

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M121/2001

BETWEEN ROYBURN ROBINSON PLAINTIFF
AND SOUTH EAST REGIONAL HEALTH AUTHORITY 1ST DEFENDANT
AND THE ATTORNEY GENERAL 2ND DEFENDANT

Raphael Codlin and Ms. Simone Morris instructed by Raphael Codlin & Co. for the plaintiff.

Miss Ingrid Mangatal, Deputy Solicitor General (Ag.), instructed by Director of State Proceedings for the defendants.

Heard on 3rd, 11th April, 3rd May and 30th September 2002

Campbell J.

On the 11th August 2000, the plaintiff (hereinafter called the applicant), filed an ex-parte Summons for an

- (a) Order for leave to be granted to the applicant to apply for an Order of Certiorari to quash the decision of the South East Regional Health Authority in a letter dated 24th August 2001, addressed to the applicant, Royburn Robinson;
- (b) an Order for leave to be granted to the applicant to apply for an Order of Certiorari to quash the decision of the Chief Personnel Officer and

or the Public Service Commission, instructing the South East Regional Health Authority that the applicant should be interdicted from duty and be paid quarter salary with effect from 30th March 2001 as contained in a letter dated 24th August 2001, addressed to the applicant by South East Regional Health Authority;

- (c) an Order prohibiting the Public Service Commission and or the Chief Personnel Officer, or both, from imposing the penalties set out in paragraph 1, 2 and 3 of the letter dated 24th August 2001 until the hearing of the plaintiff's application or until the Court otherwise orders;
- (d) an Order prohibiting the Public Service Commission and or the Chief Personnel Officer and or the South East Regional Health Authority from imposing any penalty on the applicant, arising out of the said interdiction.

On the 3rd October 2001, James J. granted the application for leave sought on the ex-parte summons. Paragraph 4 of his Order stated;

Order that execution of the penalties imposed as aforesaid be stayed until a final hearing of these proceedings, that is, until the determination of the application for an Order of Certiorari.

Some five months later, on the 7th March 2002, the 2nd defendant (hereinafter called the respondent) filed a Summons to set aside paragraph 4 of Mr. Justice James' Order, on the grounds that;

- (a) The said order is ambiguous since there are no "penalties" set forth in a letter dated 24th August 2001.
- (b) The applicant failed to disclose to the Court at the time when the application for a stay was being considered that the decision to interdict the Applicant and to put him on quarter pay had been implemented from August 2001.
- (c) The order for a stay was not made in respect of "proceedings" as required by 564c(1) of the Judicature (Civil Procedure Code)(Amendment)(Judicial Review) Rules 1998.
- (d) A stay cannot be ordered in respect of a decision which has already been implemented.

The applicant seeks to impugn the letter dated 24th August 2001, on the basis it imposes "penalties" in paragraphs 1, 2 and 3, and seeks to prohibit the imposition of such penalties by South East Regional Health Authority and Public Service Commission. On the other hand, the respondents defend the letter, but seek to set aside James J. Order on the grounds, amongst others, of ambiguity in that, the letter contains no penalties as purported in the James J. said Order at paragraph 4.

Does the letter dated 24th August 2001, impose penalties on the applicant?

Counsel for the applicant has argued that what is contained in the Order is the penalty contemplated by S. 125(3) of the Jamaican Constitution, in respect of disciplinary control. He argues that the procedure mandated by S. 125 is a

precondition to the removal of the officer or the imposition of penalty by way of disciplinary control. That procedure was not followed in the applicant's case. Counsel for the respondent contends that S.125 (3) does not apply to interdiction. The relevant procedures are outlined in Public Service Regulations, particularly S.32. Further, the interdiction of the applicant is an intermediate step as opposed to imposition of a penalty, which comes at the end of a process. Section 125 (3) provides;

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.

The letter of the 24th August 2001, from the South East Regional Health

Authority to the applicant states as follows;

Mr. Royburn Robinson
10 Allerdyce Drive
Kingston 8.

Dear Mr. Robinson

Further to our letter dated 2001 March 27, this serves to advise that Chief Personnel Officer of the Office of the Services Commission has instructed that you be interdicted from duty on quarter (1/4) salary with effect from 2001 March 30, pending the institution of criminal disciplinary proceedings. In this regard your attention is invited to

Regulation 32 of the Public Service Regulation 1961 which states that "*an officer who is under interdiction from duty;*

- a. *shall give to his Permanent Secretary or Head of Department an address at which he can be found; and*
- b. *shall not leave the island without the prior permission of the Governor-General, acting on the recommendation of the commission"*

Your monthly salary after deductions will be six thousand three hundred and twenty four dollars and fifty-nine cents (\$6,324.59).

Based on the reduction in your salary, there has been an overpayment to you in the amount of two hundred and one thousand, six hundred and forty two dollars and thirteen cents (\$201,642.13). You will be required to repay this sum, consequently, you should report immediately to this office in order to arrange repayment.

Kindly acknowledge receipt of this letter by signing and returning the attached duplicate to the office as addressed above.

Yours truly,
SOUTH EAST REGIONAL HEALTH AUTHORITY,

It is contended on behalf of the applicant that the "*interdiction on quarter (1/4) salary*" and "*your monthly salary after deductions will be*" constitute the impositions of penalties for the purposes of S. 125 (3) of the Constitution.

Section 81 of the Jamaica (Constitution) Order in Council, 1959, empowers the Governor after consultation with the Public Service Commission to make Regulations, *which he considers expedient* for providing for, inter alia;

- (e) the definition and trial of offences in relation to the functions of the Commission and the imposition of penalties for such offences.

The Public Service Regulations 1961 (the Regulations) were made pursuant to the said S. 81. These Regulations were in force at the coming into effect of the Constitution and constitute existing law for the purposes of the Constitution. They were preserved specifically by S.2 of the Jamaica (Constitution) Order in Council to continue in force after the coming into effect of the Jamaican Constitution. (See comments *Lauriano (Wilfred) v Attorney-General and Another* (1995) 47 WIR 74. Pre-existing law and its construction).

It is clear that the Regulations at S.32 of Public Service Regulations provide for the interdiction of officers and the receipt by those officers of a proportion of their pay. It is however interesting to note that S. 81 of the Jamaica (Constitution) Order in Council 1959, which provides the basis for the Regulations expressly provides for the imposition of penalties in the context of disciplinary control. James J. Order, in so far as it referred to penalties, is therefore consistent and accords with the Regulations which are the relevant provisions for the exercise of disciplinary control of the applicant. The claim of ambiguity has therefore not been made out.

The next attack on the James J. grant of leave was an alleged breach of the applicant's duty to make full and frank disclosure of all relevant material. The respondent alleges that there was a failure by the applicant to disclose that he was interdicted at the time of his application on the 3rd October 2001. Before James J.,

the applicant had filed a statement and had two supporting affidavits dated 30th August 2001 and 7th September 2001, respectively. Paragraph 4 of the latter affidavit states that in the latter part of August, he was handed a letter that he had been interdicted.

The Application for Leave was filed on the 31st August 2001, on that same date, the first affidavit was filed. The notification of the applicant's interdiction came to the applicant on the 25th August 2001, and was included in his later affidavit. I agree with Counsel for the applicant that there were several references throughout the affidavits, which served to disclose to the respondents the relevant material. In any event, James J. had the relevant material before him on the 30th October 2001.

The respondent's final line of attack was to the effect that under the Judicature (Civil Procedure Code) (Amendment) (Judicial Review) Rules, 1998, particularly rule 564 (c)(11) (a) a stay may only be granted in respect of proceedings, and a decision of the Commission is not proceedings for the purposes of the rule.

With this submission, I must agree, and I find support for so holding on the authority of Minister of Foreign Affairs v Vehicles & Supplies (1989) 39 WIR 270 at page 282, Lord Oliver of Aylmerton says;

“A Stay of Proceedings is an Order which puts a stop to the further conduct of proceedings in Court or before a

tribunal at the stage which they have reached, the object being to avoid the hearing or trial taking place.....It simply means that the relevant court or tribunal cannot, whilst the stay endures, effectively entertain any further proceedings except for the purpose of lifting the stay and that in general, anything done prior to the lifting of the stay will be ineffective

The Commission's decision to advise the Governor-General that the applicant be interdicted on quarter pay with effect from the 30th March 2001, is not proceedings that are amenable to a stay.

Finally, the applicant had submitted that there was no authority which enabled this court "to pronounce upon the validity or otherwise, of what justice James had done. That is the purview of the Court of Appeal". I cannot agree, the "principal ground" upon which the Privy Council allowed the Minister's appeal in the Vehicles and Supplies is stated at page 282 of the judgment as follows: -

"Neither the Code nor the rules contain express provisions relating to the discharge of ex-parte Orders but Order 32, Rule 6 of the Rules of the Supreme Court provides in terms that "the court may set aside an Order made ex-parte". Leave granted to institute proceedings for judicial review can, in an appropriate case, be revoked by judge under this rule."

This is an appropriate case for revocation of the leave granted for Judicial Review because of the material contained in the affidavits of Charles Jones and Tanya Whyte, which my brother James J. did not have before him.

Order made in terms of defendant's summons dated 7th March 2002 to set aside paragraph 4 of James J. Order granting leave. Cost to be costs in the cause.