

EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2015/0010

BETWEEN:

[1] WILLAN THOMPSON
(Commissioner of Police)
[2] SMITH ROBERTS
(Assistant Commissioner of Police)

Appellants

and

[1] THE ATTORNEY GENERAL OF GRENADA
[2] THE PUBLIC SERVICE COMMISSION

Respondents

Before:

The Hon. Mde. Louise Esther Blenman
The Hon. Mr. Mario F. Michel
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Rohan A. Phillip for the Appellants
Mr. Thomas Astaphan, QC and with him, Mr. Dwight Horsford, Solicitor General
and Miss Francine Foster, Crown Counsel for the Respondents

2016: January 28;
June 20.

Civil appeal – Constitution of Grenada – Section 89 – Whether a commissioned officer in Royal Grenada Police Force is liable to be transferred to another post of equivalent grade outside of the Police Force but within the public service – Costs – CPR 56.13(6)

The issue on appeal concerns whether section 89 of the Constitution of Grenada (“**The Constitution**”) prohibits the Governor General, acting on the advice of the Public Service Commission (“**PSC**”), in the case of Mr. Willan Thompson, the former Commissioner of Police, and the PSC, in the case of Mr. Smith Roberts, the former Assistant Commissioner

of Police, from transferring them from Royal Grenada Police Force (“RGPF”) to equivalent offices in the public service.

Mr. Thompson and Mr. Roberts were both transferred from the RGPF by the Governor General of Grenada and the PSC respectively, without their consent. Each of them filed a constitutional motion in which they alleged a breach of section 89 of the Constitution and sought a declaration that the RGPF is a special or closed department within the Public Service of Grenada **established by the Police Act (“The Act”)**. They contended that pursuant to section 89 of the Constitution, as police officers they cannot be transferred either by the Governor General or by the PSC to a post outside of the RGPF without their consent or the permission of the public service.

In the court below, the learned Justice Gerhard Wallbank, with the consent of the parties, identified a preliminary issue and it was agreed that that issue should have been ventilated first namely:

“Whether a commissioned officer in the Royal Grenada Police Force is liable to be transferred to another post of equivalent grade outside of the Police Force but within the public service.”

After hearing the arguments put forward by both sides, Wallbank J held that as long as the commissioner of police or other gazetted officer receives a rank or grade which is not lower than that which he or she previously held, and as long as he received an emolument package that is not less than what he or she previously enjoyed there is nothing in the Constitution, the Act and the Police Regulations (**“The Regulations”**) which prevent the Governor General (in the case of the Commissioner of Police) and the PSC (for other gazetted officers and others above the rank of sergeant) from deploying the talents and experience of such senior public servants outside of the police force in the public service, on a number of grounds.

Mr. Thompson and Mr. Roberts are both dissatisfied with the ruling of the learned judge and accordingly appealed his decision.

The main thrust of the arguments put forward by Mr. Thompson and Mr. Roberts is that the **RGPF is of a “closed nature” and it is therefore impossible to transfer** an officer of the RGPF to the wider public service without that **officer’s consent**. The respondents’ primary argument on the other hand was that the PSC is an autonomous body specifically vested with the power of control over all public officers in the public service by the Constitution and that consequently Mr. Thompson and Mr. Roberts are therefore public officers amenable to the constitutional jurisdiction of the PSC.

Held: dismissing the appeal and ordering that each party bear its own costs pursuant to CPR 56.13(6) that:

1. The Constitution of Grenada, in particular section 83 is written in clear and simple language and it is evident that the framers of this Constitution created one autonomous body, the Public Service Commission, to regulate the public service.
2. The power and scope of the Public Service Commission has been long settled. It is trite law that the power to appoint carries with it the power to remove and transfer. It is therefore axiomatic that the Public Service Commission, which has the power to appoint police officers, equally has the power to transfer those officers. The law is clear - a police officer can be properly transferred from an office in the police force to an office in the wider public service provided that he or she suffers no loss of benefits or salary. Therefore there was absolutely no impediment to the PSC or the Governor General transferring Mr. Thompson and Mr. Roberts from the RGPF to other equivalent offices in the public service.

Endell Thomas v Attorney-General of Trinidad & Tobago (1981) 32 WIR 375; GHCVAP2003/0011 (delivered 4th February 2004, unreported) applied; Public Service Regulations, 1969, regulation 2 applied; Brian Francis v Attorney General GDAHCV2001/0521 (delivered 28th November 2002, unreported), applied; Felix Da Silva v Attorney General of St. Vincent & the Grenadines and Others (SVGHCVAP1997/0018, delivered 9th December 1998, unreported), applied; Ausbert Regis, Commissioner of Police v Attorney General of St. Lucia SLUHCV2010/0497 (delivered 21st November 2011, unreported), applied; The Commissioner of Police et al v Romero Allen and Others, Civil Appeal No. 6 of 2010; [2011] CA (Bda.) 1 Civ. distinguished.

JUDGMENT

Background

- [1] BLENMAN, JA: Mr. Willan Thompson, former Commissioner of Police, and Mr. Smith Roberts, Assistant Commissioner of Police, were both transferred from the Royal Grenada Police Force (“RGPF”) by the Governor General of Grenada and the Public Service Commission (“PSC”) respectively, without their consent. They challenged their transfers on the basis that they were not liable to be transferred outside of the RGPF without their consent because the RGPF was “closed” in nature. Indeed, each of them filed a constitutional motion alleging

breach of section 89 of the Constitution of Grenada (“**the Constitution**”) and in which they sought a declaration that the Royal Grenada Police Force (“RGPF”) is a special or closed department within the Public Service of Grenada established by the Police Act (“**the Act**”).¹ They contended that pursuant to section 89 of the Constitution, as police officers they cannot be transferred either by the Governor General or by the Public Service Commission to a post outside of the RGPF without their consent or the permission of the public service. Mr. Thompson and Mr. Roberts named the Attorney General and the Public Service Commission (“PSC”) as the respondents to their motions.

[2] The Attorney General and the PSC filed an application to strike out the motions on the basis that both Mr. Thompson and Mr. Roberts had no reasonable ground for bringing them.

[3] The learned Justice Gerhard Wallbank, with the consent of the parties, identified a preliminary issue and it was agreed that that issue should have been ventilated first namely:

“Whether a commissioned officer in the Royal Grenada Police Force is liable to be transferred to another post of equivalent grade outside of the Police Force but within the public service.”

[4] I propose to briefly address the ruling below.

Ruling below

[5] The learned judge having heard the arguments put forward by both sides held that as long as the commissioner of police or other gazetted officer receives a rank or grade which is not lower than that which he or she previously held, and as long as he received an emolument package that is not less than what he or she previously enjoyed there is nothing in the Constitution, the Act and the Police Regulations which prevents the Governor General (in the case of the Commissioner of Police) and the PSC (for other gazetted officers and others above the rank of sergeant) from deploying the talents and experience of such senior public servants outside

¹ Cap. 244, Revised Laws of Grenada, 2010.

of the police force in the public service, on a number of grounds.

- [6] Both Mr. Thompson and Mr. Roberts are dissatisfied with the ruling of the learned judge and they have accordingly appealed his decision.

The Issue on Appeal

- [7] Both sides have agreed that three issues arise to be resolved in this appeal. However, with no disrespect intended to the parties these issues can helpfully be crystallised into one issue namely:

“Whether section 89 of the Constitution of Grenada prohibits the Governor General, acting on the advice of the Public Service Commission, in the case of Mr. Thompson and the Public Service Commission, in the case of Mr. Roberts from transferring them from RGPF to equivalent offices in the public service.”

Appellant’s Submissions

- [8] In seeking to answer the above question, learned counsel Mr. Rohan Phillip advanced a number of arguments that were similar to those canvassed in the court below. Chief among them is his contention that the RGPF is of a “closed nature” and it is therefore impossible to transfer an officer of the RGPF to the wider public **service without that officer’s consent**. Mr. Phillip also referred the Court to the decision of the Bermuda Court of Appeal in the case of *The Commissioner of Police et al v Romero Allen and Others*,² which accepted the English Court of Appeal’s position in *R (Tucker) v Director General of the National Crime Squad*,³ where Lord Justice Scott Baker opined:

“**A police officer is in a different position from other employees.** On becoming an officer he forfeits certain advantages, for example the right to strike or bring proceedings for unfair dismissal. He is subject to the discipline of his force and has by and large to go where and do what he is told. On the other hand he gains certain advantages for example the right to remain in service, health permitting, and to ill health and injury pensions. Dismissal or other disciplinary punishment is governed by

² Civil Appeal No 6 of 2010; [2011] CA (Bda.) 1 Civ, para. 28.

³ [2003] EWCA Civ. 57, para. 27.

statutory procedures that are amenable to judicial review in the event of **any breach of public law principles, such as fairness.**"

[9] Mr. Phillip stated that at common law, the office of constable (police officer) is independent in the exercise of his or her daily functions (powers and duties), which are vested directly by law in each individual police officer. The police officer is the holder of a public position in which he owes obedience to no executive power outside of the police force **and "in essence a police force is neither more nor less** than a number of individual constables, whose status derives from the common law organised together in the interest of efficiency".⁴ Furthermore, the police officer is required to take the oath of office on appointment and prior to the commencement of his or her duties. Mr. Phillip referred this Court to *The Attorney General of New South Wales v The Perpetual Trustee Company (Limited) & Others*⁵ where it was observed that the mode of appointment of a police officer did not make any difference in the fundamental nature and character of the office of a police officer, which evolved historically as the office of constable at common law and which is applicable to all ranks within the police force, whether constable or his or her superiors including the Commissioner.

[10] Mr. Phillip stated that the Act establishes the RGPF and provides for the various ranks or offices of seniority that will constitute the RGPF.⁶ The Act also defines a police officer as any member of the RGPF; states the function of the RGPF;⁷ requires every police officer to take and sign the Oath of Allegiance on being appointed a police officer in the RGPF;⁸ and specifies the powers and duties of the police officer.⁹ He said that a perusal of these provisions indicates that although the RGPF is provided for in the Act and the Constitution,¹⁰ it was not intended to remove the special nature and character of the office of a police officer, but rather,

⁴ See *Halsbury's Laws of England* (4th edn. 2007) vol. 36, paras. 201 and 203 - 204.

⁵ [1955] UKPC 6, pp. 4-5.

⁶ Cap. 244, Revised Laws of Grenada, 2010, ss. 3-4.

⁷ *ibid*, s. 5

⁸ *ibid*, s. 12.

⁹ *ibid*, ss. 22-23.

¹⁰ Cap. 128A, Revised Laws of Grenada, 2010, s. 89.

it was to organise the police officer for efficiency, codify his powers and duties and set him apart for further protection under the Constitution. The Act and Regulations further provide for the appointment, removal, resignation and discharge of the officers or members of the RGPF;¹¹ and forbid the members of the RGPF from joining trade unions and other prohibited associations.¹² He further pointed out that the RGPF is a disciplined force under the Constitution of Grenada that excludes it from the protection of some of the fundamental rights and freedoms guaranteed under the Constitution.¹³ Mr. Phillip submitted that the observations of the Hon. Mr. Justice Thomas W.R. Astaphan, QC in *Clifford Jackson v Police Service Commission*¹⁴ as to the nature and character of the office of the police officer in the Royal Antigua and Barbuda Police Force are therefore equally applicable to the RGPF in every respect.

[11] In order to buttress his arguments, Mr. Phillip also sought to examine whether, on a proper construction and application of section 89 of the Constitution, the PSC is required to act or function as a separate service commission in relation to the RGPF. Mr. Phillip submitted that in construing section 89 it is necessary to look at its statutory structure and context in the Constitution.¹⁵ He referred the Court to Chapter VI of the Constitution that deals with the Public Service of Grenada (“the PSG”). Part 1 of the Chapter captioned “The Public Service Commission” comprises of section 83, which provides for the establishment, composition, appointment and removal of the commissioners, and the procedures for the functioning of the commission; and section 84, which provides for the appointment, exercise of disciplinary control and removal from office of public officers generally in the PSG. However, section 84 also states that its provisions will not apply to a

¹¹ Cap. 244, Revised Laws of Grenada, 2010, ss. 7- 9.

¹² *ibid*, s. 49.

¹³ Cap. 128A, Revised Laws of Grenada, s. 18.

¹⁴ ANUHCV2010/0487 (delivered 23rd August 2012, unreported), paras. 4-8.

¹⁵ *Douglas (Clayton) v The Police* (1992) 43 WIR 175, para.178f-h; *Savarin v William* (1995) 51 WIR 75, paras. 78j - 79b, per Sir Vincent Floissac, CJ.

number of offices, including any office in the RGPF,¹⁶ which are all contained in Part 2 of Chapter VI captioned “**Appointments, etc., to particular offices**”.

[12] Mr. Phillip argued that the exclusion of the particular offices from the operations of section 84 of the Constitution and the general powers provided for by that section to the PSC is significant and sets them apart from the other offices in the PSG. He further argued that it is clear that the powers given to the PSC in section 89 of the Constitution in relation to offices in the police force are to be exercised separately and distinctly from the powers contained in section 84. This, he argued is because these offices are expressly excluded from the operation of section 84 and, if it were to be otherwise, it will mean that there is no purpose for section 89 thus rendering it otiose, which could not have been the intent of the framers of the Constitution. Mr. Phillip submitted that consequently, what the framers of the Constitution intended is that the PSC will carry out the role and functions of a public service commission in relation to the general public service and that of a police service commission in relation to the RGPF.

[13] Mr. Phillip then turned his attention to determining the effect of the words or **phrase “in offices in the Police Force” in section 89 of the** Constitution of Grenada in defining, limiting or restricting the powers of the PSC conferred by the section in relation to the appointment, removal and disciplining of such officers. Mr. Phillip reminded the Court that it is a basic presumption of statutory interpretation that meaning should be given to every word or expression because Parliament does nothing in vain and as such if a word or phrase appears in an enactment it is put there for a purpose and must not be disregarded.¹⁷ He argued that it therefore follows that where the PSC exercises its powers in relation to

¹⁶ Section 84 of the Constitution reads: “**(3) The provisions of this section shall not apply in relation to the following officer, that is to say:-**

- (a) any office to which section 85 of this Constitution applies;
- (b) the office of Director of Public Prosecutions;
- (c) the office of Director of Audit;
- (d) any office to which section 88 of the Constitution applies;
- (e) any office in the Police Force.”**

¹⁷ *Enmore Estate Limited v Ramkhellawan Darsan* [1970] 15 WIR 192.

police officers under section 89(2) of the Constitution, it must do so only in respect of offices in the RGPF, as it is expressly enjoined by the language of the section to do. He further stated that another basic presumption of statutory interpretation is that where the literal meaning of a general provision in an enactment covers a situation for which specific provision is also made, it is presumed that the situation was intended to be dealt with by the specific provision.¹⁸ This presumption is more strictly observed where it occurs in the same instrument and more so where the specific provision follows the general provision, as is the situation in this case. Mr. Phillip submitted that accordingly, the PSC could not engage in the exercise of section 84 of the Constitution general powers in respect of police officers in the RGPF since they are specifically provided for in section 89.

- [14] Learned counsel Mr. Phillip argued that it is not permissible for officers such as Mr. Thompson and Mr. Roberts to be transferred from the RGPF to positions in the PSG. He further stated that by virtue the nature and character of the office of a police officer there are no posts of equivalent grade in the PSG, once the appellants are no longer police officers or members of the RGPF. He maintained that it follows that the office of police officer in the RGPF, while being offices in the PSG, must be considered as of a different character and nature than the other public offices in the PSG such that it has a separate and distinct pay scale. Consequently, the offices are not interchangeable and are incapable of transfers from the offices in the RGPF to the general PSG and vice-versa without the consent of the officer.

Conclusion/Disposal - Order of the Court

- [15] In the circumstances, learned counsel Mr. Phillip urged this Court to set aside the judgment of the court below and make the following orders:
- (a) A Declaration that the RGPF is a special or closed department within the PSG established by the Police Act, Chapter 244 of the Continuous

¹⁸ Cusack v London Borough of Harrow, [2011] EWCA Civ 1514, para. 19.

Revised Laws and as such a Police Officer cannot be transferred by the PSC pursuant to section 89 of the Constitution of Grenada to a post outside of the RGPF without the consent or permission of the said Police Officer.

(b) Costs of the appeal and in the court below.

Respondents' Submissions

- [16] Learned Queen's Counsel Mr. Thomas Astaphan submitted that the description of a '**public officer**' (public officers) such as Mr. Thompson and Mr. Roberts is defined in the Constitution.¹⁹
- [17] Mr. Astaphan, QC stated that both Mr. Thompson and Mr. Roberts did not deny in their pleaded case that they are public officers. It is common ground that they are. He stated that it is indisputable that both of them were aware that they were liable to be transferred to positions of equivalent grade in the public service since by their instruments of appointment they were made subject to the Public Service Rules and Regulations and Civil Service Staff Orders which apply to public officers.²⁰ Mr. Astaphan, QC argued that both Mr. Thompson and Mr. Roberts are employed in the service of the Crown in a civil capacity in respect of the Government of Grenada.
- [18] Turning to the main issue, Mr. Astaphan, QC briefly examined the nature of the Public Service Commission in Grenada. He stated that unlike other Commonwealth Caribbean states, Grenada has only one service commission, the PSC. The PSC is an autonomous body specifically vested with the power of control over all public officers in the public service by the Constitution. Mr. Astaphan, QC pointed out to the Court that sections 83(1) to (13) and sections

¹⁹ Constitution of Grenada 1974, section 111.

²⁰ See: letter from the PSC – Exhibit SR1 to Mr. Roberts affidavit in support of the originating motion filed 24th June, 2015 and letter from the PSC – Exhibit "WT2" to Mr. Thompson's affidavit in support of the originating motion filed 18th July, 2014.

84(1) and (2) of the Constitution expressly render the PSC as an independent body that is insulated from political interference by constitutional design. He reminded this Court that the purpose, nature and scope of the constitutional powers and independence of the PSC that has been the subject of judicial pronouncement and interpretation is now quite well settled.²¹

[19] Mr. Astaphan, QC said that the power exercisable over the police officers below the rank of Chief of Police but above the rank of sergeant in Grenada is vested in the PSC. He stated that in the case of the Commissioner of Police it is the Governor General acting on the advice of the PSC who has the power of appointment. In effect, the PSC still retains the power of appointment, control and discipline over the Commissioner of Police. Mr. Astaphan, QC submitted that Mr. Thompson and Mr. Roberts are therefore **clearly 'public officers' amenable to the constitutional jurisdiction of the PSC (through the Governor General) in Mr. Thompson's case and the PSC in the case of Mr. Roberts.**²²

[20] Turning his attention specifically to the issue of transfers, Mr. Astaphan, QC reminded the Court that a **"transfer" in the context of the civil service is defined in section 2 of the Public Service Commission Regulations ("the PSC Regulations").**²³ Mr. Astaphan, QC stated that the PSC Regulations make provision for the transfer of particular officers in the public service and the power to transfer though not express must exist by necessary implication.²⁴

[21] Mr. Astaphan, QC relying on *Delano Dennis v Kenneth Lalla (Public Service Commission Chairman) & Others*²⁵ submitted that as a general rule, the power

²¹ *Endell Thomas v Attorney-General of Trinidad & Tobago* (1981) 32 WIR 375, paras. 381 j – 382 e, per Lord Diplock; *Richard Duncan v Attorney General of Grenada* [1998] 3 LRC, pp. 9-10, per Byron CJ which followed the decision of Lord Diplock in *Endell Thomas*.

²² The Constitution of Grenada, ss. 89(1) and (2)

²³ S.R.O. No. 27 of 2013. This section also defines particular offices referred to in s. 85 of the Constitution.

²⁴ ***Grenada Technical & Allied Workers' Union & Public Workers Union v Public Service Commission, Attorney General and Anor.***, GHCVAP2003/0011 (delivered 4th February 2004, unreported), para. 20, per Saunders JA.

²⁵ *Trinidad and Tobago HCA No. 4143 of 1995*, (delivered 30th September 30th 1996, unreported), pp. 5-9, per Blackman J.

to transfer is restricted naturally to those officers who are in the employ of the Government of Grenada in a civil capacity so that, once an officer answers the description of a public officer, he is liable to the exercise of the power of transfer vested in the PSC.

[22] Mr. Astaphan, QC argued that the proposition by Mr. Thompson and Mr. Roberts that it is constitutionally impermissible to transfer commissioned/gazetted officers such as themselves from an office in the RGPF to one in the wider public service on the basis that the RGPF is a closed department is incorrect. He stated that Mr. Thompson and Mr. Roberts' apparent contention in their affidavits is that once a person is appointed to the post of Commissioner of Police, Assistant Commissioner or any **gazetted officer's post that person is precluded from transfer** to any other position in the public service. Mr. Astaphan, QC brought to the **Court's attention that a similar contention was judicially considered** and rejected in *Brian Francis v Attorney-General*²⁶ and implored the Court to immediately reject the contention made in the case at bar.

[23] Mr. Astaphan, QC submitted that on the contrary, even the Commissioner of Police in Saint Lucia, a jurisdiction with Constitutional provisions in *pari materia* and strikingly similar language with those contained in the Grenada Constitution, is liable to be transferred out of the Police Force into the wider public service as his post is not protected against removal.²⁷ He accordingly urged this Court to reject the arguments of Mr. Thompson and Mr. Roberts on this matter, as there is no deliberate language in sections 89(1) or 89(2) of the Constitution that evinces the indication or implication that the RGPF is a closed department. He also maintained that a Commissioned/Gazetted Officer in the RGPF is liable to be transferred to a post of equivalent grade in the public service of Grenada – not to

²⁶ GDAHCV2001/0521 (delivered 28th November 2002, unreported), para. 27.

²⁷ *Ausbert Regis, Commissioner of Police v Attorney-General of St. Lucia* SLUHCV2010/0497 (delivered 21st November 2011, unreported), per Wilkinson J, paras. 64 - 69 and 74.

one of equivalent status as the appellants contended in the court below.²⁸ Finally, Mr. Astaphan, QC said that the provisions of section 84(3)(e) of the Constitution do not operate as an express prohibition on the transfer of any gazetted officer from the RGPF to an office of equivalent grade in the public service of Grenada.

Disposal

- [24] Mr. Astaphan urged this Court to uphold the judgment of the Court at first instance on the preliminary issue. He said that the appeal should be dismissed with such costs as the Court considers appropriate, if any, under rule 65.13 of the Civil Procedure Rules 2000 (“CPR”) (as amended).

Discussion and Conclusion

- [25] Before addressing the contentions of both sides, I will briefly refer to the constitutional provisions.

Law

- [26] Section 83(1) of the Constitution of Grenada states:
“There shall be a Public Service Commission for Grenada which shall consist of a Chairman and four other members...”

Section 84(1) of the Constitution of Grenada states:
“**Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in offices in 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.**”

Section 89(1) of the Constitution of Grenada provides:
“Subject to the provisions of section 91 of this Constitution, the power to appoint a person to hold or act in the office of Chief of Police and the power to remove the Chief of Police from office shall vest in the Governor-General, acting in accordance with the advice of the Public Service Commission...”

²⁸ GDAHCV2001/0521 (delivered 28th November 2002, unreported), para. 27; Felix Da Silva v Attorney-General of St. Vincent & the Grenadines and Others (SVGHC VAP1997/0018, delivered 9th December 1998, unreported), pp. 2-4, per Byron CJ (Ag.).

Section 111(1) of the Constitution of Grenada states:

“In this Constitution, unless the context otherwise requires [...]

“the Police Force” means the Royal Grenada Police Force established by the Police Act and includes any other police force established by or under a law enacted by Parliament to succeed to the functions of the Royal Grenada Police Force; **“the public office”** means any office of emolument in the public office.”

[...]

“the public officer” means a person holding or acting in any public office;

“the public service” means, subject to the provisions of this section, the service of the Crown in a civil capacity in respect of the government of Grenada.”

[27] For the sake of convenience all of the observations and analysis that are made are in relation to the Public Service Commission are equally applicable to the Governor General.

[28] In my view, the case of *The Commissioner of Police et al v Romero Allen and Others*,²⁹ though good law cannot assist Mr. Thompson and Mr. Roberts to resolve the issue in dispute. At the heart of the appeal is the power of the Governor General and the Public Service Commission to transfer police officers. Both are clothed with powers inhered in them by virtue of the Constitution. Indeed, there is a clear difference between the PSC in the Commonwealth Caribbean and the appointing bodies in other countries that do not have similar constitutional bodies such as the Governor General and the PSC. The scope and extent of the powers of the PSC has received attention in several cases from the Caribbean and there is much constituent learning in this regard. There is no need to repeat the pronouncement.

[29] The main thrust of Mr. Phillip’s submissions is that on a proper interpretation of the Constitution of Grenada, the PSC is required to act and function as a separate service commission in relation to the Royal Grenada Police Force. In my view, there is no force in this submission. There is absolutely no basis for construing the relevant provisions of the Constitution in that manner, as the words therein are

²⁹ Civil Appeal No 6 of 2010; [2011] CA (Bda.) 1 Civ, para 28.

clear and unambiguous. In my respectful opinion, the view advanced by Mr. Phillips is incongruous with the clear meaning of section 83 of the Constitution. Indeed, I find that the arguments that have been advanced by Mr. Astaphan, QC more attractive and I am persuaded as to their correctness. I agree that the scope and power of the Commission has been long settled. The well-known case of Endell Thomas has made it clear that the service commissions have the power to appoint, remove and transfer public officers.³⁰ There is no need to read anything into the Police Act.

[30] I have no doubt that the argument advanced by Mr. Thompson and Mr. Roberts, that the PSC must act as a different body in treating with police officers is wholly unmeritorious. I am fortified in this view since they have put forward no proper basis to undergird this argument.

[31] The Constitution of Grenada is written in clear and simple language and I am satisfied that the framers of this Constitution created one autonomous body, the PSC, to regulate the public service. This is unlike the situation that exists in some Caribbean countries where there are three separate and distinct service commissions namely the Teaching Service Commission, the Public Service Commission and the Police Service Commission. I can see no good reason for seeking to read words into the clear language into section 83 of the Constitution that creates the PSC in Grenada. In my judgment, there is considerable force in the argument advanced by Mr. Astaphan, QC namely that the PSC in Grenada is vested with authority over all public officers in the public service.

[32] This brings me now to consider the critical issue on this appeal whether the PSC has the power to transfer Mr. Thompson and Mr. Roberts from the RGPF to equivalent officers in the public service. It is trite law that the power to appoint carries with it the power to remove and transfer.³¹ It is therefore axiomatic that the

³⁰ (1981) 32 WIR 375.

³¹ (1981) 32 WIR 375; GHCVAP2003/0011 (delivered 4th February 2004, unreported).

Public Service Commission, which has the power to appoint police officers, equally has the power to transfer those officers. I am fortified in the above view by regulation 2 of the Public Service Regulations, 1969 that provides for the transfer of public officers including the category in which both Mr. Thompson and Roberts fall. I have no doubt that the Public Service Commission has the power to transfer public officers within the public service.

[33] Before moving on, I should say with deference to learned counsel Mr. Phillip that there is no legal basis for the proposition advanced by him that the RGPF is a closed department. I accept the argument by Mr. Astaphan, QC that if the lawmakers wished to have designated the RGPF as a closed department they would have done so by clear and unambiguous words. Neither is there any provision in the Police Act nor the Constitution that is open to any such interpretation. It is interesting to note that learned counsel Mr. Phillip has provided no authority for that proposition. It has already been established that the PSC has the power to appoint and transfer public officers to the category of which Mr. Thompson and Mr. Roberts belong.

[34] Finally and in my considered opinion, there is absolutely no impediment to the PSC or the Governor General transferring police officers from the RGPF to other equivalent other offices in the public service. In this regard, the decisions of *Brian Francis v Attorney General* and *Felix Da Silva v Attorney General* read together with *Ausbert Regis, Commissioner of Police v Attorney General* are instructive. Indeed, the law is clear namely, that a police officer can be properly transferred from an office in the police force to an office in the wider public service provided that he or she suffers no loss of benefits or salary.

[35] In all of the circumstances, I would reject the submissions of learned counsel Mr. Phillip that the judge erred in ruling as he did.

Costs

[36] The Attorney General and the Public Service Commission have prevailed in defending this appeal. However, Mr. Thompson and Mr. Roberts have not acted in a manner that warrants an award of costs against them.³²

Conclusion

[37] (a) In view of the premises, the appeal of Mr. Willan Thompson and Mr. Smith Roberts against the decision of Mr. Justice Wallbank is dismissed.

(b) On the issue of costs and in accordance to CPR 56.13(6) the appropriate order is that each party is to bear its own costs.

[38] I gratefully acknowledge the assistance of all learned counsel.

Louise Esther Blenman
Justice of Appeal

I concur.

Mario F. Michel
Justice of Appeal

I concur.

Paul Webster
Justice of Appeal [Ag.]

³² CPR 56.13(6).