

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 2008/0427

BETWEEN:

SAMUEL FLETCHER

VINCENT JN LOUIS

CYRUS BOYCE

LILIA CORNIBERT

JUSTINA BELASSE

Claimants

AND

THE ATTORNEY GENERAL

Defendants

Appearances:

Mr. Horace Fraser for the Claimant

Mr. R. Glasgow and Mr. R. Prospere

.....
2008: January, 29

February, 25
.....

JUDGMENT

Cottle J.

[1] The Claimants were employed as Special Constables in the Royal St. Lucia Police Force under the Section 55 of the Police Ordinance No. 30 of 1965. (Now Section 56 of the Police Act CAP 14:01 of the Revised laws of St. Lucia 2001. The section reads:

(1) The Commissioner of Police may with the approval of the Governor General appoint fit and proper persons to be special constables generally on any occasion if it appears to him or her to be expedient in the interest of public order and safety so to do.

(2) The approval of the Governor General shall not be required in the individual appointments of special constables

(3) Every such appointment shall be for such period not exceeding three (3) years as may be specified in such appointments

(4) The Commissioner of Police may at any time by notice in writing terminate the appointment of any special constables

[2] Despite the provisions of Section 56(3) the Claimants were allowed to remain in post and received salary for many years. (The first Claimant since 1987 and the others for shorter periods). In 2003

the then Commissioner of Police realized that the situation needed to be regularized . He required all Special Constables to take the oath of office and be sworn in as Special Constables.

[3] The Claimants now aver that at the time of their employment they were told by the then Commissioner of Police that after six (6) months of probation they would be employed as permanent workers.

[4] All the Claimants worked through the probationary period. After the first appointment they remained in post without further appointment. This, the Claimants say, indicates that their appointment has become for an indeterminate period. The duties they performed were duties normally performed by Police Constables. They say that the Commissioner of Police has power to appoint Police Constables. The Commissioner of Police before 2003 treated the Claimants as permanent employees. The Claimants now seeks declarations that as a result of the representation by the Commissioner of Police and their reliance on that representation they are in fact Police Constables and entitled to all the emoluments which attach to that post.

[5] The Defendants deny that the Claimants are Police Constables. They accept that the Commissioner of Police has power to appoint qualified persons as Police Constables. The Defendants also point out that none of the Claimants claim to possess the qualifications laid down in the Police Act at S.16:

(1) A person shall not be appointed to the Force as an inspector subordinate officer or

Constable unless:

- (a) He or she has attained the age of 15 years but has not reached the age of 30 years, However, in any such case the Commissioner of Police may with the approval of the Governor General appoint a person who has already attained the age of 30 years; (Amended by Act 17 of 1970)*
 - (b) He or she is of the required height and chest measurements, according to the standard fixed by the Commissioner of Police*
 - (c) He or she passes a medical examination as to his or her bodily fitness to be held by such Medical Officer as may be appointed for the purpose by the Governor General*
 - (d) He or she produces to the Commissioner of Police satisfactory proof of his or her good character; and*
 - (e) He or she satisfies the Commissioner of Police that he or she has attained a reasonable standard of education*
- (2) Any candidate who with a view to appointment in the Force knowingly makes any false statement or produces any birth certificate or testimonial which is false in any material particular is on summary conviction thereof liable to a fine not exceeding \$240 or to imprisonment for a term not exceeding six (6) months or to both such fine and imprisonment.*

[6] I am satisfied that the Claimants were told by the Commissioner of Police that if they successfully completed the probationary tour of duty that their appointment would be for an indefinite term. The treatment of the Claimants by all the successors in office of the Commissioner of Police leads me

to that conclusion. Indeed even the present holder of the office of the Commissioner of Police has made no effort to terminate the appointments of the Claimants. He merely requires that they take the oath of office after the effluxion of each period of three (3) years.

[7] At the hearing of this matter Counsel for the Claimants urged the court to give effect to the legitimate expectations of the Claimants. He cited the case of Soomatee Gokool et al v Permanent Secretary of the Ministry of Health et al another Privy Council appeal 84 of 2007 from Mauritius delivered on 2nd December 2008. Lord Carswell at paragraph 21 said:

“The basis of the jurisdiction is abuse of power and unfairness to the citizen on the part of a public authority: see R v North and East Devon Health Authority, ex p[arte Coughlan [2001] QB 213, 251, para 82. On this basis it has been held that two factors tend to show that there has not been an abuse of power. One is whether the Claimant has relied on the promise of representation, in particular whether he has thereby suffered any detriment, as to which see R v Secretary of State for Education and Employment, ex parte Begbie [1999] EWCA Civ 2100, [2000] 1 WLR 1115, 1130-1 and R (Bibi v Newham London Borough Council [2001] EWCA Civ 607, [2002] 11 WLR 237, 246, where the court adopted at para 29 the statement in Craig, Administrative Law 4th edition, page 619 that “detrimental reliance will normally be required”. The second is when the authority changes its policy on sufficient public grounds. If there is an overriding public interest behind its change of policy, it will not be an abuse of power: Coughlan, paragraph 57. If it could be said that the

appellants had a legitimate expectation, and even if any of them could show that he suffered sufficient detriment, the latitude permissible to a public authority faced with a change of circumstances would mean that its action was not an abuse of power and that the appellants are not entitled to a remedy”.

[8] Mr. Fraser says that these Claimants stand to suffer detriment because if they are not declared to be Police Constables they will not receive the benefits and emoluments which attach to that office.

[9] This argument is, with respect, misconceived. The Claimants sought employment as Special Constables. Special Constables are not paid at the same rate as Police Constables. They have no pension benefits. They do not get some of the allowances, given to Police Constables. They have no prospect of promotion to higher ranks in the police force. But the lower rate of remuneration is what they have contracted for. That is why they are not required to carry out all the duties of Police Constables. At best they can argue that they have a legitimate expectation to be allowed to serve as special constables for an undetermined period. This is what they say was promised them by the Commissioner of Police, and it is just this that they continue to receive. There has been no effort by the defendants to terminate their appointments or refuse them reappointment as each three (3) year period expires, had there been it may have entitled them to seek relief from the courts.

[10] In the circumstances I decline to grant the Claimants the relief they seek. The Claim is dismissed.
As is usual in these cases I make no order as to costs.

Brian Cottle

HIGH COURT JUDGE