

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2009/0178

**In the Matter of an application
pursuant to PART 56 of the Civil
Procedure Rules 2000**

**And in the Matter of sections 4 and
13(2) of the Crown Proceedings Act
Cap. 13 of the Revised Laws of Saint
Lucia 2001**

**And in the Matter of an application for
leave to make a claim for Judicial
Review**

BETWEEN:

MARCIA POLIUS

Applicant

and

THE ATTORNEY GENERAL

Respondent

Appearances:

Mr. Horace Fraser for Applicant

Ms. Dara Modeste and Mr. Dwight Lay for Respondent

2011: September 5.

JUDGMENT

Application

- [1] **GEORGES, J. [AG.]:** In this matter the applicant seeks leave to apply for judicial review of the decision of the Permanent Secretary of the Ministry of Public Service and Human Resource Development to deduct 49 days from her earned vacation

leave. She also seeks leave to apply for judicial review of his decision not to pay her uniform/laundry allowance for the period September 2000 to December 2008 and traveling allowance for the months of May and July 2007.

Grounds

- [2] The applicant's case is based on the following grounds:
- (a) The Permanent Secretary of the Ministry of the Public Service and Human Resource Development deducted 49 days from the applicant's earned vacation leave in breach of the principles of natural justice.
 - (b) The Permanent Secretary of the Ministry of Home Affairs and National Security has refused to pay the applicant uniform and laundry allowance and traveling allowance.
 - (c) There is no other recourse available to the applicant within the executive's administrative structure to address these issues.
 - (d) The applicant was granted permission by the Public Service Commission to commence these proceedings and the applicant has complied with Article 28 of the **Code of Civil Procedure** of the Revised Laws of Saint Lucia 1957.

Facts

- [3] The facts of this application are that the applicant is the Assistant Director of Rehabilitation at the Bordelais Correctional Facility. The post is a grade 17 post within the Public Service and falls under the Ministry of Home Affairs and National Security. In her position, the applicant is entitled to 33 days vacation leave per year but did not take any vacation in 2007. On 9th October 2008 she received a letter from the Permanent Secretary of the Public Service and Human Resource Development, Mr. Phillip Dalsou, purporting to deduct 49 days from her earned vacation leave pursuant to section 6.19 of the Staff Orders of the Public Service. The letter reads as follows:

"Dear Ms. Polius,

The records of the Bordelais Correctional Facility indicate that you have acquired a total of fifty-nine (59) days uncertified leave for the year 2007.

Section 6.19 of the Staff Orders of the Public Service of Saint Lucia provides that the total period of sick leave that may be granted to an officer for absence not supported by a medical certificate shall not exceed ten (10) working days in a year for officers who work a five day week.

In light of the foregoing, you have exceeded the total number of sick leave that may be granted to an officer, as your total number of sick leave without a medical certificate for the year 2007 is fifty-nine (59) days. In accordance with Section 6.19 of the Staff Orders of Saint Lucia, the excess number of forty-nine (49) days shall be deducted from your earned vacation leave."

This letter was copied to the Permanent Secretary of the Ministry of Home Affairs and National Security and the Director of the Bordelais Correctional Facility.

[4] The applicant deposed that she had no knowledge of being absent from work without permission for 59 days in 2007. She alleged that she was not given an opportunity to challenge these allegations before the 49 days were deducted. I find as a fact that no opportunity was afforded to her to be heard on that decision.

[5] The applicant is a Gazetted Officer and is therefore entitled to uniform/laundry allowance. In a memorandum dated 20th February 2008 Stephen Griffith, the Assistant Director (Administration) confirmed her entitlement in the following terms:

"In accordance with section 7(1)(a) of the Correctional Services #24 of 2003 you are at the rank of a Gazetted Officer. You therefore qualify for uniform/laundry allowance as per Section 18.1 of the Collective Agreement between the Government of Saint Lucia and the Saint Lucia Prison Association for the period April 1, 2004 to March 31, 2007 (**see attached**).

The Accountant has been advised to arrange for the payment of uniform/laundry allowance to you."

In a memorandum dated 25th February 2008, the Director of Corrections agreed

that the applicant was entitled to uniform allowance, but said none would be paid because the applicant does not wear uniform.

[6] The applicant exhibited four memoranda and one letter (M.P 4, 5, 6, 7 and 8) in which she alleges that the Director of Corrections had agreed that she did not have to wear the official uniform because of the symbolic effect it may have on inmates which she was charged with rehabilitating. She therefore made uniforms which were neutral in nature and did not bear the emblems, logos or other paraphernalia of the official uniform. It is fitting to mention that the Director did indeed make some reference to the existence of some kind of agreement with the applicant in this regard.

[7] Frustrated that her efforts to be heard continually fell on deaf ears, the applicant sought and received permission from the Public Service Commission on 12th January 2009 to institute civil proceedings against the Ministry of Public Service and Human Resource Development pursuant to Order 4.19 of the Staff Orders for the Public Service.

The Issues

[8] This issues arising in this matter are: (1) whether deduction of 49 days' vacation leave from the applicant's accumulated annual leave was contrary to the principles of natural justice; (2) whether the decision to refuse the applicant uniform/laundry allowance was unreasonable, irrational and ultra vires the Staff Orders of the Public Service and (3) whether the decision to refuse the applicant travelling allowance was unreasonable, irrational and ultra vires the Staff Orders of the Public Service.

Test for Grant of Leave

[9] Part 56 of the **Civil Procedure Rules 2000** (CPR) sets out the rules which govern Judicial Review. The general rule is that leave will usually be granted where the applicant discloses an arguable case having a realistic prospect of success. In

Sharma v Browne Antoine [2007] 1 WLR 780, at pg. 787 the Privy Council stated the general rule thus:

“The ordinary rule now is that the court will refuse leave for judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy.”

Alternative Means of Redress

[10] Learned Counsel for the Attorney General Mr. Lay submitted that CPR 56.3(2)(e) requires the applicant to state whether an alternative form of redress exists and if so, why judicial review is more appropriate or why the alternative remedy has not been pursued. He further submitted that the applicant did not conform to this requirement because she could have sought the aid of the Civil Service Union and the Ministry of Public Service to resolve the dispute. I accept the submissions of counsel for the applicant that the applicant had no recourse to the Civil Service Association because pursuant to the collective bargaining agreement between the CSA and the Government of St. Lucia they went to the union and nothing came of it.

[11] In fact numerous exhibits show that the applicant made several attempts to have the matter resolved even by writing to the Prime Minister. At no time was she given a chance to be heard either by the Permanent Secretary or the Director of Corrections pertaining to the deduction of 49 days from her vacation. This was in clear breach of natural justice and the fundamental right to be heard especially where she vigorously denied taking sick leave in 2007 without permission. In **Ridge v Baldwin** [1963] 2 W.L.R. 935 Lord Reid pointed out the importance of giving a person who stands to be affected by a decision a chance to be heard. Where as in this case decisions are taken without any readily available means for review they are voidable at the instance of the court.

Withholding uniform/laundry and travel allowance

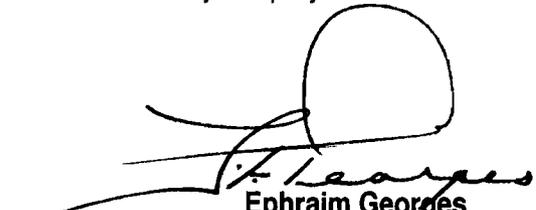
[12] The applicant had a legitimate expectation that based on her agreement with the

Director of Corrections she would still receive her uniform allowance. This was further reinforced by the memorandum of Mr. Stephen Griffith on 20th February 2008 which confirmed her entitlement. Staff Order 4.19 of the Staff Orders of the Public Service provides for such allowances. Therefore, in light of all the circumstances, the decision not to award the applicant those allowances to which she is legitimately entitled were plainly ultra vires the Staff Orders and irrational. Where the scope of the authority given to the Permanent Secretary has been exceeded it is trite law that the court has the power to quash such decisions: **Anisminic Ltd. v Foreign Compensation [1969] 2 A.C. 147.**

Considering that the provision clearly allows uniform allowances no reasonable Permanent Secretary applying his mind to the facts before him could have concluded that the applicant is not entitled to her allowances. Although it was claimed that the applicant took 49 days' uncertified sick leave based on "records" no records were exhibited even when challenged to confirm this. What then would have been the basis of the decision to deduct 49 days from her earned vacation? The decision was unreasonable irrational and unjust and ought to be quashed: **Associated Provincial Picture Houses Limited v Wednesbury Corporation [1948] 1KB 223.**

Conclusion

[13] In light of the foregoing, I am fully satisfied that there are arguable grounds for judicial review having a realistic prospect of success and I am equally satisfied that there were no alternative remedies which could avail the applicant in these circumstances. I accordingly order that leave be granted to the applicant to seek judicial review of the decision of the Permanent Secretary as prayed and that costs be costs in the cause.



Ephraim Georges
High Court Judge [Ag.]