



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2013 HCV 05472**

BETWEEN	ROBERT RAINFORD	CLAIMANT
A N D	HIS EXCELLENCY THE MOST HONOURABLE SIR PATRICK ALLEN	1st DEFENDANT
AND	THE PUBLIC SERVICE COMMISSION	2ND DEFENDANT
AND	THE CHIEF PERSONNEL OFFICER	3RD DEFENDANT

Judicial Review – Whether Committee of Investigation ultra vires Constitution – whether recommendation to dismiss and dismissal lawful – whether Claimant’s right to a hearing before Governor General’s Privy Council abrogated.

Mr. Douglas Leys Q.C. Kimone Tennant and Dwayne Thomas instructed by Dwayne Thomas & Co. for the Claimant.

Nicole Foster-Pusey QC and Monique Harrison instructed by the Director of State Proceedings for the Defendants.

Heard on: 14TH MAY, 2014 and 6th June, 2014

BATTS, J.

- [1] Prior to the commencement of this matter I disclosed to the parties that I was an acquaintance of the Claimant. Our children for some years had attended the same preparatory school. Both parties indicated they were comfortable with my proceeding to hear the matter. I feel no embarrassment about proceeding to do so.

- [2] The learned Solicitor General indicated to the court that the Claimant has for some time been offered a hearing before the Governor General's Privy Council (hereinafter referred to as the Privy Council). She indicated that this position remained the same and that the Crown admits there has been an error. In effect it is conceded that dismissal ought not to have preceded a hearing by the Privy Council. It is only upon the completion of that hearing or the Claimants refusal to request such a hearing that dismissal could take effect. Mr. Leys declined to accept this olive branch. He indicated that it was his case that the entire process embarked upon was flawed.
- [3] Mr. Leys submitted in answer to the court, that it mattered not that his client and legal advisor had participated fully in the enquiry because a jurisdictional nullity cannot be waived. He relied upon **Wade on Administrative Law 10th Edition page 201** for what he said was a trite proposition of law. Save to submit that this proposition was not applicable to procedural breaches the learned Solicitor General did not take issue with the submission.
- [4] The Claimant and the Defendant each filed written submissions supported by authorities. Having regard to the learned Solicitor General's concession however the area of the submissions canvassed was significantly reduced. Prior to review of the questions of law for my determination I will summarize the fact situation which gives rise to this application for Judicial Review.
- [5] The Claimant whilst he was the Permanent Secretary in the Ministry of Justice acted as surety for bail which was offered to one Mr. Carlos Hill. That individual was charged with criminal offences related to the operation of the well known "Cash Plus" companies. The Claimant says he acted as surety because Mr. Carlos Hill was and continued to be a family friend.
- [6] The fact that he stood surety for Mr. Hill was broadcast widely on public media on or about the 18th March 2013. The fact of his having stood surety therefore came

to the attention of the Cabinet Secretary and the Public Service Commission. By letter dated 21st March 2013 the Claimant was invited to a meeting. That letter read,

“I am directed to ask that you attend a meeting with the Public Service Commission on Monday the 25th March 2013 at 9:00 a.m. at the office of the Services Commission.

The matter to be discussed is the recent revelations of your involvement in the posting of bail for Mr. Carlos Hill.

I am also directed to advise that you have the right to be accompanied by a representative of your choice to this meeting, if you so choose.

Our office is located on the 2nd Floor, Block G Ministry of Finance Office Complex, 30 National Heroes Circle, Kingston 4 and parking is available in the park opposite the complex.”

- [7] The Claimant attended that meeting accompanied by his attorney at law. He was at that meeting asked to give a written report and was instructed to go on leave. (See Affidavit of Claimant dated 8th October 2013@ Para 7). Exhibit L.P. 2 to the Affidavit of Lois Parkes is a letter dated 28 March 2013 from the Cabinet Secretary to the Public Service Commission. That letter ended with the following words,

“Mr. Rainford’s action has not only given rise to a perception of conflict of interest, but also raises questions in relation to his judgment, bearing in mind that the Offices of the Trustee in Bankruptcy and of the Director of Public Prosecutions both fall within the policy purview of the Ministry of Justice. This notwithstanding the fact (sic) that, by statute and the Constitution, respectively they enjoy operational autonomy.

In addition, my other consultations on the matter have revealed a degree of discomfort in relation to the confidence which may now be reposed in Mr. Rainford.

In the light of the foregoing and the projected hearing, I should be grateful if the Commission would consider and determine the appropriate action to be taken in this matter.”

The Prime Minister of Jamaica as well as the Chief Personnel Officer (Lois Parkes) were copied with this letter.

- [8] The Public Service Commission in response to this entreaty, considered it merited the institution of disciplinary proceedings. A letter from the Office of the Services Commission under the signature of Dr. Lois Parkes Chief Personnel Officer and dated 8th April 2013 was issued to the Claimant. The letter read,

“Further to your meeting with the Public Service Commission on March 25th 2013, I am directed to inform you that His Excellency the Governor General has given approval for disciplinary proceedings to be instituted against you as outlined in the attached charge.

I am to advise that you have fourteen (14) days within which to provide a response to the charge, indicating any grounds on which you may wish to rely on to exculpate yourself from the charge. Your response should be in writing to the undersigned.

I am to also advise that, if upon examination of your response, the commission is of the view that the matter will proceed to a disciplinary hearing, the tentative date on which this may be held is May 6th 2013. You may wish to advise your representative of same.”

- [9] The “attached charge” read as follows:

**DISCIPLINARY HEARING WITH A VIEW TO DISMISSAL
PURSUANT to Regulation 43 of the PUBLIC SERVICE
REGULATION 1961**

**To: Mr. Robert Rainford
Permanent Secretary**

**Ministry of Local Government and Community
Development**

CHARGE

**An Act prejudicial to good order and discipline
Particulars of CHARGE**

That on the 16th day of November 2010, being the Permanent Secretary employed and in charge of the Ministry of Justice, you committed an act which was prejudicial to good order and discipline in the Public Service and has brought the Public Service into disrepute, when you posted bail in the amount of fifteen Million Dollars (M\$15) for Mr. Carlos Hill, who was charged for fraudulently inducing persons to invest (Count 1) and fraudulently attempting to induce persons to invest (Count 2) in Cash Plus Limited and/or Cash Plus Group of Companies, contrary to Section 28(c) of the Larceny Act. At that time, the Office of the Trustee in Bankruptcy, which is seeking to recover money for Cash Plus Limited and/or Cash Plus Group of companies depositors, operates under the said Ministry of Justice which you were the then Permanent Secretary.”

- [10] By letter dated the 6th May 2013 the Chief Personnel Officer Lois Parkes informed the Claimant’s legal representative that “a Committee has been appointed to enquire into the charges” preferred against his client. He was also advised of the date of the hearing.
- [11] The committee of enquiry “as approved by the Governor General on the recommendation of the Public Services Commission” consisted of Mr. Michael Hylton Q.C, Ms. Lorraine Robinson and Ms. Paulette Morgan (hereinafter referred to as the Hylton Committee) see Affidavit Lois Parkes dated 24 March 2014. The hearing took place on the 20th June 2013 and the Hylton Committee gave a report dated 19 August 2013. The Committee concluded its report as follows “PS Rainford has committed an act prejudicial to good order and discipline and that the act is sufficiently serious to warrant his dismissal.”

[12] The Claimant and his attorneys (Robert Fletcher, Nadine Patterson-Flowers and Glen Thomas) attended and fully participated in the hearing before the Hylton Committee. No objection was taken to the constitution of the Committee. The Claimant did not give oral evidence before the committee and elected to rely on a written statement. The other evidence before the Committee consisted of several documents as well as written and oral evidence from Ambassador Saunders.

[13] On the 26th September 2013 at a meeting at the office of the Services Commission the Claimant was handed two letters, both of which were addressed to him. Their respective contents are the fodder for much of the submissions by Mr. Leys and I therefore quote each in full:

(a) Letter dated 25 September 2013 from the office of the Governor General,

“The Public Service Commission has advised his Excellency the Governor General that pursuant to Regulation 43 of the Public Service Regulations 1961 you should be dismissed from the Public Service with effect from 26th September 2013.

However, before His Excellency acts on this advice, you may apply for your case to be referred to the Privy Council for its consideration and recommendation to His Excellency.

If you choose to do so, then this must be done within fourteen days of you receiving this letter and you must state the grounds on which you make the application. Your application should be directed to the Office of the Services Commission.

Failure to comply with these requirements will lead to His Excellency acting on the Public Service Commission’s advice without further reference to you.”

This letter was signed by the Governor General’s Secretary and Clerk to the Privy Council.

(b) Letter dated 26th September 2013 from the Office of the Services Commission.

“I am directed to inform you that the Public Service Commission considered the report of the Committee of Enquiry, which investigated the disciplinary charge against you (attached), and in keeping with its findings, the Commission has recommended to the Governor General that you should be dismissed from the Public Service in accordance with regulation 43 of the Public Service Regulations 1961.

The Governor General has accepted the Commission’s recommendation and has given approval for your dismissal with effect from September 26, 2013.

In this regard you are kindly asked to acknowledge receipt of the attached letter from the Governor General dated September 25, 2013.”

This letter was signed by Dr. Lois Parkes Chief Personnel Officer.

- [14] By letter dated 2nd October 2013 the Claimant’s attorney-at-law requested from the Office of the Services Commission a copy of the report of the Committee of Enquiry as well as “the details of your recommendation to the Governor General that Mr. Rainford be dismissed.” By letter dated 7th October 2013 the Office of the Services Commission provided the following, rather surprising, response:

“I make reference to your letter dated October 2, 2013 requesting a copy of the report of the Committee of Enquiry, and the details of the recommendations to the Governor General that Mr. Rainford be dismissed from the Public Service.

According to regulation 33 of the Public Service Regulations 1961,

“an officer in respect of whom a disciplinary enquiry is to be held shall be entitled without charge to him to receive copies of or be allowed access to any documentary evidence relied on for the purpose of the enquiry. He shall also be given upon request a copy of the evidence (including copies of documents tendered in evidence after the enquiry is closed.”

It is to be noted that the requested documents do not fall under the category of evidence; therefore, we are unable to fulfill your request.

I have enclosed copies of the Notes of Evidence May 30, 2013, June 12, 2013 and June 20th 2013 for your perusal.”

[15] The Commission appears to have thought better of that approach and by letter dated 17th October 2013 wrote:

‘I make reference to your letter dated October 15th 2013 repeating your request for a copy of the report of the committee of Enquiry, and the details of the recommendations to the Governor General that Mr. Rainford be dismissed from the Public Service.

Subsequent to our letter dated October 7, 2013 the Public Service Commission at its meeting held on October 16, 2013 reviewed your request and have (sic) decided to forward a copy of the report. However, I am unable to give you the actual recommendation to the Governor General as it would be in breach of regulation 12 of the Public Service Regulations 1961. Notwithstanding, the usual procedure is that the Governor General would be advised of the recommendation of the Commission along with a summary, copy of the report, notes of evidence and all documents admitted into evidence.

I also note in your affidavit served upon me that you indicated, your client’s right to have his matter heard by the Privy Council was abrogated. This right is still available to you if you wish to pursue it at this time. Kindly indicate urgently whether your client wishes to pursue an appeal before the Privy Council.”

[16] By the time that letter was written the Claimant had already filed his application for leave to apply for Judicial Review on the 8th October 2013. The Order granting leave was made on the same date. Dr. Lois Parkes in her affidavit of the 24th March 2014 at Para 19 states:

“19. The Claimant has to date, failed to exercise his right and to pursue this remedy and had instead through his attorney at law expressed the view that the Claimant remains unable to invoke the Constitutional procedures to have his matter

referred to the Privy Council because of the decision to dismiss him and that only the Court may correct this. A copy of letter dated October 18, 2013 from Mr. Duane Thomas to the Office of the Services Commission is attached and marked LP8 for identification.”

[17] Mr. Douglas Leys QC has continued to maintain this position before me, even in the face of the Solicitor General's concession that an error was made. The Solicitor General indicated that it is an error to dismiss prior to the offer of an appeal to the Governor General's Privy Council. It is she said the letter of the 25th September 2013 which is correct and that the letter of the 26 September 2013 was premature. Even now she conceded, the Claimant is entitled to a hearing before the Governor General's Privy Council. Mr. Leys on the other hand submitted that this was not possible without an Order of the court quashing the letter of the 26th September 2013. He submitted that an administrative order once made is valid until and unless set aside. He submitted that “It is clear the Governor General has dismissed the Claimant and his right to have his case referred to the Privy Council has been abrogated.” He relied on the authorities of ***Smith v East Elloe Dist Council (1956) AC 736, 769-770, R v Restormel B.C exp Corbett [2001] EWCA Civ 2330, Calder Gravel Ltd. v Kirkell Metropolitan Borough Council (1989)Times 16 October and a passage at para 5-009 of Judicial Remedies in Public Law 2000 by Clive Lewis***; in support of his submission.

[18] I do not, with respect, find these authorities or indeed the proposition of law advanced, helpful in the situation before me. That principle and those authorities address a circumstance where the administrative tribunal or local government body or inferior tribunal had made an order or made a decision which it continues to uphold as valid legal and effective. The question which sometimes arises is whether the citizen who is of the opinion that the said Order or decision is a nullity, has a duty to obey or abide the order or decision until or unless a court has pronounced it null and void. The answer to that question has received differing responses even at the highest level, see the discussion of this by their

Lordships in the Judicial Committee of the Privy Council in ***Mossel (Jamaica) Ltd. v. Office of Utilities Regulation et al*** – [2010] UKPC 1; Appeal No. 0079/2009 – Judgment delivered 21st January, 2010, @ para 44.

[19] I do not need for present purposes to express a view on the matter. This is because it is pellucidly clear that the state in the case before me has resiled from the letter of the 26th September 2013. The learned Solicitor General said as much in her submissions before me. In such a circumstance the Claimant has no dilemma. He has not lost his right to have the decision reviewed by the Governor General's Privy Council. A public authority is entitled to reverse an Order or decision, and so long as this is clearly communicated to the citizen the order or decision is no longer in effect. In this case the Claimant was faced with contradictory positions emanating from the Office of the Services Commission on the one hand and the Office of the Governor General on the other hand. One might have thought that the prudent approach would have been to elect to adopt the position considered correct and to have the public authority (in this case the Services Commission) retract the other. The Claimant did not do so because he is of the view that once issued the letter of the 26th October 2013 could not be set aside without an order of the court. I hold that that is not so. The Claimant was entitled in October 2013, and up to the date when this hearing commenced, to have accepted the offer of a hearing from the Governor General's Privy Council.

[20] In Ground C of his submissions Mr. Leys argues that the proceedings are a nullity because the relevant authority failed to disclose to the Claimant the reason why it was felt the charge might attract dismissal. I do not agree. Even a cursory reading, of the charge, which was enclosed in the letter dated 8th April 2013 to the Claimant, makes clear the conduct in question and the reason why it was felt that such conduct had serious implications for the Claimant's continued employment. I find that the Claimant was duly notified of the case he had to meet and the reason the charge was laid.

[21] The Claimants other reason for continuing with this litigation is of greater moment. He contends that the Constitution of Jamaica does not allow for the appointment of a committee constituted in the manner and for the purposes of, the Hylton Committee described in Paragraph 13 above. In other words the Hylton Committee is ultra vires the Constitution of Jamaica. This forms ground D in the Claimant's written submissions and is formulated thus:

“The 2nd defendant has a Constitutional duty to enquire into charges against the Claimant and neither the 1st Defendant nor the 2nd Defendant can delegate this function to the Hylton Committee to enquire into the charge against the Claimant as the Constitution does not recognize any such Committee.’

It is submitted that the Public Service Commission abdicated its constitutional responsibility when it delegated the hearing of the charge against the Claimant to the Hylton Committee. Mr. Leys for the Claimant submitted that the Regulations pursuant to which the Hylton Committee was established must be read subject to the provisions of the Constitution. When so done, he submits, the terms of reference of the Hylton Committee are ultra vires.

[22] In Order to resolve this issue I will of course have to examine the relevant legal provisions. The relevant Constitutional provisions are as follows:

Section 125

- (1) Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor General acting on the advice of the Public Service Commission.**
- (2)**
- (3) Before the Governor General acts in accordance with the advice of the Public Service Commission that any public**

officer should be removed or that any penalty should be imposed on him by way of disciplinary control, he shall inform the officer of that advice and if the officer then applies for the case to be referred to the Privy Council, the Governor General shall not act in accordance with the advice but shall refer the case to the Privy council accordingly;

Provided that the Governor General, acting on the advice of the Commission, may nevertheless suspend that officer from the exercise of his office pending the determination of the reference to the Privy Council.

(4) Where a reference is made to the Privy Council under the provisions of subsection (3) of this section, the Privy Council shall consider the case and shall advise the Governor General what action should be taken in respect of the officer, and the Governor General shall then act in accordance with such advice

- (5)
- (6)
- (7)

Section 127

(1) The Governor General, acting on the advice of the Public Service Commission, may by instrument under the Broad Seal direct that, subject to such conditions as may be specified in that instrument, power to make appointments to such offices, being offices to which this section applies,

as may be so specified and power to remove and power to exercise disciplinary control over persons holding or acting in those offices, or any of these powers, shall (without prejudice to the exercise of such power by the Governor General acting on the advice of the Public Service Commission) be exercisable by such one or more members of the Public Service Commission or by such other authority or public officer as may be so specified.

(2) In relation to any power made exercisable under subsection (1) of this section by some person or authority other than the Governor General acting on the advice of the Public Service Commission, the offices to which this section applies are all offices in respect of which that power is, apart from this section, vested by this Constitution in the Governor General acting on such advice.

(3).....

(4) Where, by virtue of an instrument made under this section, the power to remove or to exercise disciplinary control over any offices has been exercised by a person or authority other than the Governor General acting on the advice of the Public Service Commission, the officer in respect of whom it was so exercised may apply for the case to be referred to the Privy Council, and thereupon the action of the aforesaid person or authority shall cease to have effect and the case shall be referred to the Privy Council accordingly and the Governor General shall then take such action in respect of that officer as the Privy Council may advise:

Provided that ----

(a) Where the action of the aforesaid person or authority included the removal of that officer or his suspension from the exercise of his office, that person or authority may nevertheless suspend him from the exercise of his office pending the determination of the reference to the Privy Council; and

(b) Before advising the Governor General under this subsection, the Privy Council shall consult with the Public Service Commission.

[25] Section 13 of the Constitution empowers the Governor General by regulation “or otherwise” to regulate its powers. Section 2 of the Constitution provides that if any other law is inconsistent with the Constitution the Constitution shall prevail and the other law “to the extent of the inconsistency” shall be void.

[26] The Jamaica (Constitution) Order in Council 1962 herewith referred to as the Order in Council has as its 2nd Schedule the Constitution of Jamaica. Section 2 of the Order in Council is as follows:

2. “(1) The Orders in Council specified in the First Schedule to this Order (hereinafter referred to as “the existing Orders”) are hereby revoked,

(2) Notwithstanding the revocation of the existing Orders the following Regulations –

a) The Public Service Regulations 1961

b) The Judicial Service Regulations 1961 and

c) The Police Service Regulations 1961 and

d) The Jamaica (Constitution) (Retirement of Entitled Officers) Regulations 1961, made thereunder and all amendments thereto shall continue in force subject to such adaptations or modifications as may be made thereto by or under section 4 of this Order and subject to amendment or repeal by the authority having power to amend or revoke the same.

(3)

Section 4,

- (1) “All laws which are in force in Jamaica immediately before the appointed day shall (subject to amendment or repeal by the authority having power to amend or repeal any such law) continue in force on and after that day, and all laws which have been made before that day but have not previously been brought into operation may (subject as aforesaid) be brought into force, in accordance with any provision in that behalf, on or after that day, but all such laws shall, subject to the provisions of this section, be construed, in relation to any period beginning on or after the appointed day, with such adaptations and modifications as may be necessary to bring them into conformity with the provisions of this Order.”
- (2) Without prejudice to the generality of the preceding subsection, in any law which continues in force on and after the appointed day or which, having been made before that day is brought into force on or after that day, unless the context otherwise requires-
- a) Reference to the Governor, shall in relation to any period beginning on or after the appointed day, be construed as references to the Governor General;
 - b) –(e)
 - f) References to the Privy Council shall, in relation to any such period as aforesaid be construed as references to the Privy Council established by the Constitution.
 - g) References to the Judicial Service Commission, the Public Service commission or the Police Service Commission shall, in relation to any such period as aforesaid, be construed as references respectively to the Judicial Service Commission, the Public Service Commission or the Police Service Commission established by the Constitution;
 - h)
- (3) (3) – (5)

[27] Those transitional provisions of the Instruments which heralded the Constitution of Jamaica are relevant because, and this is common ground between the parties; the Rules governing the discipline and removal of Public Officers are to be found in Pre-independence Regulations. In particular the Public Service Regulations 1961. The Title to those Regulations reads as follows: **“Regulations made under Section 81 of the Jamaica (Constitution) Order in Council 1959, preserved by Section 2 of the Jamaica (Constitution) Order in Council (1961) (made by the Governor, after consultation with the Public Service Commission on the 1st day of June 1961).** The Regulations be it noted have been amended several times since 1962 most recently in the year 2000.

[28] In those Regulations “authorized officer” is defined as an authority or public officer to whom the functions of the Governor General have been delegated pursuant to Section 80 of the Order. “Commission” is defined as “The Public Service Commission established by Section 75 of the Order.” “Order” is defined as the Jamaica Constitution Order in Council 1959.

[29] Discipline is dealt with in Part 5 of the said Regulations. Part 5 ‘A’ is entitled General. Regulation 28 (1) provides:

(1) “The Commission shall deal with disciplinary proceedings against officers in the light of reports from Permanent Secretaries and Heads of Department, or otherwise.

(2) Subject to paragraph (3) where the Commission is of the opinion that disciplinary proceedings ought to be instituted against an officer, the Commissioner may recommend to the Governor General that such proceedings be instituted.

(3)

Regulation 39 provides for an application to the Governor General within 14 days of the date an officer is informed of a recommendation being made by the Commission for his dismissal or other disciplinary penalty.

[30] Part V B of the Regulations is entitled "Proceedings". Regulation 42 treats with those proceedings in which the authorized officer is of the opinion that the misconduct alleged is not so serious as to warrant proceedings with a view to dismissal. Subsection 4 of Regulation 42 is as follows:

42 (4)

"Unless the appropriate authorized officer is of the opinion that there are circumstances which render the following offence more serious, these offences shall be regarded as not so serious as to warrant proceedings with a view to dismissal

(a) to (i)

(j) committing any act prejudicial to good order and discipline."

[31] **Regulation 43**

- 1) Subject to the provisions of these Regulations an officer may be dismissed only in accordance with the procedure prescribed by this regulation.**
- (2) The following procedure shall apply to an investigation with a view to the dismissal of an officer whose basic annual salary (whether fixed or on a scale) exceeds the prescribed salary rate-**

(a) The Commission (after consultation with the Attorney General if necessary) shall cause the officer to be notified in writing of the charge and to be called upon to state in writing before a specified day (which day shall allow a reasonable interval for the purpose) any grounds upon which he relies to exculpate himself;

(b) if the officer does not furnish such a statement within the time so specified or if he fails to exculpate himself the Governor General shall on the recommendation of the Commission appoint to enquire into the matter a Committee consisting of not less than three persons of whom the chairman shall be a Judge, Resident Magistrate, or legal officer, or some other person possessing legal qualification; the members of the

Committee shall be selected with due regard to the standing of the *officer* concerned, and to the nature of the charges made against him;

(c – j)

(k) if the Commission is of opinion that the officer does not deserve to be dismissed by reason of the charges alleged, but that the proceedings disclose other grounds for removing him from the service in the public interest it may recommend to the Governor- General that an order be made accordingly, without recourse to the procedure prescribed by regulation 26.

- (3) The procedure prescribed by paragraph (2) shall apply to an investigation with a view to dismissal of an officer whose basic annual salary (whether fixed or on a scale) does not exceed the prescribed salary rate except that the charges may if the Commission so recommends be investigated by the Permanent Secretary, Head of Department or such other officer or officers as may be appointed by the Governor General.**
- (4) Where an officer charged under this regulation admits in writing the facts giving rise to the charges, it shall not be necessary to hold an enquiry or investigation under this regulation unless in the opinion of the Commission such enquiry or investigation is likely to find such circumstances as may modify the view taken of and the punishment to be imposed for the offence.**

[32] **Regulation 47** is as follows:

“The provisions of regulations 11, 13 to 20, 28, 32, 35, 36, 38 and 43 shall apply, with such modifications as may be necessary, in relation to the exercise of any powers delegated by the Governor General pursuant to section 127 (I) of the Constitution.”

[33] I have considered carefully the submissions made by both parties in this matter. It seems to me that in order to give effect to the constitutional intent, both pre and post independence, a purposive approach to the construction is necessary. It is manifest that the Regulations enable the Public Service Commission to

investigate an officer for allegations of indiscipline and to do so by a committee. That committee is to make a report to the Commission. Upon receipt of that report the Public Service Commission will consider it and either adopt, reject or adopt with modification the report and recommendation of the committee. That then becomes the Public Service Commission's advice to the Governor General. He then (if the advice is for removal or that a penalty be imposed) shall inform the officer who then has a right to apply for the case to be referred to the Privy Council. It seems to me that we are not here dealing with a Section 127 delegation at all. I have not in any event seen the appointment under the Broad Seal necessary for same. Furthermore the Section 127 power is divesting the power to dismiss, subject, as the section says to the Governor General's residuary power to dismiss also continuing. The Hylton Committee was not exercising a power to dismiss. I hold therefore that the Hylton committee was lawfully constituted as an investigatory tribunal by the Public Service Commission.

[34] I do not find that Regulation 43 is ultra vires the Constitution as Mr. Leys submits in paragraph 51 of his written submissions (ground E). On the contrary there seems to be a clear intent to preserve that regulation. It certainly is not inconsistent with Section 125 or 127 of the Constitution. I note indeed as the Solicitor General submitted that sections 74,75,77,78 and 80 of the 1959 Constitution bear a marked similarity to sections 123, 124, 125, 126 and 127 of the 1962 Constitution. I hold that the Regulations are intra vires the Constitution of Jamaica.

[35] Even if I am wrong on this and the Hylton committee was established pursuant to Section 127, Regulation 47 expressly preserves the Section 43 procedures with respect to the Governor General's power in S. 127. This must mean that the Service Commission is empowered to establish a committee to enquire into the matter.

- [36] I therefore hold that there has been no breach of the Constitution in relation to the establishment of the Hylton Committee. The regulations, expressly saved by the Constitutional instruments of 1962, were complied with. The Hylton Committee did not purport to dismiss. A report was made to the Public Services Commission which considered the report and made a recommendation to the Governor General. This is consistent with the scheme of the Constitution.
- [37] Mr. Leys' other ground related to unreasonableness in the Wednesbury sense. He submitted that the decision to recommend dismissal and or to dismiss, in the circumstances of this case, is so unreasonable that no tribunal properly directed could have come to it. The question here is not what decision this court would have arrived at, nor even whether the decision is unreasonable; the question is whether the decision is perverse or outlandish or otherwise incomprehensible.
- [38] On the facts before the Hylton Committee and hence that known to the Public Service Commission, it seems to me that it cannot be said that its conclusion is one which no such tribunal could have arrived at. In the course of his submissions Mr. Leys indicated that the Claimant sought his legal advice whilst he was Solicitor General, and did so before standing surety. In other words the Claimant acted on the advice of the then Solicitor General of Jamaica. Mr. Leys submitted that this fact negated the primary finding of a grave lack of judgment when deciding to stand bail. This may or may not be so, however there was no such evidence before the Hylton committee nor was it brought to the Public Service Commission's attention. The Claimant was content to rely on a written statement which stated without elaboration that he had "sought verbal legal advice internally at the Ministry of Justice" and, that the advice was that "it was perfectly legal and there was no conflict of interest." There was no reference to the fact that such advice came from the Solicitor General of Jamaica. Furthermore the recommendation of the Hylton Committee is premised not on legalities but on what may be described as appropriateness. In effect the decision to dismiss is premised on a lack of trust and confidence stemming from

conduct which gave the appearance of a conflict of interest. Whether and what effect this new information will or might have had I make no comment. For present purposes it suffices to say that on the information before the Hylton Committee and the Public Service Commission this ground fails.

[39] Mr. Leys' remaining ground of complaint relates to the point conceded by the Solicitor General. The Constitution (sections 125 and 127) is clear that dismissal, where the officer elects to have the case referred to the Privy Council, cannot occur before that body considers the matter. The letter of the 26th September purporting to dismiss cannot therefore stand as it was issued even before the relevant 14 day period expired. The Claimant is entitled to have the matter considered by the Governor General's Privy Council.

[40] Before closing I should advert to a certain submission made by the Learned Solicitor General. This was that it was unnecessary and not in keeping with the dignity of his high office to name the Governor General as a Defendant to this claim. No authority was cited for the proposition and the Claimant did not directly respond. The point not having been fully argued I decline to express a final view; save to say, that the Crown Proceedings Act was passed in order to do away with archaic procedures and allow civil proceedings against the Crown to be against the Attorney General. These being Civil Proceedings one would have thought it would be sufficient to name the Attorney General as a Defendant. It is however too late in the day to suggest that the Crown is above the law and not subject to decisions of the Supreme Court of Judicature of Jamaica, particularly in a claim for Constitutional relief. To be fair I did not understand that to be the Solicitor General's contention.

[41] It is therefore Ordered and Declared:

- (a) That Certiorari do issue to bring up and quash the decision to dismiss the Claimant as is contained in the letter dated 26th September 2013.

- (b) A Declaration that the Claimant is entitled to an opportunity to consider whether he wishes the matter referred to the Privy Council as per the advice contained in the letter dated 25th September 2013.
- (c) That time for the purpose of computing the relevant 14 day period mentioned in the letter dated 25th September 2013 shall commence to run from the date of delivery of this Judgment.

I do not propose to make any Order for Costs but will hear submissions on Costs as well as with regard to any consequential Orders necessary for the carrying into effect of this my decision.

DAVID BATTS J
6th June, 2014