

GRENADA

IN THE COURT OF APPEAL

CIV. APP. NO.13 OF 1997

BETWEEN:

RICHARD DUNCAN

Appellant

and

THE ATTORNEY-GENERAL

Respondent

Before:

The Hon. Mr. C.M. Dennis Byron

Chief Justice [Ag.]

The Hon. Mr. Satrohan Singh

Justice of Appeal

The Hon. Mr. Albert Matthew

Justice of Appeal [Ag.]

Appearances:

Dr. Francis Alexis for the Appellant

Hon. Attorney-General, Mr. Errol Thomas & Ms. Tamara Gill  
for the Respondent

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1997:        November 26;  
                  December 8.  
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*Constitutional Law* - Declaration sought by Motion that a request by the Public Service Commission (PSC) to go & remain on leave was in effect a retirement - Whether appellant entitled to retiring benefits conferred by section 84(8) of Constitution - Interpretation & construction of Staff Orders & section 84(1) of Constitution - Whether the High Court is empowered to determine applications alleging contravention of rights & freedoms not expressly guaranteed by the Constitution - **Harrikissoon v. A.G.** (1980) A.C. 265 P.C. referred to - Court to evaluate the substance, not form, of the action/ decision taken - **Smith & others v. A.G.** (Belize) [1985] LRC (Const.) 1128 referred to - **Thomas v. A.G.** (1981) 32 WIR 375 applied - Whether the PSC is empowered to order an officer to go on leave with immediate effect &/or for the purpose of improving the operations of the

Ministry - *PSC Regulations, 1969*, 45 & 46 - Constitutionally guaranteed right to work. Appeal allowed.

## JUDGMENT

### **BYRON, C.J. [AG.]**

The appellant issued a Notice of Motion on 10<sup>th</sup> November 1995, pursuant to section 101 of the Constitution, seeking declarations to the effect that a requirement by the Public Service Commission [PSC], that he go, and remain, on leave with immediate effect for the purpose of improving the operations in the Ministry of Finance, was in actuality retiring him for the purpose of reorganisation of his Ministry, and that consequently the provisions of section 84(8) of the Constitution were being contravened.

The matter came on for hearing before Moore J. on 20<sup>th</sup> December, 1995 and 25<sup>th</sup> January, 1996. Judgment was reserved and eventually delivered on 15<sup>th</sup> May, 1997.

### **The Decision**

The learned trial Judge concluded that the PSC was entitled to require the appellant to go on 43 days leave in accordance with Staff Order 107, and thereafter to require him to remain on leave in accordance with Staff Order 90, and that although the appellant had not chosen to remain on leave it was a far cry from saying that he was being retired from the public service.

### **The Appeal**

The appellant in his various grounds of appeal contended that the learned trial Judge erred in concluding that the PSC did not actually retire him and that he was not entitled to the rights protected by section 84(8) of the Constitution.

The Hon. Attorney-General supported the conclusion and reasoning of the learned trial Judge, and contended that the action of the PSC was authorised by section 84(1) of the Constitution and Staff Orders 90, and 107.

### The Procedural Issue

He also contended that the action was brought under section 101 of the Constitution and ought to have been struck out because the alleged contravention was anticipatory, in that the motion was filed before the 43 days leave, to which the appellant was lawfully entitled, had expired. He relied on **Harrikissoon v Attorney-General** of Trinidad and Tobago (1980) A.C. 265 where Lord Diplock said at 268:

“In an originating application to the High Court under section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for the unlawful administrative action which involves no contravention of any human right or fundamental freedom.

The instant case concerns and concerns only the right of a holder of a public office not to be transferred against his will from one place to another. In their Lordships view it is manifest that this is not included among the human rights and fundamental freedoms specified in Chapter 1 of the Constitution.”

This is clearly inapplicable to the instant case because section 101 of the Constitution of Grenada specifically confers jurisdiction to determine applications alleging contravention of provisions of the Constitution other than those in chapter 1.

101(2):

“the High Court shall have jurisdiction on an application made under this section to determine whether any provision of this

constitution (other than a provision of Chapter 1 ) has been or is being contravened and to make a declaration accordingly."

In this application, the appellant contends that his rights under section 84(8) of the Constitution have been contravened by denial of retiring benefits as if he had attained the compulsory retirement age. Section 84 is not in chapter 1. Therefore, by virtue of section 101(2) the court does have jurisdiction to hear it.

The contention that the alleged breach was anticipatory because it neither had occurred nor was occurring at the time when the proceedings were issued is untenable because the question whether the breach occurred on 25<sup>th</sup> October, 1995, when he was required to be absent from office, is in issue.

The respondent, who was represented by other Counsel at first instance, had submitted to the jurisdiction before the learned trial Judge as no objection to jurisdiction was taken at the trial.

For these reasons I would decline to order that the proceedings be struck out.

### **The Background Facts**

On 25<sup>th</sup> October, 1995 the appellant, Deputy Director for Planning and Development in the public Service of Grenada, was told by the Chief Personnel Officer [CPO] that she was directed by the PSC to require him to proceed on 43 days vacation leave with immediate effect. The appellant had not applied for any leave. The CPO explained that this was authorised by Staff Order 107 of the Public Service Staff Orders and resulted from a memo to the PSC from the Permanent Secretary in the Ministry of Finance indicating that the leave was designed to improve the operations of the Ministry. She sent him a letter requiring him to proceed on leave on the same day. This leave, being the total amount for which the appellant was eligible, was due to expire on 7<sup>th</sup> December, 1995.

The appellant reacted immediately and replied by letter dated 26<sup>th</sup> October, 1995. He denied that the reason given to him was accurate, pointing out that he was entitled to accumulate a maximum of 126 days vacation leave, and that he had accumulated only 43 days. He further pointed out that the role of his office in the preparation of the 1996 budget was paramount. He claimed that he was being sent on pre-retirement leave, and stated that in order to facilitate the procedures he waived his rights under paragraphs 45 and 46 of the Public Service Regulations, 1969. He requested the withdrawal of the letter of 25<sup>th</sup> October, and to be retired under the constitutional provisions. There was no response.

On 7<sup>th</sup> December 1995 the CPO wrote the appellant stating:

“I am directed by the PSC to inform you that in the exigencies of the Service you are required to remain on leave with effect from 8<sup>th</sup> December, 1995, and until further notice.”

On 11<sup>th</sup> December, 1995 the appellant replied asking for the authority on which he was required to remain on leave even when he had no vacation leave to utilise. He was not given any answer. The appellant has never been asked to resume his duties. For some time the state continued to pay him his salary. It was not clearly established when that stopped, nor whether the payments occurred each month. At some stage the appellant undertook other employment. It was undisputed that he has received no retiring benefits at all.

### **The Crucial Issue**

The crucial issue to be determined is whether the court can determine that the conduct of the PSC was something different to what it said it was, and if so what was the essential character of what transpired. This issue was joined in the Court below because the respondent contended that it did not intend to retire the appellant; it did not follow any of the procedural steps leading to

retirement; it did what it said it did and that is to grant the appellant leave. The appellant contended that the effect of the action of the respondent was to retire him and to do so in circumstances where he was denied the constitutional protection of his right to receive retirement benefits, as if he had attained the compulsory retiring age, as provided by section 84(8) of the Constitution..

Reference was made to a decision of this court in the case of **Donovan v Attorney-General** (1993) 2 LRC 145. The case dealt with a statutory provision designed to reduce the benefits conferred by section 84(8) of the Constitution. I delivered the judgment of the court declaring that the statute was void to the extent that it was inconsistent with section 84(8). The instant case is different in that it deals with

- the power of the PSC, not Parliament,
- whether conduct complies with the constitution not whether the law complies with the Constitution.

In **Donovan** we ruled that Parliament could not use an ordinary statutory provision to reduce benefits conferred by the constitution. In the instant case the appellant is asking whether the PSC can deny him those benefits altogether by retiring him under the pretense of sending him on leave.

### **The Legal Principle**

The duty of the Court is clear. There are abundant authorities that establish that the Court must determine the true nature of the event or transaction whatever term is used to describe it. I merely refer to two decisions from the Caribbean which expound the rule.

In **Smith and Others v Attorney-General** (Belize) [1985] LRC (Const) 1128, Public officers who were lecturers at the Belize Teachers College, received letters informing them in consequence of "restructuring" of the College and "reorganisation" of the courses they were to be "posted" at the Belize Junior School. In litigation

claiming declaratory judgment for unconstitutional "transfers" the Crown denied that there was any transfer and alleged a posting to an institution under the control of the Ministry of Education. Moe C.J. said at 1130:

"It is clearly the duty of the Court to determine what in fact transpired irrespective of the name given to or the term used to describe the matter under consideration. I must therefore determine the true nature of the event or transaction. What then is the substance of the transaction? ...the effect of the respective letters was to require the person concerned to "shift", "move" or go from duties in one post to duties in another post. To move from one place to another place is to transfer and is a transfer by whatever term the move is described, whether it be shift, move, post or transfer. Further it is a transfer notwithstanding that the shift, move or posting is not permanent. Again the fact that the posts are at institutions within one department does not alter the fact that there is a transfer from one post to another..."

In the well know leading case from Trinidad and Tobago, **Thomas v Attorney-General** (1981) 32 WIR 375, Lord Diplock discussed the point in relation to the concept of removing a police officer from office. At 384 he said:

"To "remove" from office in the police force in the context of section 99(1), in their Lordships' view, embraces every means by which a police officer's contract of employment (not being a contract for a specific period) , is terminated against his own free will, by whatever euphemism the termination may be described, as for example, being required to accept early retirement."

I am thereby fortified in my opinion that the Court must look at the undisputed facts of this matter and identify them for what they really are and not adopt a myopic view and consider only what they are represented to be. This view is hardly controversial because it is the approach which the learned trial Judge adopted, and in his argument the Hon. Attorney-General addressed arguments to support the contention that the appellant was in reality sent on leave.

## The Power to Grant Leave

The relevant provision is contained in section 84(1) of the Constitution.

The Constitution:

Section 84(1) "subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in the offices of the public service (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office, and the power to grant leave, shall vest in the Public Service Commission."

Despite that constitutional provision the Staff Orders provide that:

"86. Authority for the grant of leave to individual officers and employees is vested in the Chief personnel Officer acting on behalf of the Minister of Finance..."

There is a collision between section 84(1) of the Constitution and the Staff Orders. The Constitution vests the power to grant leave in the PSC. The Staff Orders vest the authority in the CPO acting on behalf of the Minister of Finance. I hope I will be forgiven for commenting that the constitution has been in force since 1973. There has already been enough time for necessary revisions to bring these provisions into conformity with the Constitution. However, happily, the matter is easily resolved, by the terms of the Constitution itself.

Constitution "Section 106. This Constitution is the supreme law of Grenada and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency be void."

Constitution Schedule 2, section 1(1). The existing laws shall, as from the commencement of the Constitution, be construed with such modifications, adaptations, qualifications and exception as may be necessary to bring them into conformity with the Constitution and the Court Order.

There is no doubt the prevailing provision is section 84(1) of the Constitution, and it is unnecessary to invalidate the staff orders,

or any part of them, because they can be construed to bring them into conformity with the Constitution, and I therefore declare that these Staff Orders should be so read.

Consequently the PSC is empowered to exercise the authority to grant leave conferred in the staff orders.

### **Duty to act in accordance with governing provisions**

In his argument the Hon. Attorney-General submitted that the power of the PSC was unqualified, because it was a constitutional power exercisable under section 84(1) of the Constitution, subject only to the Constitution itself.

I think that the qualifications imposed by the Constitution are very important. It is well established and generally accepted that the Constitution limited the arbitrary power that had previously been exercised by the Crown in relation to the public service, in particular by abolishing the concept of dismissal at pleasure, and by giving government employees a security of tenure superintended by an autonomous PSC. In **Thomas v Attorney General** (1981) 32 WIR 375, (*supra*) Lord Diplock discussed these principles in relation to the Police Service Commission in Trinidad and Tobago, principles which apply with equal force to the PSC in Grenada. At page 381 he said:

“The whole purpose of Chapter VIII of the Constitution which bears the rubric “The Public Service” is to insulate members of the Civil Service, the Teaching Service and the Police Service in Trinidad and Tobago from political influence exercised directly upon them by the Government of the day. The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service.”

The qualifications which affect the exercise of the powers conferred on the PSC include the obligation to act for reasonable cause, and not to act whimsically or arbitrarily, to apply the constitutional provisions, to conform to the rules and regulations it administers and to observe the rules of natural justice. I would say that there are substantial qualifications to the powers exercisable by the PSC. In **Thomas** (supra) Lord Diplock expressed the idea at 384:

“In their Lordships’ view there are overwhelming reasons why “remove” in the context of “to remove and exercise disciplinary control over” police officers in section 99[1] [and in the corresponding sections relating to the other public services] must be understood as meaning “remove for reasonable cause”, of which the commission is constituted the sole judge, and not as embracing any power to remove at the commission’s whim. To construe it otherwise would frustrate the whole constitutional purpose of Chapter VIII of the constitution which their Lordships have described. It would also conflict with one of the human rights recognised and entrenched by section 1[d] of the Constitution. Viz. “the right of the individual to equality of treatment from any public authority in the exercise of any functions”. Dismissal of individual members of a public service at whim is the negation of equality of treatment.”

### **The 43 Days Leave. In compliance with Staff Order 107?**

“Staff Order 106. Subject to the exigencies of the Service, Heads of Departments should arrange-

(a) That officers and employees who are permitted to accumulate vacation leave do not go without leave for periods longer than it takes them to accumulate the maximum vacation for their particular grade;

(b) That other officers and employees do not forfeit any of their vacation leave.

107. In pursuance of Staff Order 106, the Chief Personnel Officer may require an officer or employee to take vacation leave at any time, and if the officer or employee declines to take leave when called upon to do so, without reasonable excuse to the satisfaction of the Public Service Commission,

he shall have no claim to the additional full-pay leave referred to in Staff Order 106 in the event of his failing to obtain leave when he next applies for it.”

These Staff Orders must be construed by substituting PSC for CPO to bring them into conformity with the Constitution. The power Staff Order 107 confers, to require the officer to take leave, is limited to the attainment of the objective of Staff Order 106. This is to ensure that officers do not lose their leave entitlements by failing to go on leave for periods longer than it takes for them to accumulate the maximum vacation leave for their grade. This provision for the benefit of the officer, is designed to obligate the PSC to remove the risk that leave is forfeited by an officer who fails to go on leave and accumulates more leave than he is entitled to accumulate. The qualification against arbitrary use of this power is evidenced by the rule requiring the PSC to exercise a quasi-judicial function to assess the reasonableness of any excuse the officer may have for declining to take leave as directed, and thereby introducing the principles of natural justice in particular the *audi alteram partem* rule.

The PSC, is obliged to exercise its power for the purpose and in the manner prescribed. Unless the PSC is acting in pursuance of Staff Order 106, it cannot employ the powers under Staff Order 107 and this does not confer on the PSC any power to require an officer to go on leave for the purpose of improving operations in a Ministry.

The undisputed evidence, which was contained in the affidavit of the CPO, was that the reason for requiring the appellant to go on leave on the 25<sup>th</sup> day of October, 1995 was the memorandum from the Permanent Secretary in the Ministry of Finance to the PSC alleging that the appellant's absence was necessary for improving the operations of the Ministry.

There are two reasons why the conduct of requiring the appellant to go on leave on 25<sup>th</sup> October, was *ultra vires* Staff Order 107:

1. Staff order 107 does not give any power to require an officer to go on leave with immediate effect, and without providing an opportunity to determine the reasonableness of any excuse the officer may have.
2. The Staff Order does not empower the PSC to require an officer to go on leave to improve the operations of the Ministry.

I would therefore hold that the learned trial Judge erred when he concluded that the PSC was entitled to send the appellant on leave in accordance with Staff Order 107, on the 25<sup>th</sup> October, 1995.

## **Remain on Leave**

### **In compliance with Staff Order 90 ?**

Staff Order

"85. Subject to the exigencies of the Service and to the provisions of these Orders, Public Officers and Employees shall be granted leave as set out in this chapter." and

"90. An officer who has been granted leave under these Orders may be required on public grounds to remain on leave after the expiration of the original leave."

The respondent argued that Staff Order 85 and 90 and section 84(1) of the Constitution confer an unqualified right to grant leave. He argued in effect that leave could be granted even when the officer had not accumulated any entitlement to leave. I must confess thinking that the argument was reduced to absurdity when in response to a question from the court, he found himself suggesting that even as he was before us, the appellant was still in

the public service, on leave, and entitled to receive any arrears of salary, that had yet not been paid. He also contended that the "exigencies of the service" in order 85 and "public grounds" in order 90 could be equated with "public interest" and that the Grenadian public would have an interest in the reorganisation of the pivotal Ministry of Finance in order to achieve greater efficiency.

This argument highlighted the difficulty of the respondent, because it conceded the essential fact that the appellant's absence from work was required to facilitate the reorganisation of the Ministry.

This leads to the important question of whether an absence from work for that purpose is leave.

What therefore is leave?

### **What is Leave ?**

The Concise Oxford Dictionary 8<sup>th</sup> edition, describes "Leave" as "Permission to be absent from duty." The Staff Orders regulate the circumstances and procedure for the grant of leave. The context of these orders clearly indicate that leave is a privilege for which the public servant becomes eligible as an incident of his employment. It is for the benefit of the worker.

The character of absence from duty is also relevant because not every absence from duty is leave. The requirement to absent oneself from duty, even with pay, can be a disciplinary sanction. For example, a temporary removal for disciplinary reasons is the sanction of suspension. A permanent exclusion from the performance of one's employment would be neither a grant of leave nor a suspension. In my view it would be a matter of fact to be determined from the circumstances whether an indefinite exclusion is in reality permanent. A permanent exclusion would, in effect, be a removal from office, by whatever euphemism it is described. The

payment of emoluments will impact on the question of financial loss, but a professional person or senior public servant will suffer other substantial losses, such loss of reputation, and loss of the satisfaction of discharging duties, loss of the opportunity for promotion and so on. The payment of salary would be only one factor to be considered in deciding whether the officer in receipt has been removed from office. It is not conclusive. An officer, who is preventing from discharging the duties of his office, or is excluded from his workplace, against his will and without lawful authority has been removed from office even if he is in receipt of salary.

The Constitution also guarantees the right to work as a fundamental right in section 1 (d). I do not think it necessary to do more than state that the right to work can be infringed even when one is receiving salary, if one is prevented from discharging the duties of one's office. It is unthinkable that the constitution could intend that the PSC could arbitrarily order a public servant to be prevented from performing his job for an indefinite period.

The Staff Orders categorise a variety of types of leave. These include "departmental leave"; "leave on the ground of urgent private affairs"; "overseas leave"; "leave prior to retirement"; "leave prior to resignation"; "vacation leave"; "sick leave". There is no provision for the grant of leave to facilitate improvements in the organisation of a department or Ministry.

An allegation that one's absence from work is necessary for making improvements in the workplace is a serious complaint about one's ability or attitude. Requiring an officer to be absent from work for that purpose is not for his benefit. It implies dissatisfaction with the officer. In my view it cannot be leave.

I would therefore conclude that the learned trial judge erred when found that the PSC was entitled to require the appellant to

remain on leave with effect from 8<sup>th</sup> December, 1995 until further notice.

## ABSENCE TO FACILITATE IMPROVEMENTS

What then is it? How should compulsory absence from the workplace to facilitate improvements be categorised? Where there is a well founded allegation that an officer's absence is necessary for improvements to be effected, it is inconceivable that a temporary absence would be effectual. The concept of "permanent leave" is absurd. The concept of dismissal is inapplicable. A suitable category is retirement. To retire is described in the Shorter Oxford Dictionary as "to leave office or employment".

The conduct of sending one home to facilitate improvements in the Ministry is defined in the Public Service Commission Regulations, 1969 in regulations 45 and 46. The regulation most consistent with the facts of this case is as follows

"46 [2] Where it is necessary to retire or remove an officer from the public service for the purpose of facilitating improvement in the organization of a Department or Ministry to which he belongs in order to effect greater efficiency or economy, the Permanent Secretary or Head of Department shall, subject to paragraph [4] of this regulation, make a report thereon to the Chief Personnel Officer for consideration by the Commission, and shall recommend with his reasons therefor, which officer shall be retired or removed from the public service in consequence of such organization."

In my view this regulation defines the character of a requirement to absent oneself from work to facilitate improvement in the organisation of a Ministry as retirement.

The facts are not in dispute. The appellant's absence from office was required to facilitate improvements in the organisation of the Ministry. The regulation is clear and unambiguous. It provides a description of the conduct in this case. The letter of the Permanent

Secretary was not exhibited, and the evidence did not disclose whether in its terminology the letter recommended "retirement" or "leave". Yet in my opinion a communication from the Permanent Secretary explaining why the appellant should be absent from duty to facilitate the improvement in the Ministry, unmistakably initiates the procedure laid out in regulation 46(2). It is inconceivable that a CPO, acting in good faith, could have failed to recognise this, especially after it was pointed out in the letter of the appellant. This gives rise, inevitably, to the inference that reliance on Staff Orders 107 and 90 was a sham. This is not really relevant because the motive or intention of the CPO or the PSC is not in issue. The question we have to decide is the true nature of the transaction. In this case the appellant immediately expressed his fears, and subsequent events proved him to be right. In argument, the Hon. Attorney-General suggested that the appellant contributed to the situation by instituting legal proceedings. Was this a suggestion that the PSC retaliated or imposed an arbitrary sanction because he instituted legal proceedings? I cannot accept that. I find it so unreasonable as to be incredible, that by writing the letter he did, and issuing the legal proceedings he did, he would cause the PSC to fail or refuse, or delay indefinitely making any statement to him evincing that he was expected back to work at some time, if they would otherwise have made it.. In my view the subsequent conduct, is consistent with and confirms that the appellant was permanently removed from office. In fact I can see no other conclusion that can reasonably be drawn.

The PSC as I have earlier stated cannot discharge its duties without cause. Regulation 46(2) indicates how the cause is to be presented. Further, it cannot act arbitrarily, and must observe the

rules of natural justice. The method of observing these duties is set out in the said Regulation 46 which provides:

[3] Where a Permanent Secretary or Head of Department makes any recommendation under paragraph [1] or [2] of this regulation, the Permanent Secretary or Head of Department shall, subject to paragraph [4] of this regulation, at the same time, notify the officer concerned in writing of his recommendations and such officer may, within seven days of the receipt of the notification, make representations thereon.

[5] Where an officer makes representations in respect of recommendations made under paragraphs [1] and [2] of this regulation, the representations shall be forwarded in their original form to the Commission by the Permanent Secretary or Head of Department together with such comments as the Permanent Secretary or Head of Department thinks fit.

[6] Notwithstanding the provisions of this regulation, the Commission may, after consideration of any representations made by an officer under this regulation, instead of retiring or removing him from the public service, transfer him to another public office not lower in status or emoluments than that which he holds or held [as the case may be]."

These provisions demonstrate what should have occurred after the Permanent Secretary explained the need for the appellant's absence to facilitate improvements in the Ministry. They satisfy the constitutional objectives that decisions affecting the security of tenure of Government employees are not made arbitrarily and that the rules of natural justice be observed.

The undisputed evidence is that regulation 46(3) was not observed. In his letter of October 26<sup>th</sup> the appellant waived the application of the rule, which was for his benefit. The effect of this waiver was to enable the PSC to adjudicate and make an order without requiring the Permanent Secretary to notify the appellant of his recommendations.

But why were the appellant's representations in his letter of October 26<sup>th</sup> not communicated to or considered by the PSC? In my view this was required whether the rule under consideration was the Public Service Commission Regulation 46(5) and (6) or Staff Order 107.

It would seem that the appellant was denied the benefit of the rules which were designed to give him security of tenure under the superintendence of an autonomous PSC.

I conclude therefore that the effect of the conduct under consideration is that the appellant was retired from the Public Service for the purpose of facilitating improvement in the organisation of the Ministry of Finance.

#### THE CONSTITUTIONAL RIGHT

Eligibility for retirement benefits (which are part of the Public Servant's emolument package) under the normal law, is dependent on the attainment of a minimum age. Retirement below that age would result in loss. The concept of requiring an officer to retire for the purpose of facilitating improvements in the organisation of a Ministry as provided in regulation 46 is a circumstance requiring protection of retirement benefits. The constitutional purpose of giving government employees security of tenure, is effected by a guarantee of minimum standards of financial protection on retirement provided for in section 84(8).

Constitution section 84(8):

"Every officer who is required to retire on abolition of his office or for the purpose of reorganisation of his Ministry or Department shall be entitled to pension and retiring benefits as if he had attained the compulsory retiring age."

This provision is clear and unambiguous. The conclusion to which I have reached necessarily invokes its application. The appellant was effectively retired on 7<sup>th</sup> December 1995 when his

leave entitlement expired. I would also declare my conclusion that the date of the breach actually occurred on 25<sup>th</sup> October 1995 when he was required to go on all the leave to which he was entitled. The effect of this is that he was made to take all the leave due him with full pay immediately prior to the effective date on which he was retired from the service. This is consistent with the Staff Orders.

Staff Order 98:

“Notwithstanding anything to the contrary contained in these Orders, an officer who is being retired from the Public Service may be granted, immediately prior to the effective date of his retirement on pension or gratuity, the vacation leave on full salary for which he is eligible, together with...”

In my view 8<sup>th</sup> December, 1995 is the date at which his retirement benefits should commence subject to allowance being made for the moneys paid to him on account of salary after that date.

**Order**

Consequently I would allow the appeal set aside the order of the learned trial Judge and declare that the PSC retired the appellant from the public service for the purpose of reorganising the Ministry of Finance with effect from the 8<sup>th</sup> December, 1995, and that the appellant is entitled to pension and retiring benefits as if he had attained the compulsory retiring age, on that date, subject to the set off of moneys received on account of salary after that date.

Costs of the appeal to the appellant.

C.M. DENNIS BYRON  
Chief Justice [Ag.]

I Concur.

SATROHAN SINGH  
Justice of Appeal

I Concur.

ALBERT MATTHEW  
Justice of Appeal [Ag.]