

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO. M 112/97

BEFORE: THE HONOURABLE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE COOKE
THE HONOURABLE MR. JUSTICE G. G. JAMES

R v. The Commissioner of Police ex parte Radwell Thompson

Arthur Kitchin instructed by H.G. Bartholomew & Company for the Applicant
Nicole Foster and Nicole Simmons instructed by the Director of State
Proceedings for the Respondent

Heard: February 18, 1998.

ORAL JUDGMENT

WOLFE, C.J.

The applicant herein Radwell Thompson enlisted as a member of the Jamaica Constabulary Force and attained the rank of Acting Corporal. He was attached to the Portland Division of the Jamaica Constabulary Force and stationed at the Port Antonio Police station in the said parish.

The Applicant applied to the commissioner of Police to be re enlisted in the Force in the month of February 1996. By letter dated the 29th day of May, 1996, issuing out of the Office of the Commissioner of Police, the applicant was advised that his application for re enlistment had not been approved.

Inspector Bish of the Portland Police averred in an affidavit dated February 11, 1998, that the said letter was served upon the applicant on Tuesday the 4th day of June, 1996 at Buff Bay in the parish of Portland at 7.15 p.m. Inspector Bish further deposed that the Applicant was requested to acknowledge service of the said letter, by signing a receipt dated June 1, 1996. The applicant refused so to do. His refusal was endorsed upon the said receipt. It is appropriate to note that Inspector Bish deposed that service of the letter dated the 29th day of May, 1996, was effected in the presence of Sergeant July of the Jamaica Constabulary Force. Exhibited with the Affidavit of Inspector Bish is a copy of the letter dated the 29th day of May, 1996 with the particulars of service duly endorsed thereon as well as the receipt referred to above.

The applicant Radwell Thompson in an affidavit dated the 17th day of February, 1998, joined issue with the Respondent, as to the service of the letter dated May 29, 1996, and stated that the first time the existence of that letter came to his attention was when he read the affidavits of the Commissioner of Police and Inspector Bish on Monday the 16th day of February, 1998.

The applicant now moves this Court for an Order of Certiorari to quash the publication of his dismissal from the force, in the Jamaica Constabulary Force Orders dated August 29, 1996, serial number 2569. He further prays an Order of Mandamus to compel the Commissioner of Police to act in accordance with the Constabulary Force Act, the Police Service Regulations, 1961, the Book of Rules

for the guidance and General Direction of the Jamaica Constabulary Force, 1988 and the Constitution of Jamaica.

It was conceded by Mr. Kitchin that the sole issue for determination by this Court is whether or not the applicant was served with the letter dated the 29th day of May, 1996, because if he were in fact served, the basis of his complaint would have been destroyed. This, in the view of the Court, is a question of fact to be resolved on a balance of probabilities.

I have already referred to the affidavit evidence of Inspector Bish relevant to the service of the letter of refusal.

The following are to be observed in relation to the documentary evidence:-

- (1) The copy of the receipt does not bear the signature of Inspector Bish.
- (2) Mr. Kitchin observed that the date of the receipt is June 1, 1996.

This observation, Mr. Kitchin contends, supports the view that it is a concoction, in that the applicant averred that he had been reporting to work up to June 8, 1996. In paragraph 7 of his affidavit the applicant states -

“On or about the 8th day of June 1996, I reported for duty at the Port Antonio Police Station and I was informed by one Inspector Bish that he had

instructions not to assign me to any duty, and I
left the said Police Station and returned home."

It is to be noted that at paragraph 7 of his affidavit the applicant states that he reported to work on the 8th day of June 1996 and was advised orally that he was not to be assigned work and without more he left. He does not attempt to depose that he questioned why he was not to be assigned work. In the circumstances, it would not be unreasonable to infer that he made no enquiry because he had been already served with the letter dated May 29, 1996 as deposed by Inspector Bish.

No where in his affidavit did the applicant say that he had reported to work between the 1st and 7th June. In fact, we find that if he had been reporting to work between the 1st and 7th of June, there would have been no necessity to serve him at his home. We further find that he turned up to work after he had been served with the notice of refusal.

The question is as Miss Foster properly stated "What was to be gained by not serving the applicant the letter dated May 29, 1996, bearing in mind the letter dated February 20, 1996, which the applicant admits receiving and in which the applicant was advised that any application made by him for re enlistment would not be recommended?" It would not be unreasonable to infer that the receipt of a letter by the Superintendent of Police for the parish of Portland that the application of the applicant had been refused would be in keeping with the Superintendent's resolve and in such circumstances we are not persuaded that

they would have failed to serve this notice of refusal upon the applicant. Worthy of note is that subsequent to June 8, 1996, the applicant makes enquiries at the Commissioner's Office, at the Police Federation's Office which is a kind of trade union to protect rights of sub officers and men of the Jamaica Constabulary Force. It is difficult to believe that someone at the Federation would not have required him to produce the letter of refusal or be aware of its existence. The applicant's affidavit clearly shows that his purpose for going to the Federation was to find out why he was not being assigned any duties. There would have been an enquiry - "On what basis was this man being prevented from assuming his duties?"

On the basis of the foregoing we are satisfied on a balance of probabilities that the applicant was duly served as deposed by Inspector Bish. Accordingly, we order that the Motion herein be dismissed. Costs to the respondent to be agreed or taxed.

COOKE, J

I agree.

G. JAMES, J.

I agree.