

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 10 of 1988

BETWEEN:

THE PUBLIC SERVICE COMMISSION

and

THE ATTORNEY GENERAL OF THE
COMMONWEALTH OF DOMINICA

- Defendants/Appellants

and

DARNELL SHILLINGFORD

- Plaintiff/Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Byron (Acting)

Appearances: Alick Lawrence and J. Johnson for the appellants
A. Astaphan for the Respondent

1990; Sept. 17,
1991; Apr. 29.

JUDGMENT

BYRON, J.A.:

On 10th February, 1988 the respondent issued an originating summons seeking declaratory Orders that decisions, of the Government of Dominica, the Permanent Secretary in the Ministry of Communications, Works and Tourism and the Public Service Commission retiring him from the Public Service with effect from 1st July, 1982 and as to his entitlements to emoluments, other financial benefits and pensions, communicated to him in letters of 26th May, 1982 and 7th July, 1982 are null, void and of no effect.

After obtaining leave to enter a conditional appearance the appellants issued a summons on 9th March, 1988 to set aside the originating summons on the ground that the action was barred by section 2(a) of the Public Authorities Protection Ordinance, Cap. 15.

This preliminary issue came on for hearing. The only evidence before the learned trial Judge was contained in the affidavits of the respondent and the letters and documents exhibited therewith.

On 30th November, 1988 judgment was given refusing to set aside the originating summons. This appeal is against that judgment.

/The appellant.....

The appellant has challenged the rulings of the trial Judge that (1) when the Public Service Commission purported to remove the respondent from office after his post had been abolished there was a breach of natural justice;

(2) the decision of the Public Service Commission to terminate the appointment of the respondent whose post was abolished was a nullity;

(3) that the Public Service Commission was not protected within section 2(a) of the Public Authorities Protection Ordinance.

The Respondent, Darnell Shillingford, was employed in the Public Service of Dominica. On 1st July, 1972 he had been appointed to the post of Assistant Superintendent in the Ministry of Communications and Works.

By letter dated 26th May, 1982 the Permanent Secretary of the Ministry of Communications, Works and Tourism, wrote the respondent a letter which included the following paragraphs:

"I have to inform you that Government has decided to abolish the post of Assistant Building Superintendent with effect from 1st July, 1982 as part of the measures taken for the purpose of facilitating improvements in the organisation of the building section of the Public Works Division of the Ministry of Communications and Works.

This decision has been referred to the Public Service Commission for its decision as regards your retirement from the Public Service."

By letter dated 7th July, 1982 the Permanent Secretary again wrote the respondent:

"Further to my letter PF. 197 of 26th May, 1982 in which you were notified that the post of Assistant Building Superintendent would be abolished with effect from 1st July, 1982, I have to inform you that the Public Service Commission has approved of your retirement from the Public Service with effect from 1st July, 1982."

It is significant that this letter did not come from the Public Service Commission.

The learned trial Judge found that the Public Service Commission had not made any such approval at the time that letter was written, and that the allegation that the respondent's retirement from the Public Service, was approved by the Public Service ~~was~~ untrue. She further ruled that the Permanent Secretary did not have any statutory authority to terminate the appointment of the respondent and that this letter of 7th July, 1982 being based on the false /statement of.....

statement of fact that the Public Service Commission had so ordered was null void and of no effect.

No argument was directed against this ruling of the Judge, and I agree that if the Public Service Commission had not in fact exercised its constitutional powers to remove the respondent from office the false statement by the Permanent Secretary that it had done so could have no legal effect whatsoever.

Some four years later by letter dated 27th May, 1986 the Secretary of the Public Service Commission wrote the respondent a letter which included the following paragraphs:

"Section 85(1) of the Commonwealth of Dominica Constitution Order, 1979, provides inter alia, that the power to appoint persons to hold or act in offices in the Public Service, and the power to remove such persons shall rest in the Public Service Commission. Also section 20 of the Public Service Commission Regulations, S.R. & O. No. 31 of 1975, provides for the termination of a post by the Public Service Commission where that post has been abolished.

The authority to retire an officer is therefore vested in the Public Service Commission Regulations, S.R. & O. No. 31 of 1975 and not in the Pensions Ordinance, Cap. 235 as purported by you.

The records clearly show that in the Public Service Commission 22nd July, 1982, the Commission approved termination of your appointment (in addition to others), your post being abolished with effect from 1st July, 1982.

Finally, although the post of Building Control Officer has been established in the Ministry of Communications and Works, the duties attached to this post are different to those done by you while you served as Assistant Building Superintendent, Ministry of Communications and Works."

The Judge acted on the basis that the statement in the letter from the Secretary of the Public Service Commission dated 27th May, 1986 was evidence from which it could be concluded that the Public Service Commission decided to remove the respondent from office under Regulation 20 of the Public Service Commission Regulation S.R. & O. No. 31 of 1975, which reads:

"Where a post, which is one of a number of such posts, has been abolished but one or more such posts remain the Permanent Secretary shall make a report thereon to the Secretary stating his recommendations with reasons thereon as to which substantive holder of such post shall have his appointment terminated for consideration and determination by the Commission."

/The learned....

The learned trial Judge stated her findings in these terms:

"I therefore conclude that in May and July, 1982 there was only one post of Assistant Building Superintendent in the Ministry of Communications and Works.

I am satisfied that Regulation 20 makes no reference to termination of a single appointment in a Ministry or Department and there is no authority so to do.....

Consequently, the purported termination of the plaintiff's appointment is unlawful, void and of no effect."

No argument was directed against the Judge's ruling that this purported termination was not authorised by the said statutory provision. In my view the ruling is correct.

The Judge also found that there was a denial of natural justice. The respondent was given no prior notification of any enquiry, nor was he given any opportunity to be heard in relation to his retirement from the Public Service Commission, nor was he given any information from the Public Service Commission that it had removed him from office, until the letter of 27th May, 1986 after some 4 years had elapsed. The learned trial Judge ruled that the denial of natural justice made the decision null, void and of no effect.

Counsel for the appellant's argument briefly put was that Professor Wade's distinction between ouster clauses and limitation clauses was pertinent to the Public Authorities Protection Ordinance and the Court should consider itself barred from undertaking any enquiry into the validity of the respondent's dismissal because more than 6 months had elapsed before the proceedings were instituted.

In the case of Smith v East Elloe Rural District Council (1956) 1 All E.R. 855 the appellant had claimed against the District Council that it had wrongfully and in bad faith made or confirmed a compulsory purchase order against him. The respondents had the writ struck out because paragraph 16 of the relevant legislation specifically prescribed that a compulsory purchase order could not be questioned in any Court proceedings. This was subject to para. 15 which prescribed that any person aggrieved may question in the High Court the validity of the order or certificate issued on the ground of non compliance with the Act or any regulation made thereunder within 6 weeks. The majority of the House of Lords held that para. 16 ousted the jurisdiction of the Court to try

/issues whereby.....

issues whereby the validity of the compulsory purchase order was brought into question.

In discussing whether the Court should read into the plain words of the Statute some limitation to provide a remedy where bad faith was alleged, Viscount Simmonds at 858 said:

"It is our plain duty to give the words of an Act their proper meaning and, for my part, I find it quite impossible to qualify the words of the paragraph in the manner suggested..... What is abundantly clear is that words are used which are wide enough to cover any kind of challenge which any aggrieved person may think fit to make..... But, it is said, let those general words be given their full scope and effect, yet they are not applicable to an order made in bad faith. But, my Lords, no one can suppose that an order bears on its face the evidence of bad faith. It cannot be predicated of any order that it has been made in bad faith until it has been tested in legal proceedings, and it is just that test which para. 15 bars."

References were also made to Lord Radcliffe's speech at p. 871, letter G. where he discussed the effect of nullity. "At one time the argument was shaped in the form of saying that an order made in bad faith was in law a nullity and that consequently all references to compulsory purchase order in para. 15 and para. 16 must be treated as references to such order only as had been made in good faith. But this argument is, in reality, a play on the meaning of the word nullity. An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders. And that brings us back to the question that determines this case: Has Parliament allowed the necessary proceedings to be taken? I am afraid that I have searched in vain for a principle of construction as applied to Acts of Parliament which would enable the appellant to succeed".

In 1969 there was the case of Anisminic Ltd. v Foreign Compensation Commission (1969) 2 A.C., 147. In that case the House of Lords had to decide whether section 4(1) of the Foreign Compensation Act 1950, that "the determination.....of any application.....shall not be called in question in any court of law" ousted their jurisdiction in the matter before them.

Lord Pearce at page 199, had this to say:

"It has been argued that your Lordships should construe "determination" as meaning anything which is on its face a determination of the commission including even a purported determination which has no jurisdiction.

/It would,...

It would seem that on such an argument the court must accept and could not inquire whether a purported determination was a forged or inaccurate order which did not represent that which the commission had really decided. Moreover, it would mean that however far the commission ranged outside its jurisdiction or that which it was required to do, or however far it departed from natural justice its determination could not be questioned. A more reasonable and logical construction is that by "determination" Parliament meant a real determination, not a purported determination. On the assumption, however, that either meaning is a possible construction and that therefore the word "determination" is ambiguous, the latter meaning would accord with a long-established line of cases which adopted that construction.

Undoubtedly such a provision protects every determination which is not a nullity. But I do not think that it is necessary or even reasonable to construe the word "determination" as including everything which purports to be a determination which is in fact no determination at all. And there are no degrees of nullity.

The case which gives most difficulty is *Smith v East Elloe Rural District Council* (1956) A.C. 736..... almost the whole of the argument was on the question whether a time limit in the Act applied where fraud was alleged; there was no citation of the authorities on the question whether a clause ousting the jurisdiction of the court applied when nullity was in question, and there was little about this matter in the speeches. I do not therefore regard this case as a binding authority on this question. The other authorities are dealt with in the speeches of my noble and learned friends, and it is unnecessary for me to deal with them in detail. I have come without hesitation to the conclusion that in this case we are not prevented from inquiring whether the order of the commission was a nullity."

Professor Wade at page 737 explained the distinction between these two cases as follows:

"The question therefore is whether an order protected by a time-limited ouster clause can be challenged in proceedings brought after the expiry of the time limit on any of the grounds which would render it ultra vires, such as bad faith, wrong grounds, or violation of natural justice, in accordance with the principle of the *Anisminic* case.

Both reason and authority dictate a negative answer..... But more probably the court would, despite the *Anisminic* case make a radical distinction between absolute ouster clauses and time-limited ouster clauses. The latter might well be regarded not as ousting the jurisdiction of the court but merely as confirming the time within which it can be invoked. In other words,

/clauses of.....

clauses of this type might be regarded as analogous to Statutes of Limitation, setting limits of time within which action need be brought. There is no judicial criticism of Statutes of Limitation as 'ousting the jurisdiction of the court', though this is exactly what they do; and the courts formerly made no difficulties about enforcing the Public Authorities Protection Act 1893 (repealed in 1954) which set a time limit of six months, later extended to a year, on actions against Public Authorities acting in execution or intended execution of any Act of Parliament. On this basis the East Elloe and Anisminic decision can be reconciled."

Cases were cited in support of this proposition. There were two cases from Canada:

Re Clements and Toronto 20 D.L.R. (2d) 497 where Laidlaw J.A. at 499 said:

"It is provided in the clearest possible language that, subject to certain exceptions, "an application to quash, in whole or in part,.....shall not be entertained unless made within one year after the passing of the by-law". There is no ambiguity whatsoever in that language. The effect of it is perfectly plain. The Court is precluded from entertaining and is forbidden to entertain an application to quash a by-law not made within one year after the passing of the by-law."

And Re Canadian Pittsburgh Industries and International Association of Bridge, Structural & Ornamental Ironworkers, Local Union 725 et al, 77 D.L.R. (3d) 581 where McDonald, J. said at 583:

"Section 51(2) is a privative clause. It has the effect of precluding judicial review of the Board's decisions.....where the question is whether the Board has acted within its jurisdiction."

After considering the Anisminic case and others which followed it he went on to say at 587:

"Therefore, s.51(2) of the Alberta Labour Act, 1973, will not prevent judicial review where the ground on which review is sought will, if established, constitute a lack of jurisdiction in one of the ways Lords Reid and Pearce spoke of.

However, a time-limit of the kind imposed by s.51(3) has not been interpreted in any case of which I am aware, as other privative clauses have been. Nor, in England, was Prof. H.W.R. Wade able to locate any such case."

In the case of R v Secretary of State for the Environment ex parte Ostler (1976) 3 All. E.R. 90, Lord Denning M.R. had this to say in a case where there was a challenge to a compulsory purchase order, on the ground that.....

ground that it was a nullity, made long after the 6 week period of limitation prescribed in the relevant legislation had expired.

At 92:

"We are here presented with a nice question. Is Smith v East Elloe Rural District Council a good authority? or has it been overruled by Anisminic v Foreign Compensation Commission?"

At 95:

"In these circumstances, I think that Smith v East Elloe Rural District Council must still be regarded as good and binding on this court. It is readily to be distinguished from the Anisminic case. The points of difference are these.

First, in the Anisminic case the Foreign Compensation Act 1950 ousted the jurisdiction of the court altogether..... Whereas in Smith v East Elloe Rural District Council the statutory provision has given the court jurisdiction to enquire into complaints so long as the applicant comes within six weeks. The provision is more in the nature of a limitation period than of a complete ouster.....

Secondly, in the Anisminic case the House was considering a determination by a truly judicial body.... Whereas in Smith v East Elloe Rural District Council the House was considering an order which was very much in the nature of an administrative decision.....

Third, in the Anisminic case the House had to consider the actual determination of the tribunal, whereas in Smith v East Rural District the House had to consider the validity of the process by which the decision was reached."

We were also referred to an Australian case N.J. Burr Ltd. v Blenheim Borough Council (1990) 2 NZLR 1 which high lighted the approach of the Australian Courts in exercising their supervisory jurisdiction over Administrative authorities.

Per Cooke J. at p.4:

"When a decision of an administrative authority is affected by some defect or irregularity and the consequence has to be determined, the tendency now increasingly evident in administrative law is to avoid technical and apparently exact (yet deceptively so) terms such as void, voidable, nullity, ultra vires. Weight is given rather to the seriousness of the error and all the circumstances of the case. Except perhaps in comparatively rare cases of flagrant invalidity, the decision in question is recognised as operative unless set aside. The determination of the Court whether to set the decision aside or not is acknowledged to depend less on clear and absolute rules than on overall evaluation; the discretionary nature of judicial remedies is taken into account."

/These cases.....

These cases reflect important principles. They emphasize that the Court must examine the relevant statute and interpret it in accordance with strict legal principles of construction. When a statutory provision takes away the jurisdiction of the High Court to enquire into the validity of orders made by inferior tribunals it is necessary to distinguish (1) whether the order is administrative or judicial and (2) whether the clause ousting jurisdiction does so absolutely or merely imposes a limited time within which proceedings to test the validity of the order can be instituted. Where the order is administrative and the clause merely limits the time within which proceedings may be instituted the time limit will be absolutely enforced. Where the order is judicial and the ouster clause absolute the court will enquire whether it is a real order or a purported order and one which is in fact null and of no effect.

The Public Authorities Protection Act was raised in two Caribbean cases referred to us.

In the Jamaica case of Lloyd v The Jamaica Defence Board et al, Supreme Court Civil Appeal No. 59/78, delivered on 19th June, 1981, the appellant was a Lt. Colonel in the Jamaica Defence Force. He alleged that on 27th April, 1977 he was summoned to a meeting of the Defence Board and was interrogated and later the same day he received a letter of even date signed by the Secretary of the Defence Board calling on him to retire under Regulation 10 of the Defence (Officers) Regulations 1962 - which deals with compulsory retirement. On 28th April, 1977 he tendered his resignation. He issued a Writ and alleged that the Defence Board was not properly constituted and acted contrary to natural justice. The respondents took the preliminary issue that the Writ and Statement of Claim should be struck out because the Writ was issued on 20th November, 1978 more than one year after the acts complained of and therefore they were entitled to rely on the Public Authorities Protection Act. The issue with regard to the Constitution of the Defence Board was rejected by the Court on the basis of the facts alleged or lack of them. All three members of the Court of Appeal supported the respondent's proposition with regard to the period of limitation, and rejected the appellant's contention that since he alleged that there was a breach of natural justice the Court should enquire whether the order made was a nullity and, if it was, deprive the respondent of the benefit of protection under the Public Authorities Protection Act.

In Lloyd's case there was a judicial order and a time limit clause. In that case the Defence Board conducted a judicial hearing giving the appellant prior notice and an opportunity to be heard. The alleged

/breaches.....

breaches of natural justice occurred during the proceedings. An order was delivered to the appellant by letter on the conclusion of the hearing. The Court held that the Public Authorities Protection Ordinance ousted its jurisdiction to enquire into the alleged breaches of natural justice after the time limit had expired.

There is an important difference between the facts of Lloyd's case and Shillingford's case now under consideration. In this case the Public Service Commission never embarked upon any judicial hearing, nor did it give the respondent any prior notice nor an opportunity to be heard. It did not even give him notice of its order until some four years had elapsed and the time limit under the Public Authorities Protection Ordinance had long expired.

The Antigua case of Public Service Commission v Davis & Others (1984) 33 W.I.R. 112 is important, it comes from this jurisdiction. Counsel for the appellant invited the Court to consider that it was per incuriam because *Smith v East Elloe* was not referred to in the judgment and it was wrong in principle.

In that case teachers in Antigua were charged with criminal offences. The Public Service Commission Regulations 1967 precluded the institution of disciplinary proceedings before the conclusion of any criminal proceedings arising out of the same circumstances. On 1st January, 1979, the Public Service Commission sent letters dismissing the teachers summarily in the public interest before the conclusion of criminal proceedings. In addition the statutory procedure for dismissal was not followed in that no letter was sent advising them of the charges against them, nor were they given any opportunity to be heard, nor was any enquiry held before the decision was taken to dismiss them in the public interest. In September, 1979 the teachers, the respondents, applied to the High Court for declarations that the dismissals were null and void. The appellants, the Public Service Commission contended inter alia that the summonses were filed more than six months from the act of dismissal and that it was entitled to rely on section 2(a) of the Public Authorities Protection Act. The Court of Appeal rejected the contention of the Public Service Commission.

Robotham J.A. as he then was expressed the judgment of the Court in these terms at p. 120:

"I do not think that this can be a matter of dispute and, if what was being complained of here was merely that the commission in retiring these officers had breached its own procedure and gone wrong within its jurisdiction, then different considerations would have

/arisen.....

arisen. Their actions then could possibly be said to be voidable only. The same could be said if it was only a breach of natural justice which had been committed. That also could make the decision voidable. What in fact transpired here, however, was that a condition precedent to the Commission's assuming jurisdiction, namely the termination of the criminal proceedings, had not been satisfied; and having improperly and/or prematurely assumed jurisdiction it failed to follow its own procedure, and completely ignored the rules of natural justice. In short, it did nothing right.....

It is the duty of a court to attribute autonomy of decision to tribunals when they act within their designated area. On the other hand, the court must also ensure that the limits of that area which have been prescribed for them are observed. I am of the view that in this case the Public Service Commission acted without jurisdiction when it purported to dismiss the respondents on 1st January, 1979. This lack of jurisdiction stemmed from the failure to ensure that the condition precedent to its assuming jurisdiction, namely the termination of criminal proceedings had been satisfied. That, and what followed, amounted to a complete disregard of its own procedure and a breach of the rules of natural justice. Taken as a whole, I am of the opinion that the act of dismissal in each case was a nullity. That being a nullity, it can create no sanction nor can it give rise to any privileges or immunities. Therefore, it is not entitled to the protection of the Public Authorities Protection Act."

In my opinion this decision is not inconsistent with the East Elloe case as Counsel contended.

The Public Authorities Protection Ordinance, Cap. 15, section 2(a) reads as follows:

"2. Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Ordinance, or of any public duty or authority or any alleged neglect or default in the execution of such act, duty or authority, the following provisions shall have effect -

- (a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof."

This provision seems to require that the Public Authority seeking to claim its protection must be able to show that the proceedings were for an act done, or default, in pursuance or execution or intended execution of some Act or Ordinance or of a public duty or authority.

/In this.....

In this case the respondent was alleging that he was a member of the Public Service and that the purported termination of his employment was wrongful.

In the case of Ridge v Baldwin (1964) A.C. 40 when he was considering the case where a person was dismissed from an office where there must be something against a man to warrant his dismissal Lord Reid said:

"There I find an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation."

In Gerriah Sarrao (1969) 14 W.I.R. 361 at 367 Crane, J.A. after discussing the principles at some length said:

"Therefore, no one ought to be left in any doubt that proceedings relating to removal from office in the Public Service are by nature judicial....."

In the case of Endell Thomas v Attorney General for Trinidad & Tobago (1982) A.C. 113 the Privy Council considered the power of removal exercised by the Police Service Commission by virtue of the Constitution of Trinidad and Tobago. At page 126 Lord Diplock said:

"To "remove" from office in the Police Force in the context of section 89(1) in their Lordships' view, embraces every means by which a police officer's contract of employment (not being a contract for a specific period) is terminated against his own free will, by whatever euphemism the termination may be described, as for example, being required to accept early retirement.

In their Lordships' view there are overwhelming reasons why "remove" in the context of "to remove and exercise disciplinary control over" police officers in section 88(1) and in the corresponding sections relating to the other public services must be understood as meaning "remove for reasonable cause" of which the Commission is constituted the sole judge, and not as embracing any power to remove at the Commission's wish."

In Dominica the Constitution establishes the powers and duties of the Public Service Commission. These are intended to give security in their employment to officers in the Public Service.

"85(1) The power to appoint persons to hold or to act in offices in the Public Service (including the power to confirm appointments), and subject to the provisions of section 93 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission."

/Section.....

Section 121(8) of the Constitution specifically prescribes:

"References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the Public Service."

In my judgment section 85(1) of the Constitution of Dominica imposes a public duty on the Public Service Commission in exercising the power of removal of persons from the Public Service to act judicially. This includes "retirement from the Public Service" or "termination of appointment" or whatever other "euphemism" was used to describe the removal from office.

The judicial exercise of this power requires that prior notice be given of the hearing and that the person to be removed had an opportunity to be heard. It also requires that the removal be carried out under some lawful authority giving the Public Service Commission jurisdiction to take the decision it takes.

On the facts in this case it is clear that the Public Service Commission did not conduct any judicial hearing. The failure to give prior notice and to afford the respondent an opportunity of being heard are breaches of natural justice which denies the forum, at which the decision was taken, of the character of a judicial hearing. Further the section under which the Public Service Commission made its ruling did not give them any jurisdiction to approve the termination of the respondent's appointment, so that there was no jurisdiction to make the order made. The matter was compounded when it transpires that the respondent learns of the decision of the Public Service Commission some 4 years after it is made and long after the time limit on which the Public Service Commission now seeks to rely had expired. The comment made in Public Service Commission v Davis is most appropriate here. "In short (the Public Service Commission) did nothing right". It seems to me that in this case we have to follow the decision in Davis (supra).

If one were to apply the plain meaning of this section as Counsel has urged it would seem that the appellant must be able to show that the respondent's proceedings were for an act done, or a default, in pursuance or execution or intended execution of some act or public duty.

Under the provisions of the Constitution section 85(1) the respondent could not be removed from office except as a result of a decision taken by the Public Service Commission after undertaking a judicial exercise which involved giving the respondent prior notice and an opportunity to be heard.

/The facts.....

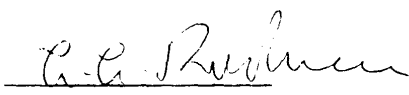
The facts which have been found are that the Permanent Secretary purported to terminate the respondent's employment by letter dated 7th July, 1982 in which he falsely stated that the Public Service Commission had approved of his retirement from the Public Service. That was not an act done by or a default of the Public Service Commission nor was it an act done by or a default of the Permanent Secretary in pursuance of or execution or intended execution of any act or public duty.

The Public Service Commission "approved the said termination" on the 22nd July, 1982, but in addition to the fact that (a) there was no termination to approve and (b) section 20 of the P.S.O. No. 31 of 1975 did not give the Public Service Commission any jurisdiction to remove the respondent from office, the Public Service Commission did not embark upon any judicial exercise, nor did it give the respondent any prior notice nor an opportunity to be heard.

As I see the facts in this case, one cannot point to an Act or public duty under which the appellant could be said to have acted. The appellant has therefore failed to show that these proceedings are protected by the Public Authorities Protection Ordinance.

I would dismiss the appeal with costs.

C.M.D. BYRON,
Justice of Appeal (Acting)


L.L. ROBOTHAM,
Chief Justice


G.C.R. MOIR,
Justice of Appeal