vacation leave which ended on 9th October 1989, and accordingly was deemed to have resigned or have abandoned his office. The Defence further pleads that the 1st and 2nd Defendants are not properly before the Court because they are not the Plaintiff's employers. The submission is that the Plaintiff was employed by the Government of St Vincent and the Grenadines. It is further pleaded that the Plaintiff did not comply with the provisions of sections 3, 4, and 5 of the Public Officers' Protection Act, and his claim should be dismissed with costs.

The Reply filed on 18th September, 1992 is to the effect that the Plaintiff had not abandoned his office, and that his request for further leave by reason of his clinical condition precluded all questions of abandonment of his employment. Further, that at the time of submitting his said application for

leave he was entitled to 61 days leave, and was subsequently paid salary for the said 61 days. Further, the Plaintiff relies on section 78 of the Constitution and contends that both Defendants are properly before the Court. The Plaintiff further denies that the Public Officers Protection Act applies as a defence, as the cause of action sounds neither in tort nor in contract nor in detinue nor in trespass nor in assumpsit, but in administration.

The Law

1. The Public Officers' Protection Act, Cap 209 of the 1990 Revised Edition of the Laws of St Vincent and the Grenadines provides:

"3. 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 has 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 legal practitioner 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 legal practitioner 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.

4. Every action as set out in section 3 shall be brought within twelve calendar months next after the cause of action stated in the notice arose and no such action shall be maintainable after the expiry of the said period.

5. In every proceeding for an action as referred to in section 3, it shall be incumbent upon the party bringing the action to prove:

- (a) that the notice as required under section 3 has been given;
- (b) that the action has been brought within the time specified in section 4; and
- (c) the cause of action, and upon the failure to establish any of the same, the action shall be dismissed or otherwise terminated and a verdict shall be given against the person who brought the action, with or without costs."

2. The Crown Proceedings Act, Cap 85 of the 1990 Revised Edition of the Laws of St Vincent and the Grenadines, provides:

"15. (1) ...

(2) Civil proceedings against the Crown shall be instituted against the Attorney General."

In section 2 of the Act, "officer" is defined to include any servant of Her Majesty in right of Her Government of St Vincent and the Grenadines. "Civil proceedings" is also defined in sub-section (3) to include any reference to civil proceedings to which the Attorney-General, any Government department or any officer of the Crown, as such, is a party.

3. The Constitution of Saint Vincent and the Grenadines at section 78 provides inter alia that:

"(1) The power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), and, subject to the provisions of section 87 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

(2) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or, with the consent of the Prime Minister, to any public officer."

The Submissions

Counsel for the Defendants submitted that:

- (i) the failure of the Plaintiffs to give 2 months' notice to the Defendants as required by section 3 of the Public Officers' Protection Act was fatal, and the action should be dismissed;
- (ii) the failure of the Plaintiffs to comply with the 12 month limitation period for commencement of an action against a public officer provided by section 4 was fatal, and on this section the action should be dismissed;
- (iii) the obligation to comply with the provisions of the Act is not limited to cases involving tort, contract, detinue or trespass, as section 3 governs actions brought against any public officer for anything done or purporting to be done in the exercise of his office.
- (iv) The 2nd Defendant is the administrative head of the Department of Finance and is simply an officer of the Crown. The proper procedure would have been to have brought the action against the Attorney-General as representing the Crown. Section 15(2) requires that all civil proceeding against the Crown shall be instituted against the Attorney-General.

In reply, Counsel for the Plaintiff submitted that:

- (i) The Crown Proceedings Act does not deal with claims based on contract. In a case of an alleged breach of contract by a

government department in St Vincent it is correct procedure to name the officer who was responsible for the breach of contract.

(ii) The Public Officers' Protection Act does not apply in contract. The words "anything done" in section 3 do not include anything done in a case of contract.

(iii) The 2nd Defendant is properly before the Court because he is merely an arm of the PSC in the Plaintiff's complaint. The complaint is not that the officer has done anything wrong either in contract or in tort. What he has done is to apply a statutory regulation which has produced an untenable result. The Plaintiff's complaint is that the officer applied a regulation administratively improperly. The Plaintiff also complains that the regulation is oppressive and ought not to have been applied. It also presumes a breach of the audi alteram parti rule.

In reply, Counsel for the Defendants submitted that:

(i) a claim of breach of contract by government alleged by any person must be brought in the Courts of St Vincent against the Attorney-General as provided by section 15(2).

(ii) If the 2nd Defendant enforced a regulation, either legally or illegally, he did so as an officer of the Crown. In any event, a claim for wrongful dismissal is a claim in contract, and must be brought against the employer, in this case the Crown. It is therefore the Attorney-General who should have been named as the party in this suit, and not the two Defendants.

(iii) There is no claim before the Court that the regulation is oppressive or illegal.

Decision

No authorities were brought to the attention of this Court to assist with any of the thorny issues of interpretation raised in this preliminary proceeding. I, therefore, deal with them on general principles as follows:

1. I find that the Public Service Commission is not a branch of the Crown for the purposes of the Crown Proceedings Act, nor are it or its members public officers for the purposes of the Public Officers' Protection Act. The Public Service Commission is a creature of the Constitution placed there to supervise the relations between the Crown and its employees, the public servants of St Vincent and the Grenadines. If the fathers of the nation, in framing the Constitution, had intended to constrain the right of a public officer to question the performance by the PSC of its constitutional function by the Courts, then they would have done so by express words in any of the Constitution,

the Crown Proceedings Act or the Public Officer's Protection Act. They did not do so. I, therefore, hold that the action can proceed against the 1st Defendant.

2. The 2nd Defendant is a public officer, and as such enjoys the protection of the 2 Acts in question. He has been improperly joined as a party to the action, and his name is ordered to be struck from the action as a party.
3. Each party to bear his and its own costs:
4. The hearing of the Summons for Directions to be set down on the Chambers day in two weeks time unless either party shall meanwhile have filed a notice of intention to appeal this ruling, leave for which is hereby automatically given.



.....
ID Mitchell, QC
High Court Judge (Ag.)
13 May, 1997