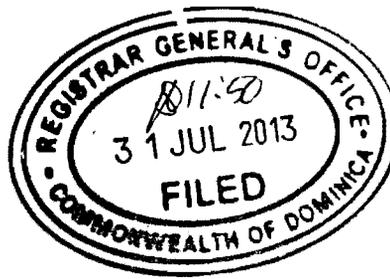


COMMONWEALTH OF DOMINICA
DOMHCV2009/0054



BETWEEN:

LEVIE MAXIMEA

Claimant

and

CHIEF OF POLICE

Defendants

POLICE SERVICE COMMISSION

ATTORNEY GENERAL

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Levie Maximea Claimant in person
Mrs. Kathy Buffong-Royer for the Defendants

[2013: July 31st]

JUDGMENT

- [1] COTTLE J:** By his fixed date claim form filed in 2009 and subsequently amended and re-amended, the claimant sought certain declarations and determinations from the court. During the case management phase of the trial the defendants failed to comply with several court orders. They filed no defence. At the trial of the claim the court heard evidence from the claimant only. He was cross examined by counsel for the defence.
- [2]** Both sides were then invited to submit closing arguments in writing. The claimant availed himself of this opportunity to present the court with an opus magnus running some 313 paragraphs. Several of the paragraphs ran over several pages. He detailed his difficulties in his career in the Commonwealth of Dominica Police Force from his enlistment in 1982 to the date he demitted office in February 2011. Every training course that he undertook was cataloged as well as all of his appointments to various posts within the force.
- [3]** In 2005 the claimant brought an action for judicial review for acts which he felt had adversely affected his career. He blamed the police authorities for these acts. Henry J dealt with the claim in DOMHCV2005/0006. Many of the matters recited in the present affidavit in support filed by the claimant are repeated from the earlier claim. As I understand the present claim, the claimant is

seeking relief for six events, whether acts, omission or decisions of the defendants which have caused him to be aggrieved. I hope I do no disservice to the claimant's case as I attempt to reduce it to comprehensibility.

- [4] Firstly the claimant says that he was transferred to the Guard Desk at the Roseau Police station against his will. This exercise of constitutional authority by the defendants he views as illegal, arbitrary, oppressive and procedurally improper as it was done without any probable and reasonable cause. Despite careful scrutiny of the voluminous affidavit in support I could discern no legal requirement indentified by the claimant as having been omitted by the decision to transfer him without his consent and only upon reasonable and probable cause. Section 28 of the Police Service Commission Regulations provides:

“where the Commission proposes to transfer a police officer, the Commission shall, except where the exigencies of the Service do not permit, make an order of transfer in writing and shall give not less than fourteen days notice to the officer who is to be transferred.”

- [5] In his affidavit in support between paragraphs 111-122 the applicant says he was transferred, not to the Guard desk, but to the Roseau Police Station. He did not complain that he was transferred to the Roseau station, but that he was required to work at the guard desk, including a shift that ran from midnight to 8:00 a.m. This he says caused him hardship because he had no transportation.
- [6] The claimant also says that *“the decision, actions, conduct and/or omission of the Chief of Police and the Police Service Commission in resorting to unilateral actions in the use of disciplinary control exercised over the claimant in the exercise of their constitutional powers without any probable and reasonable cause contravened the provisions of sections 8 (2) (a) (b) (c) 8 (8) 13, 16, 92 (2) and 103 of the Constitution of Dominica and was therefore unconstitutional.”*
- [7] No particulars of the disciplinary control are provided by the claimant. Under cross-examination he admitted that no disciplinary proceedings were completed against him and no sanctions imposed. The third complaint repeated the second save that other sections of the constitution are quoted and the actions of the defendants are categorized as also against the rules of natural justice and therefore “illegal, irrational, oppressive, unreasonable, arbitrary, and procedurally improper.” Again no conduct was particularized by the claimant.
- [8] The fourth area of complaint by the claimant was that the decision, actions, conduct and/or omission of the Chief of Police and the Police Service Commission in neglecting, failing, or refusing to evaluate the claimant's performance as prosecutor at the Roseau Magistrate Court in the exercise of their powers vested under the Constitution contravened regulations 20 (2) 31, 333 of the Police Service Commissions Regulations, regulations 3 and 27 of the Police Regulations and the ules of natural justice.
- [9] The defendants admit that the claimant's performance was not evaluated. Despite this the claimant was promoted to act as Corporal of Police on several occasions and even as Sergeant of Police after he had been promoted to corporal. It is unclear that the failure to evaluate the claimant was a

causa sine qua non of his failure to be promoted to the ranks he considered himself to be entitled to attain.

[10] The claimant also complains of the decision to transfer him from the Roseau Magistrate Court to Portsmouth Police Station without any reasonable and probable cause. The claimant did not suggest that he suffered any reduction in rank or emoluments consequent on his transfer. He admitted on cross examination that he was given an additional allowance to cover incidentals and expenses caused by the transfer. The allowance was \$200.00 per month. It is unclear how the claimant expected the police force to operate unless officers are assigned to the various stations around the island.

[11] The final area of the complaint of the claimant is a blanket one. He says the failure of the authorities to promote him was grounded in bad faith and improper motives, fully aware that they were thereby abusing their constitutional powers. In his cross examination the claimant admits that he was promoted to act as corporal several times before being confirmed in that rank and that he was also promoted to act as sergeant of police. He did not offer particulars of the bad faith or improper motives that he alleged.

[12] When the matter came up for trial the applicant was no longer a member of the Commonwealth of Dominica Police Force. He says he was constructively dismissed. He considered his assignment to the guard desk to be a demotion despite the fact that his emoluments remained unchanged. He thereupon wrote to the authorities to indicate that he quit. I interpret this as a clear indication by the claimant that he is no longer interested in being a police officer.

[13] Despite all the effort invested in this litigation it now makes no sense to continue it. The relief the applicant prays for are all of merely academic nature at this stage. The defendants in their conduct of this matter did not cover themselves in glory. The state should always be an exemplar. It cannot be demanded of citizens to comply with the civil law process if the state is seen to be disregarding its obligations as a litigant. But what is clear is that no live controversy now remains between the parties. In circumstances such as these the court does not grant declaratory relief of the nature the claimant seeks.

[14] I consider that it would be inappropriate for the court to make declarations which will serve no practical purpose. This position was adopted in Attorney General of St. Lucia, Monica Joseph v Dr. Vaughn Lewis Civil Appeal 12 of 1997.

[15] In the exercise of my discretion I decline to grant the claimant the relief sought. I make no order as to costs.



Brian Cottle

Brian Cottle

High Court Judge