

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.1 OF 2004

BETWEEN:

GORDON ST. BERNARD

Appellant

and

THE ATTORNEY GENERAL

Respondent

Before:

The Hon. Mr. Albert J. Redhead

Justice of Appeal [Ag.]

The Hon. Mr. Michael Gordon, QC

Justice of Appeal

The Hon. Mr. Joseph Archibald, QC

Justice of Appeal [Ag.]

Appearances:

Dr. Francis Alexis for the Appellant; Mr. Dwight Horsford with him
Mr. Darshan Ramdhanny for the Respondent

2004: June 30;
2005: July 15.

JUDGMENT

[1] **REDHEAD, J.A. [AG.]:** This is an appeal from a decision of Master Brian Cottle in which he dismissed the appellant's claim for declarations and awarded costs in the sum of \$10,000.00 against the appellant.

[2] On 20th June 2000, the appellant who was a teacher filed a writ of summons seeking inter alia the following declarations:-

[i] A declaration that pursuant to section 4 (1) Pensions (School Teachers) Act Cap. 236, 1990 Revised Laws, Grenada, the Plaintiff is entitled to be granted a pension regarding his having occupied for not less than ten years the position of a teacher in a school in the public service of Grenada.

- [ii] A declaration that pursuant to section 5(1), Pensions (School Teachers) Act Cap. 236, the Plaintiff is entitled to have the service given by him as such a teacher from 1956 to 1968 prior to his break of service between 1968 and 1990 count for pension purposes together with the services given by him as such a teacher from 1990 to 1996.
 - [iii] A declaration that pursuant to section 7, Pensions (School Teachers) Act, Cap. 236 the Plaintiff is entitled to have his thirteen year period of service as a teacher in Jamaica count in reckoning his period of service for pension purposes in Grenada.
- [3] I make the observation that I find great difficulty in appreciating that a Master has jurisdiction to hear and determine the issues of law when there is a statement of claim and a defence notwithstanding that there was an agreement by the parties as to the facts. If the Master has the authority to adjudicate on matters such as this, then, in my view there is a serious blurring of the functions between Judge and Master.
- [4] The appellant joined the Public Service as an uncertified Assistant Teacher in May 1956.
- [5] In February, 1968 he travelled overseas on six months leave without pay. In August, 1968 the appellant wrote to the Chief Personnel Officer of the Public Service [PSC] requesting an extension of his leave to August, 1974.
- [6] On 6th January, 1969 the Public Service Commission wrote to the appellant refusing to grant further leave to him. The appellant did not return after the expiry of his leave.

- [7] In 1974 while abroad in Canada the appellant obtained a BA degree from Wilfred Laurier University and an MA degree in 1979 from the University of Western Ontario.
- [8] The appellant then served as a teacher in Jamaica for thirteen years from September, 1977 to August, 1990. On 15th October, 1990 the appellant resumed service in the Public Service of Grenada as a lecturer at the then Grenada National College now the T. A. Marryshow Community College. He continued as a lecturer until 14th October, 1996 when he retired, after attaining fifty [50] years, the age of retirement.
- [9] The appellant then applied to the Ministry of Education for a pension. He based his claim on the following grounds:-
- [i] His two periods of service 1956-1968 and 1990-1996, separated by the break 1968-1990, to be joined and treated as unbroken service.
 - [ii] A pension regarding his service in the Public Service as a teacher.
- [10] In dismissing the appellant's claim the learned Master found that the appellant resigned in 1969 "at the very latest" when he was advised that he would be granted no further leave. He held that the appellant was not at that time eligible for the grant of pension. Although he had served for more than ten [10] years he had not attained the age of fifty [50].
- [11] The learned Master also held that the appellant could not avail himself of section 5(1) of the Pensions [School Teachers] Amendment Act because the break in his service was due to his voluntary resignation.
- [12] Finally the learned Master rejected the appellant's claim that his teaching service in Jamaica could be taken into consideration for the purpose of granting him a pension in accordance with S.7 of the Pensions [School Teachers] Act:
- "S.7 subject to section 18, a teacher who has served as a teacher in Grenada and who has served as such for a period of ten [10] years or

upwards in a territory of the Caricom States may, on his retirement, be granted a pension in accordance with the provisions of this Act. Provided that such pension shall be payable only in respect of the period during which such teacher actually served in Grenada.”

[13] The appellant is dissatisfied with the judgment of the learned Master and appeals to this court.

[14] Three [3] grounds of appeal are filed on behalf of the appellant.

[a] The learned Master erred in law in ruling that the Appellant retired as a school teacher in 1969 and not on 14th October, 1996 so that the appellant is not entitled to grant of a pension under section 4(1) of the Pensions [School Teachers] Act, Cap.236 1990 Revised Laws of Grenada.

[b] The learned Master erred in law in construing section 7 of the Pensions [School Teachers] Act Cap. 236 1990 Revised Laws Grenada, to mean that the teaching service rendered by the appellant in Jamaica should not be counted together with his teaching service in Grenada from 1958-1968 so as to render him eligible for pension in Grenada.

[c] The learned Master erred in law in not ruling that the Cabinet failed to apply its mind properly or at all to the question whether the appellant's two periods of service as a school teacher should be taken as a whole as pensionable service under section 5(3) of the Act.

[15] I shall deal with the appeal in the following order: I shall give consideration to the second ground, then the third ground and finally the first ground.

[16] Dr. Alexis, learned Counsel argued on behalf of the appellant that “the Caricom connection” as he termed it entitled the appellant to a pension in Grenada. He argued that S.7 “must be catering for teachers who have not given enough service in Grenada to make them eligible for a pension based only on their service in Grenada.”

- [17] Dr. Alexis contended that the appellant is therefore entitled to a pension under S.7 when his service in Jamaica is counted, whether cognizance is taken of the service in Grenada regarding the pre-break only, or the post-break period only or both periods joined together.
- [18] Although it is difficult to determine what S.7 says, as in my opinion it is not clear drafting, I can say emphatically that S.7 does not say what Dr. Alexis is contending for [referred to above].
- [19] Dr. Alexis' argument is that the appellant's thirteen [13] years of service in Jamaica should be considered in reckoning his entitlement to pension in Grenada. In other words according to Dr. Alexis, his thirteen [13] years of service should be joined with the period of service in Grenada.
- [20] It seems to me on a reading of section 7, particularly in light of the proviso, that the appellant must first qualify for a pension in Grenada before he can take advantage of section 7.
- [21] The proviso clearly says..."**such pension shall be payable only in respect of the period during which such teacher actually served....**" A pension would not be paid for a period of four [4] years service for instance.
- [22] In this regard the learned Master arrived at the correct conclusion on this aspect of the matter.
- [23] I now turn to the third ground of appeal. Under this ground of appeal learned Counsel regarded Cabinet's refusal to join the appellant's period of service as unreasonable. He contended that Cabinet adopted an inflexible approach towards the appellant and that approach was wrong.

[24] On 12th June, 1995 the appellant wrote to the authorities requesting that his initial period of service and his second period of service be joined for pension purposes. This request was pursuant to section 5(1) and (3). Section 5(1) and (3) of Pensions [School Teachers] Amendment Act 1996 No. 4 of 1996 provides:

“S.5(1) The service in respect of which a pension will be granted shall be unbroken. Provided that service prior to a breach of service may be allowed to count for pension where the service has been interrupted by abolition of office or other temporary suspension of employment not arising from misconduct or voluntary resignation of the teacher.

(3) Notwithstanding subsection (1) where the Cabinet considers it just and equitable, so to do, the Cabinet may direct that any breach in the service of a teacher shall be disregarded and the whole of his service shall be taken as pensionable service”

[25] It is beyond dispute that Cabinet considered the appellant’s request.

[26] By letter dated 20th May, 1999 the appellant was written to, informing him that Cabinet did not approve the joining of his services.

[27] He was further told that it was not the policy of Government of Grenada to approve request to join years of service of employment in the public service after an absence of five years [letter of July 31, 1991].

[28] It is with this decision that Dr. Alexis has taken issue. He submitted that Cabinet could not legally do that because such fettering of a discretion by blindly applying a general policy is not allowed by law: **Bromley LBC v Greater London Council**¹; **R v Licensing Committee of Flint**².

[29] Learned Counsel, Mr. Ramdhanny argued that the present case is distinguishable on the facts from the above **two** cases referred to by Dr. Alexis. Mr. Ramdhanny contended that there cannot be any unforeseen circumstances after five [5] years absence from the service.

¹ [1982] 1 All ER 153

² [1957] 1 All ER 112

- [30] In addition he argued that there could not be anything unreasonable in government laying down a policy that after five [5] years there will be no joinder of service.
- [31] Mr. Ramdhanny, learned Counsel, further argued that even if this Court were to find that **Cabinet was wrong in the exercise of its discretion**, this Court cannot substitute its discretion for Cabinet's. The Court should send back the case for Cabinet to rethink the matter. I yield to these submissions because they are of substance.
- [32] In fact Dr. Alexis was contending for a similar approach i.e. in the event that this Court came to the conclusion that the discretion was improperly exercised then it should be sent back for the proper exercise of the discretion; although Dr. Alexis also urged that we should adopt the approach of the Privy Council in **Observer Publications Ltd v Matthew**³.
- [33] Finally I turn to the first ground of appeal. The appellant was employed as a teacher from May, 1956 to July, 1968. On my reckoning some twelve [12] years and 3 months.
- [34] I make this observation: in February, 1968 he was granted six [6] months leave. His leave should have taken him up to July/August, 1968. Thereafter when the appellant was refused further leave and he continued on his leave of absence, it must, as a matter of common sense and logic, be taken that the appellant voluntarily gave up his job. Moreover the appellant was afterwards employed in the Teaching Service of Jamaica for a period of thirteen [13] years. In my judgment it does not conform to **reason or common sense to argue that** the appellant did not retire from the Teaching Service of Grenada until 1996. In other

³ (2001) 58 W.I.R. 188

words, it cannot be said that while he was employed by the Jamaica Government he was also employed by the Grenada Government as a teacher.

- [35] Dr. Alexis holds this view because he says that when the Government of Grenada refused to extend the appellant's leave and he remained abroad in order for him to have retired from the Service, S.41 of the Public Service Commission Regulations should have been invoked. S.41 (1) reads as follows:-

“An officer who is absent from duty without leave for a period of one [1] month may be declared by the Commission to have resigned his office and thereupon the office becomes vacant and the officer ceases to be an officer.”

- [36] In my judgment the appellant was engaged on a contract of employment. If, therefore, he absents himself from work without the consent and/or permission of his employer he would have unilaterally terminated his contract.

- [37] However, as I have said above the appellant had served about twelve [12] years and three [3] months before he left the service. Is he eligible for pension? Dr. Alexis contended on behalf of the appellant that he served for a period of public service for not less than ten [10] years.

- [38] At the date of his retirement he had already attained the age of fifty [50] years, he was then sixty [60] years of age. Dr. Alexis submitted that these are the factors applicable to the appellant in receiving a pension by virtue of S.4(1) Pensions [School Teachers) Act Cap 236, 1990 Revised Laws of Grenada. Section 4(1) provides:

“Subject to the provisions of this Act, a teacher who has occupied for not less than ten [10] years the position of a teacher and who has attained the age of fifty years on retirement be granted a pension as provided in this Act.”

- [39] In interpreting the provision of this section, everyone, it seems to me, accepts the position that in order for a teacher to qualify for a pension he must serve ten [10]

years **and** attain the age of fifty [50] years. Both events must occur at the same time in order to qualify.

[40] I ask the simple question, what qualifies one for a pension? In other words, what is rewarded? Is it the service one gives or the persons age? I would have thought it is the former.

[41] Take for example, a person who is forty [40] years old and joins the teaching service. He works for 10 [ten] years, he gets a pension because he is qualified under the section according to the argument, whereas a person who joins the service at twenty [20] years works for twenty nine [29] years. He is now age forty nine [49]. According to the argument he is not qualified under the section to receive a pension. Certainly that could not be equitable and just as in relation to the forty nine [49] year old man. My interpretation of the section is that one qualifies for a pension after ten [10] years unbroken service but that pension is not payable until that person attains the age of fifty [50] years.

[42] The appellant is therefore entitled to be paid a pension in respect of the twelve years which he served up to the time of the refusal of the extension of his leave.

[43] Costs to the appellant in the sum of \$6,666.00.

Albert J. Redhead
Justice of Appeal [Ag.]

I concur.

Michael Gordon, QC
Justice of Appeal

I concur.

Joseph Archibald, QC
Justice of Appeal [Ag.]