

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2016/0136

BETWEEN:

BRIAN SAMUEL

Claimant

And

THE PUBLIC SERVICE COMMISSION

Defendant

APPEARANCES:

Mr. Horace Fraser for the Claimant

Mrs. Grace Ward-Glasgow for the Defendant

2016: November 29;
2017: October 6.

DECISION

[1] **BELLE J:** The Applicant filed an application on the following relief:

1. A declaration that the Respondent's summary disposal of his application for the post of Commissioner of Police is irrational, unreasonable and discriminatory.
2. A declaration that the Respondent's failure to give reason(s) for not affording him an interview for the post of Commissioner of Police was in breach of the rules of fairness.

3. A declaration that the failure of the Respondent to observe fairness in relation to his application for the post of Commissioner of Police negated against his chance of being appointed to that office.
4. An Order granting leave to the Applicant to make a claim for Judicial Review.
5. Costs.
6. Such further or other relief as the Court deems just.

[2] The Applicant's grounds were as follows:

- (a) The applicant has made an Application to the Respondent on 5th February, 2016 for the post of Commissioner of Police as vacancy to fill that post was advertised.
- (b) The Applicant is most qualified to hold the said post.
- (c) The Respondent in response to the Applicant's application wrote to him on the 15th February, 2016 informing him that he was not short listed for an interview but has conducted interviews in relation to other candidates who are on the same level with him both in terms of qualification and experience and a candidate who is subordinate to him in rank, qualification and experience which renders the selection process discriminatory and irrational.
- (d) The selection process is discriminatory.
- (e) Should this Honourable Court not see it fit to grant interim orders sought the Applicant stands to lose the chance of having his application fairly and fully considered according to law.

[3] The Applicant filed an affidavit in support of his application on 4th March, 2016. At paragraph 21 of his affidavit he states:

"That before the Respondent scrapped the entire selection process they sent a letter to Acting Commissioner of Police Mr Errol Alexander informing him that he was not successful in his bid for the post of Commissioner of Police. In my estimation Mr Errol Alexander was probably the most suitably qualified candidate for the job in terms of qualification, experience and the fact that he was at the time acting as Commissioner of Police."

[4] This statement shows that the Applicant had applied for the position of Commissioner of Police even though he knew that others better qualified than he would apply. His basis for questioning the other candidates is that he had more managerial experience since in paragraph 3 of the Affidavit in support of the

application he states that he had over 15 years of experience. In asserting this he includes experience as a Sergeant, Inspector and Assistant Superintendent of Police as of 24th April, 2012.

- [5] In paragraph 7 of his affidavit he states that between July, 2007 and April 2012 (5 years) he was assigned to head the Drug Squad, a position which according to the estimates of expenditure is funded to be headed by a Superintendent (grade 16). However he does not explain how he was able to do the job of a Superintendent and whether he was paid as a Superintendent. Then he states:

“As of January, 2016 I was re-assigned to head the Drug Squad. Also in relation to the second limb of the requirements for the post of Commissioner of Police I have over eight years’ experience at senior management level.”

- [6] It is questionable how the Applicant is able to calculate the years 2012 to 2016 as 8 years at senior management level. This calculation would have to include his position as head of the Drug Squad while he was an Inspector of Police. But he has failed to address in his affidavit, how he could possibly be doing the job of a Superintendent of Police while being an Inspector of Police. Without such an explanation I would have to conclude that the Applicant had only 4 years’ experience in a senior management position at the time he made the application. This is based on the principle that the managerial experience can only accrue after the officer has reached the rank of Superintendent. But Mr Samuel seems to be calculating his experience from the time he became a sergeant.

- [7] In paragraph 29 of his affidavit the Applicant states that another candidate Mr Milton Desir was appointed Inspector of Police on the 15th February, 2005, is a holder of a Master’s Degree in Business Administration, UWI 2010 and a Certificate in Paralegal Studies and also has 10 years’ experience at the senior management level. Again it is self-evident that the Applicant is counting the years as Inspector but fails to refer to any other management experience qualifying Milton Desir as a candidate for the position of Commissioner of Police. Milton Desir is not here to respond to this account and consequently the PSC would have to determine

whether it agrees with this assessment of Mr Desir's qualification having checked his personnel file. In any event Mr Desir was obviously promoted to the rank of Inspector before the Applicant was.

[8] The Applicant then refers to the case of Severin Monchery who according to the Applicant was promoted to the rank of Inspector of Police on 8th July, 2000 acted as Assistant Commissioner of Police from 1st June, 2013 to March, 2015, and as Deputy Commissioner of Police from 1st April, 2015 to present. Severin Monchery holds a Bachelor of law degree from the University of London (2005) and a Certificate of Paralegal Studies (1990) and has 14 years' experience at a management level.

[9] It is difficult to comprehend how the Applicant could assert that he is more suitably qualified than Severin Monchery to hold the post of Commissioner of Police.

[10] Finally the Applicant refers to the candidate Moses James who was appointed Inspector of Police in 2005. Mr James holds a degree in Management from the UWI (2003) and a Certificate in Public Administration UWI (1991) and according to the Applicant has experience of 10 years at the senior management level. Again this shows that the Applicant is including an appointment as Inspector of Police as a senior management position without more. But even on this criterion the Applicant falls behind Moses James since James was an Inspector since 2005, again 2 years more than the Applicant. Again the Applicant fails to set out any other experience of this applicant.

[11] Finally the Applicant spends a considerable amount of time in the candidate Vern Garde. Vern Garde joined the Royal Saint Lucia Police Force on 2nd October, 1997 and was promoted to the rank of Sergeant on 24th September, 2007 and to the rank of Inspector (grade 12) on 3rd June, 2013. He was appointed Acting Director of Bordelais Correctional Facility from the 27th February, 2015 to the 26th February, 2015 to the 26th February, 2018. He holds a Bachelor's degree in Criminal Justice

which is specific to law enforcement. He held a senior management position for 1 year 8 months (no Diploma or Certificate in Public Administration).

- [12] In relation to Vern Garde the Applicant fails to include Vern Garde's experience from the time he was appointed inspector as he did for himself and everyone else. The question therefore is why is this so? If the Applicant intended to make a fair and balanced application and intended to obtain a fair and balanced result he would include the years Vern Garde served with the rank of Inspector until the time he made the application.
- [13] The applicant cannot argue that his application is any more than subjective having failed to explain what he did as head of the Drug Squad as an Inspector, which separates him from the others, along with his failure to set out full background of experience of the other candidates. In that respect it is difficult to understand why he is so peeved that there would be a degree of subjectivity applied by the PSC in their choice of candidates to be interviewed and in their choice of a recommended appointee for the post of Commissioner of Police.
- [14] The applicant asserts that given the stand taken by the Respondent PSC in relation to him then the only basis for refusal by the Respondent to have him attend an interview for the post of Commissioner of Police is irrationality, unreasonableness and discrimination. The Applicant states that the hard line taken against him means that Mr Vern Garde who was interviewed is not qualified to be so interviewed let alone appointed to the post.
- [15] It is now well known that Vern Garde was not appointed Commissioner of Police. Neither was Milton Desir who is clearly more experienced than the applicant and Moses James who also has 10 years' experience in a senior management position according to the Applicant. Severin Monchery is the other candidate and is the substantive Commissioner of Police with 14 years at a senior management level.

- [16] The applicant's beef then is with one candidate Vern Garde who was not appointed Commissioner of Police.
- [17] It is my view that this application was filed to stop Vern Garde from being appointed Commissioner of Police. This is now academic. Indeed even if this were not the situation the Applicant could only make a case against Vern Garde. Nevertheless in my view he would have to show in relation to Vern Garde that some maladministration occurred which would require the intervention of the Court by way of Judicial Review. Vern Garde should then have been made a defendant in the case so that he could respond to the allegation of maladministration involving him. This was not done. In relation to the other candidates the Applicant clearly has no case since he is not able to show equivalent experience at a senior management level.
- [18] However in the case of Vern Garde it is arguable that his appointment to a position in which he had no institutional supervisor set him apart from the others. In the applicant's case, every position which he has held was supervised by a higher ranking officer.
- [19] But it is the court's view that it cannot be that the only criteria for appointing an individual to be a Commissioner of Police would be the quantity of experience at a senior management level as distinct from the quality of performance at a senior management level. In that regard it is interesting that nothing of this kind is cited in the application. I conclude that even without addressing the respondent's reply this Application must fail because it raises no basis for interfering with any decision of the Respondent since the court is not interested in the outcome of the decision but the basis for the decision. It should be understood that there should be a prima facie case of bias or unfair procedure and not that the administrative body be called upon to defend the substance of a decision.

- [20] In support of that proposition I refer to the decision in the case of **Chief Constable of the North Wales Police v Evans**¹ where it was held that Judicial Review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the court is observed, the court would be under the guise of preventing the abuse of power, be itself guilty of usurping power. See Lord Brightman's dictum in the said case.
- [21] In **Council of Civil Service Unions v Minister for the Public Service**² at page 1196 A-F Lord Diplock explained that there are three grounds by which an administrative action is subject to judicial review. The first ground is illegality, that is, the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- [22] The second ground is irrationality, which was a concept developed in the Court of Appeal decision **Associated Provincial Picture Houses Ltd v Wednesbury Corporation**³. In coming to a decision of irrationality the court is entitled to investigate whether the local authority took into account relevant matters or came to a conclusion so unreasonable that no reasonable authority could ever make it.
- [23] The third is procedural impropriety which will depend on the subject matter of the case but involves observing rules of natural justice which include a right to notice and opportunity to be heard.
- [24] I am able to say that there is no instance in which a prima facie case of illegality, irrationality or natural justice being breached has been made out. On the latter issue of natural justice the Applicant has not argued that he was entitled to be heard before being denied being entered on the shortlist for an interview.

¹ [1982] All ER 141 at 154

² [1984] 3 WLR 1174

³ [1948] 1 KB 233

[25] A deeper analysis of the significance of the management roles played by the applicant would further assist in exposing his apparent motive.

[26] Up to 2014 the Applicant was supervised by a higher ranking officer even though he may have been the head of a squad or Division of the Force. He outlines in paragraph 9 of this affidavit that on 6th May, 2014 the then Commissioner of Police Mr Vernon Francois submitted a recommendation for acting appointments to run from 2nd June to 30th September, 2014 as follows:

1. Assistant Commissioner of Police Frances Henry to act in the post of Deputy Commissioner of Police, Vice Moses Charles.
2. Superintendent of Police Anastasius Mason to act as Assistant Commissioner of Police, Vice Frances Henry.
3. Assistant Superintendent of Police Brian Samuel to act in the post of Superintendent of Police, Vice Anastasius Mason.
4. Inspector Andre Collymore to act as Assistant Superintendent of Police, Vice Brian Samuel.

[27] This table illustrates that above Inspector there are least three tiers of senior administration in the police force. The applicant remained in a supervised post until 2016, below the rank of Superintendent, Assistant Commissioner, Deputy Commissioner and Commissioner when he applied for the position of Commissioner of Police. Vern Garde was acting as Director of Bordelais Correctional Facility at that time without institutional supervision.

[28] To be complete I will refer to the affidavit in reply from the PSC which explains the PSC's position in relation to the choice of person to be interviewed.

[29] Elma Mathurin the Secretary of the Public Service Commission in an affidavit filed on April 27th, 2016 stated at the outset that she had access to all of the records and documentation of the Commission including the personal files of all public servants.

[30] Firstly Ms, Mathurin pointed out that the Applicant was appointed by the Commission to act in the post of Assistant Superintendent of Police by the Respondent for the period April 25, 2012 to December 01, 2012. The Applicant was

subsequently promoted by the Respondent to the post of Assistant Superintendent of Police with effect from February 01, 2013. The Applicant was also appointed to act in the post of Superintendent of Police by the Respondent for a period of three (3) months from November 4, 2013 to January 31, 2014.

[31] Ms Mathurin declares her position on the question of managerial experience when at paragraph 8 of her affidavit she denied that the Applicant has acted in a managerial capacity with the Royal Saint Lucia Police Force, except for a period of three (3) months. She continued that the Applicant has held the positions of Sergeant, Inspector and Assistant Superintendent of Police in the Police Force. These positions according to the affiant are classified as grades 10, 12 and 14 respectively are not considered managerial positions within the public service or police service. Ms Mathurin characterized the positions classified as grade 14 are considered to be functioning in a supervisory capacity and not in a managerial capacity. She concluded that the Applicant was never appointed by the Respondent to hold or act in a post in the public or police service in which he was to perform duties at a managerial level save for the period of three (3) month from November 4, 2013 to January 31, 2014, when he was appointed to act as Superintendent of Police.

[32] It is clear then that the Public Service Commission does not agree with the Applicant that acting in a named position such as head of the Drug Squad which according to the Applicant is to be headed by a grade 16 officer does not put him in a managerial position, since he was not a Superintendent while he acted as head of the Drug Squad.

[33] The Secretary said in direct reply to the Applicant's insistence that he acted in a managerial position that the Public Service Commission acted in the manner outlined below.

- [34] The Respondent, which is the sole constitutional authority to appoint persons to act in the post of Superintendent of Police, never appointed the Applicant to hold or act in a grade 16 post nor in the post of Superintendent of Police which is classified at grade 16, save for the short period of 3 months from November 4th, 2013 to January, 2014.
- [35] The Applicant then clearly cannot compare himself with Monchery, Desir, James or Garde who all acted or were appointed in grade 16 positions for longer periods than 3 months.
- [36] The Secretary pointed out that the Advertisement for the post of Commissioner informed those interested that candidates who met the minimum qualifications and experience may not be considered for an interview and only the candidates with the best qualifications and experience would be shortlisted for interviews.
- [37] As stated earlier there is an element of subjectivity in the approach that any employer or agency responsible for recruitment of employees would utilize. But they must be permitted to make decisions based on principle and accepted role as they understand their application. At the end of the day the court cannot change the decision that the Public Service Commission made. The only issue before the court on an application for leave to file a Claim for Judicial Review was whether there is a prima facie case that the Respondent acted illegally, irrationally, or in breach of natural justice. I find no such prima facie or arguable case.
- [38] The decision not to consider the period when the Applicant acted as the head of the Drug Squad as a Sergeant or Inspector of Police was justifiable based on the conclusion that it was not a managerial but a supervisory position. This stance is supported by the Applicant's own description of the acting appointments in which he stood as "vice" to other ranks. Head of Drug Squad was subject to the supervision and management of others based on his own account of the rank he held at the time

or this appointment and secondly the appointment was never approved by the Public Service Commission.

- [39] The listing of Vern Garde for an interview was justified based on the fact that his appointment as acting Director of the Bordelais Correctional Facility was not merely supervisory but a managerial position.
- [40] The Application for leave to file a claim for Judicial Review is therefore dismissed.
- [41] There will be no order as to costs.

**FRANCIS H V BELLE
HIGH COURT JUDGE**

BY THE COURT


REGISTRAR