

ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.18A OF 2005

BETWEEN:

[1] OLSON HECTOR
[2] PHILLIP ISAAC

As Representatives of Deputy Commissioner James Hill,
Assistant Commissioner Philip Isaac, Inspector Conrad Kellman,
Inspector Claudette Braithwaite-Mason, Senior Sergeant Imanuel Atlee,
Sergeant Mary Greenaway-Davis, Sergeant Ineta Martin, Corporal Ray John,
Corporal Juliene Brown and Olson Hector and Christopher Warren

Appellants

and

[1] ATTORNEY GENERAL
[2] THE PERMANENT SECRETARY
IN THE OFFICE OF THE PRIME MINISTER

Respondents

Before:

The Hon. Brian Alleyne, SC

Chief Justice [Ag.]

Appearances:

Mr. Cosbert Cumberbatch for Appellants

Mr. Justin Simon, QC, Attorney-General and Ms. Carla Harris for the Respondents

2005: November 28;
December 9.

JUDGMENT

[1] **ALLEYNE, J.A.:** This is an application for leave to appeal against an interlocutory order of the High Court dated 12th October 2005 refusing an application for an order for Joseph Laurent, former chairman of the Police Service Commission, to be examined on oath before the trial or hearing of the application for judicial review in this matter, pursuant to Part 33.7 of the Civil Procedure Rules (CPR) 2000.

- [2] By leave of the High Court the applicant/appellant as representative of himself and a number of other police officers of various ranks issued a fixed date claim form against the Attorney General, the Permanent Secretary in the office of the Prime Minister, and the Chairman of the Police Service Commission, on June 14th 2005.
- [3] The reliefs and remedies sought by the claim as amended are:
- [1] An order for Certiorari to remove into this Honourable Court and to quash the decision of the Acting Permanent Secretary in the Office of the Prime Minister made on the 20th May, 2005 whereby the Permanent Secretary has by a unilateral decision placed the Claimants and 17 other Police Officers on leave for a period of ninety (90) days with immediate effect, on the grounds set out in the Application served herewith used on the application for leave to apply for judicial review; and further for,
- [2] A Declaration that the decision of the Acting Permanent Secretary contained in the letter of the 20th May 2005, is *ultra vires*.
- [3] A Declaration that the decision contained in the letter of the Acting Permanent Secretary of the 20th May 2005, is in breach of the established police procedures for the grant of vacation leave and accordingly is contrary to good industrial relations and practices.
- [4] A Declaration that the decision of the Acting Permanent Secretary contained in her letter of 20th May 2005 is unlawful and unreasonable and made in bad faith and in breach of the Rules of Natural Justice.
- [5] An Order that the decision of the Acting Permanent Secretary contained in her letter of 20th May 2005, be quashed.

[6] Damages and Exemplary Damages on the ground that the Permanent Secretary is a public officer acting in the discharge of her public duty.

[7] Such further or other Relief as may be just, proper and equitable in the circumstances.

[8] AND that the costs of and occasioned by this Motion be paid to the Claimants.

[4] By interlocutory application filed on September 29th 2005, the claimants/appellants sought an order that Joseph Laurent, the chairman of the Police Service Commission at the date of the events which form the subject matter of the claim, be examined (before) the trial "as to his knowledge and participation in the decision to send the applicants and their representative class on leave as of 20th May 2005 whilst he was the chairman of the Police Service Commission and with the promotion of 18 police officers by Special Force Order". This application was based on the ground that Mr. Laurent has since the beginning of these proceedings "been removed or demitted office and the present chairman is not likely to possess the relevant knowledge".

[5] In the affidavit filed in support of the application, it is deposed that the Commission is "the entity concerned with the consideration and granting of leave, removal, transfer and discipline for all Police Officers". The affidavit goes on to assert that "Mr. Stephen Winter, who was not the Chairman or a member of the (Commission), now holds that position but respectively is not likely to possess the relevant knowledge that Mr. Laurent has", and that "Mr. Laurent is the person that would know if any meetings considering leave applications and related promotions were had and under what if any circumstances he authorised the relevant leave, removal, promotion or discipline of any of the officers".

- [6] On 12th October 2005 the learned Judge made a number of case management orders, and refused the application for an order for examination of Joseph Laurent, against which refusal the applicant/claimant now seeks leave to appeal.
- [7] Learned Counsel for the applicant submitted in support of the application that Mr. Laurent as Chairman at the relevant time would have had intimate knowledge of the facts relevant to the issues for trial. Counsel cited the case of **Lester Bryant Bird v Observer Radio Limited and others and Lester Bryant Bird v Baldwin Spencer and others**¹, paragraph 9 of the judgment of Saunders J.A. where it was held that the Court may grant an order under Pt. 33.7 where the Court is satisfied that the intended deponent is in possession of material evidence or there are solid grounds for believing that to be the case, and that an order for examination is necessary in order to obtain disclosure of that evidence. Counsel contended that in contrast to the **Lester Bryant Bird** case, the role of the Chairman in the instant case was pivotal.
- [8] Learned Counsel referred further to sections 104 and 105 of the **Constitution of Antigua and Barbuda**², which establish the Police Service Commission and make provision relating to its powers and functions. In brief, the Commission is the body empowered to appoint persons to hold or act in offices in the Police Force, including appointments on promotion and transfer, and to remove and exercise disciplinary control over persons holding or acting in such offices. Subsection (5) of section 105 vests the power to appoint officers below the rank of Sergeant, and to exercise disciplinary control over such officers, and the power to remove such officers from office, in the Commissioner of Police.
- [9] The Constitution makes no provision with respect to the granting of leave. However, if it is found that sending officers on leave against their wishes amounts to the exercise of a disciplinary function, as it is contended by learned Counsel is

¹ Civil Appeal No. 5 of 2003, Antigua and Barbuda.

² CAP. 23, Laws of Antigua and Barbuda Revised Edition 1992.

the situation in the case before the Court, then that function falls within the purview of the Commission, or its delegates under subsection (1) of section 105.

- [10] The learned Attorney-General, in his submissions in opposition to the application for leave to appeal noted and emphasized that all the remedies sought related to the actions of the Permanent Secretary, and that no relief was sought, and no complaint made, in relation to the proceedings of the Police Service Commission, or the actions of the Chairman.
- [11] Further, the learned Attorney-General stated that the present chairman of the Commission was a member of the Commission at the relevant time. This assertion is not supported by affidavit evidence but was not challenged by Counsel for the applicant and I therefore take it to be an agreed fact notwithstanding the statement to the contrary in the affidavit referred to in paragraph 5 of this judgment. Be that as it may, it seems to me that the proceedings and decisions taken at any meeting of the Commission must be recorded in the minutes of the Commission, which would be the best evidence of any facts regarding any proceedings relating to the impugned actions of the Permanent Secretary, or the absence thereof, which the applicant wishes to establish.
- [12] There is no suggestion that Joseph Laurent is a necessary witness for the production of the minutes of the Commission, or that he would be unwilling to be examined on oath in the course of the trial (as opposed to before the trial as contemplated by Pt. 33.7). It seems to me that the applicant has not satisfied the requirement adumbrated by Saunders J.A. in the **Lester Bryant Bird** case, that an order is necessary in order to obtain disclosure of the evidence.
- [13] In the circumstances the application for leave to appeal is dismissed, with costs to the respondent in the sum of \$750.00.

Brian Alleyne, SC
Chief Justice [Ag.]

