

IN THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
Civil Division**

SAINT LUCIA

CLAIM NO: SLUHCV2024/0007

BETWEEN:

CHERYL MC CLAUREN

Claimant

-and-

THE PUBLIC SERVICE COMMISSION

Defendant

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances: Mr. Alvin St. Clair for the Claimant
Mrs. Grace Ward – Glasgow for the Defendant

2025: March 10 – Trial
April 30 – Closing Submissions
June 10 – Decision

JUDGMENT

**Claim for Judicial Review of the Defendant's decision not
to retroactively appoint and reclassify the position of the Claimant – Illegality,
Irrationality and Procedural Impropriety**

INTRODUCTION:

[1] **PARIAGSINGH, J** : -This is a claim for judicial review¹ by which the Claimant seeks the following relief:

“1. A declaration that the decision appointing the Claimant effective 19th December 2022 is wholly unfair and an egregious infringement of the Claimants rights.

¹ Filed on January 10, 2024

2. An Order quashing the decision contained in letters of April and May 2023 to the effect that the Claimant's appointment is to take effect from 19th December 2022.
3. An Order that the Claimant's effective date of appointment is September 2009.
4. Further and other Relief as deem just by the court.
5. Costs."

[2] The core issue for determination is whether the Public Service Commission (PSC) acted unlawfully, irrationally, or unfairly in appointing the Claimant effective December 19, 2022, rather than from September 2009, as she claims should have been the case pursuant to Cabinet Conclusion 1160 of 2009.

[3] An important concession was made by Counsel for the Claimant at the commencement of trial. That is, even if the Court finds merit in the Claimant's case, the Court could not grant the relief of making the Claimant's effective date of appointment September 2009 as opposed to the stated date of December 2022. That concession is further discussed later in this judgment. I felt it necessary to refer to it at the beginning for context.

PROCEDURAL HISTORY OF THIS CLAIM:

[4] This is a judicial review claim originally commenced against the Attorney General of Saint Lucia on January 10, 2024. Early in the management of the case, on April 30, 2024, the Claimant was granted leave to substitute the PSC as the Defendant without objection from Counsel from the Attorney General's Chambers on the Claimant's application filed on March 11, 2024.

[5] Almost immediately upon coming into the matter, the Defendant filed an application to strike out the claim on June 06, 2024. The basis of this application was that the claim disclosed no cause of action. This application was contested and heard on July 24, 2024. On October 21, 2024, I dismissed the application to strike out with costs to the Claimant and gave directions for the claim to go to trial on December 11, 2024.

- [6] In the interceding time, the Claimant applied for permission to lead expert evidence at the trial. This application was also opposed by the Defendant, leading to the trial date having to be vacated for the Court to rule on the Claimant's application. On January 23, 2025, the Court gave its ruling on the Claimant's application to lead expert evidence, allowing the application. Directions were also given for the filing of the expert's evidence and a new trial date of March 10, 2025, was fixed.
- [7] I felt it necessary to set out the above procedural history to explain the delay in the determination of this claim, in particular, to understand why an administrative claim filed in January 2024 only came on for trial in March 2025.

BACKGROUND FACTS:

- [8] The Claimant was appointed as Information Technology Manager II with the Ministry of Communications, Works, Transport, and Public Utilities, effective July 6, 2009. Her role included overseeing the Ministry's ICT infrastructure and related responsibilities.
- [9] The Claimant asserts that Cabinet Conclusion 1160 of 2009, dated September 24, 2009, established a Public Service-wide reclassification of ICT professionals, including her post. She contends that this decision mandated her reclassification and subsequent appointment at Grade 17 from that time.
- [10] The PSC, however, only appointed her effective December 19, 2022, based on Cabinet Conclusion 824 of 2022, which it received via recommendation from the Department of the Public Service. The Claimant argues that this was unlawful and a failure to take into account the correct Cabinet Conclusion (1160 of 2009).
- [11] The Claimant further asserts that appointments were made under Cabinet Conclusion 1160 of 2009 for other ICT professionals, and that her post was clearly part of the reclassification exercise. She claims that the PSC did not conduct any due diligence in verifying whether she should have been reclassified earlier.

[12] The PSC, on the other hand, argues that Cabinet Conclusion 1160 of 2009 did not explicitly reclassify her post and that its decision was based entirely on the recommendation from the Department of the Public Service, which stated that her reclassification was effective December 19, 2022. The PSC contends that it has no legal authority to determine effective dates of appointments, as this falls under the government's jurisdiction as the employer.

[13] The PSC also contends that it was under no obligation to conduct investigations in the manner suggested by the Claimant. It submits that the scope of the PSC in the appointment and reclassification is limited. In short, it contends that the PSC could not appoint the Claimant retroactively to 2009 as the post did not exist in the structure until 2022. Additionally, it is contended that it is the executive who makes the recommendation, as the executive remains the employer and is responsible for paying the salary of the employee. As such, the PSC cannot fix the terms of employment, including the payment of salary, which are terms of the employment within the domain of the executive.

EVIDENCE:

[14] At the trial, the Claimant gave evidence in support of her claim. The Claimant was also cross-examined. Her evidence was not shaken in cross-examination. I accepted her to be a witness of the truth. Unfortunately, the resolution of this matter is not hinged on any critical facts having to be resolved.

[15] It is worth noting that following the Claimant's appointment to the position of IT Manager II on July 06, 2009², the Claimant has been writing to the Government from as early as September 15, 2011³, concerning several issues: from consideration to make the position of IT Manager a travelling post, reminder of request for travelling⁴,

² Exhibit CM1 (Terms and Conditions of Employment) to the Claimant's affidavit in support of the claim on January 01, 2024. The exhibits referred to below were also annexed to the said affidavit in support.

³ Exhibit CM5 Letter dated September 15, 2011

⁴ Exhibit CM6 – Letter dated November 02, 2012

recommendation of an IT Technician⁵, request for assistance under the NICE Project⁶, and request for creation of the post of computer technician⁷.

[16] The first mention of the performing of Grade 17 duties and being paid at the Grade 15 level, was by letter dated August 31, 2020⁸. In this letter, there was no mention of any entitlement to be reclassified under the 2009 Cabinet Note. What was alleged was that the Claimant was performing at Grade 15, which was lower than other IT Manager positions in the Public Service.

[17] The first reference to the 2009 Cabinet Conclusion or an entitlement to a benefit under it was in a letter dated March 11, 2022 to the Permanent Secretary⁹, some 13 years after the alleged entitlement occurred. This letter was swiftly followed by another dated March 17, 2022, again addressed to the Permanent Secretary¹⁰.

[18] These letters were followed by a letter from the Saint Lucia Civil Service Association to the Permanent Secretary dated June 08, 2022, which stated¹¹ that the employee (the Claimant), "...claims that she is presently at Grade 15 when this position was classified as Grade 17." Again, no mention was made of the Cabinet Conclusion of 2009.

[19] By another letter dated October 12, 2022¹², the Claimant wrote to the Permanent Secretary and requested compensation for the duties performed during the period June 2016 to July 2021¹³. This letter made no reference to an entitlement to a Grade 17 salary based on classification pursuant to the 2009 Cabinet Conclusion.

[20] The above letters were followed by a pre-action letter by the Claimant's attorney, which began with a letter to the Permanent Secretary dated July 24, 2023 and a second letter

⁵ Exhibit CM7 – Letter dated November 14, 2012

⁶ Exhibit CM8 – Letter dated November 14, 2012

⁷ Exhibit CM9 – Letter dated March 02, 2017

⁸ Exhibit CM7

⁹ Exhibit CM11

¹⁰ Exhibit CM12

¹¹ Exhibit CM13 at paragraph 4

¹² Exhibit CM14

¹³ paragraph 1 of the letter

to the Attorney General on September 16, 2023. Up to the date of the filing of the claim on January 10, 2024, there was no substantive response to these letters.

[21] Similarly, the Defendant's witness, Ms. Lindy Baptiste-Daniel, was also cross-examined to no ultimate end. Whilst the Claimant in her written submissions made heavy weather of her inability to recall certain matters and did not produce minutes of meetings held by the Commission, I do not accept the Claimant's evidence that she "came to court simply to lie" or that her evidence should be "discarded with contempt."

[22] Whilst public authorities are under a duty of candour and in different circumstances the Court may have been minded to draw certain adverse inferences to the PSC not producing minutes of meetings concerning the appointment of the Claimant, I do not hold the view that this is one such case. There was never any allegation of bad faith alleged, and the Claimant's case on the facts was very narrow. The Claimant's claim was that the PSC did not consider the 2009 Cabinet Conclusion and that it was duty-bound to do so. In this regard, I hardly see merit in the suggestion that Ms. Baptiste-Daniel's inability to remember certain facts, having to rely on the records of the PSC and not producing minutes of a meeting or meetings, to be germane to the resolution of this case.

[23] In respect of the evidence of Mr. Mark Louis, the expert, the Court accepted his evidence regarding several practices. In particular, that specific Cabinet Conclusions can sometimes have wider implications for the Public Service, that the Cabinet Conclusion of 2009 may have referred to or contemplated the Claimant being reclassified, and that the 2022 Cabinet Conclusion sought to "cure" the issue. His evidence, with the greatest of respect, is not relevant to the issues in this case. If anything at all it underscored that the Claimant did not challenge the decision contained in the recommendation of 2022 made by the executive but rather focused her challenge on the PSC, the body who inter alia appoints but does not create the position or provide funding for the post.

[24] Mr. Mark Louis's evidence that "Cabinet Conclusion 824/2022 did what should have been done more than a decade ago" is telling. It ought to have set off alarm bells on the

Claimant's side to consider if judicial review of the PSC's decision to appoint her in accordance with the 2022 Cabinet Conclusion was her proper course of action.

[25] Mr. Louis' evidence would only be relevant if I find that the PSC had a duty to investigate or consider the 2009 Cabinet Conclusion, which I have found against on the facts of this case, for reasons set out later in this judgment.

ISSUES FOR DETERMINATION:

[26] The following issues arise for determination:

- 1) Whether the PSC's decision to appoint the claimant effective December 19, 2022, was unlawful?:
 - i Did the PSC have an obligation to consider the 2009 Cabinet Conclusion?
 - ii Was the 2009 Cabinet Conclusion applicable to the Claimant?
 - iii Did the PSC consider irrelevant information or failed to consider relevant information in arriving at its decision?
- 2) Whether the decision to appoint the Claimant effective December 2002 was unreasonable?
- 3) Whether the decision was unfair?
- 4) Whether the claimant's expectation to be appointed effective 2009 was legitimate?
- 5) Whether the Court can grant the remedy sought by the claimant?

ANALYSIS:

Issue 1: Was the PSC's Decision Unlawful?

[27] The elements for proving that a public authority acted unlawful, which falls under the category of illegality in a judicial review claim, was set out by Lord Diplock in **Council of Civil Service Unions v Minister for the Civil Service**¹⁴ as follows:

“By 'illegality' as a ground for judicial review I mean **that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.** Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.”

[28] There are two elements to this ground:

- 1) The decision maker must understand correctly the law that regulates his decision-making power; and
- 2) The decision maker must give effect to the law that regulates its decision-making power.

[29] **Section 86 of the Constitution of Saint Lucia**¹⁵, sets out the applicable law that regulates the decision-making power of the PSC. It states:

“86. Appointment etc., of public officers

- (1) The power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), and, subject to the provisions of section 96, 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.”

¹⁴ [1984] 3 All ER 935 at pages 950-951

¹⁵ Chapter 1:01 of the Revised Laws of Saint Lucia

[30] The application of this section which is well settled. The starting point is understanding that notwithstanding that the appointment is made by the PSC, the employee is not an employee of the PSC but rather the Crown. This principle is stated in the cases of **Endell Thomas v The Attorney General of Trinidad and Tobago**¹⁶ and **Jhagroo v Teaching Service Commission of Trinidad and Tobago**¹⁷.

[31] Being an employee of the Crown, the PSC has no jurisdiction in setting the terms and conditions of employment but rather, its functions are set out in **Endell Thomas** as follows:

“... the functions of the Police Service Commission fall into two classes: (1) to appoint officers to the Police Service, including their transfer and promotion and confirmation in appointments; and (2) to remove and exercise disciplinary control over them.”¹⁸

[32] Lord Diplock’s formulation has been adopted and restated by this Court in **Willian Thompson v The Attorney General of Grenada**¹⁹ per Blenman JA (as she then was), where it was held that:

“[32] ... It is trite law that the power to appoint carries with it the power to remove and transfer. It is therefore axiomatic that the Public Service Commission, which has the power to appoint police officers, equally has the power to transfer those officers.”

[33] The PSC, not being the employer, naturally means that it does not create a post; that is the responsibility of the employer. The rationale for this is obvious: if the PSC were to create a post, it would, in effect, be directing the executive how to allocate resources of the Crown, that is, money to pay the salary for the position. This is not the function of the PSC. It is the executive which must create a post and allocate the funding for the position. Then a recommendation can be made to the PSC to make the appointment.

¹⁶ [1981] 32 WIR 375 at page 385

¹⁷ [2002] UKPC 63

¹⁸ At page 386

¹⁹ [2015] ECSCJ No. 18

[34] The purpose for the establishment of the PSC is set out in **Endell Thomas**²⁰ :

“The whole purpose of chapter VIII of the Constitution which bears the rubric " The Public Service " **is to insulate members of the Civil Service, the Teaching Service and the Police Service in Trinidad and Tobago from political influence exercised directly upon them by the Government of the day.** The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service. **These autonomous commissions, although public authorities, are excluded by section 105 (4) (c) from forming part of the service of the Crown.** Subject to the approval of the Prime Minister they may delegate any of their powers to any of their members or to a person holding some public office (limited in the case of the Police Service Commission to an officer of the police force); but the right to delegate, though its exercise requires the approval of the Prime Minister, is theirs alone and any power so delegated is exercised under the control of the commission and on its behalf and not on behalf of the Crown or of any other person or authority.”

[35] Having established the role and function of the PSC, I go on to consider whether the PSC was under an obligation to consider the 2009 Cabinet Conclusion. The burden of proving that the Defendant’s decision was illegal, unreasonable or unfair is on the Claimant. The Claimant must prove that the PSC failed to take into account relevant considerations; see **R (on the application of Ireneschild) v Lambeth London Borough Council**²¹.

[36] The parties disagree on this issue. The Claimant contends that the PSC was under an obligation to request or consider the entirety of the Claimant’s file in making the appointment under the 2022 Cabinet Conclusion. The Defendant, on the other hand, contends that it acted properly under the 2022 Cabinet Conclusion which was provided to it, and in particular, that the Claimant held the post of Information and Technology Manager; it listed the Claimant’s qualifications, experience, and training, and informed that funding for the reclassified position was available in the 2022/2023 Estimates of Expenditure. The PSC contends that the Cabinet Conclusion of 2022 contained all the

²⁰ at pages 381-382

²¹ [2007] EWCA Civ 234 at [44]

information necessary to make the decision, and as such, there was no cause for the Commission to look beyond the recommendation or make any enquiries.

[37] In my view, there is no duty in law on the PSC to investigate the substance of the recommendation. I agree with the PSC that it had no obligation to investigate why the government made a recommendation to appoint the Claimant effective December 2022 and not 2009. The PSC can decline to make an appointment if there are questions but it cannot go behind the recommendation per se. On the fact of the recommendation, I find there was nothing disclosed which warranted the asking any of any such questions and not making the appointment in accordance with the recommendation received. If there was any issue about the recommendation, that, in my view, would be a matter between the Claimant and the Government, and not the Claimant and the PSC.

[38] There was nothing on the face of the recommendation to raise any suspicion to warrant an investigation, and it is not the role of the PSC to conduct. Put simply, whether the Claimant's file was in the same building, as submitted by the Claimant, or otherwise, there was no necessity in the circumstances of this case to resort to any investigation of the recommendation and the 2022 Cabinet Conclusion, recommending retroactive appointment of the Claimant from December 2022. The Claimant made reference to a duty under Section 13 of the Public Service Commission Act²². I find this submission to be wholly without merit. That section gives the power to make regulations for inter alia for the conduct of examinations and interviews within the public service. The post the Claimant was appointed to was not a post that required any examination or interview by the PSC.

[39] The PSC's role is to ensure that the persons recommended for appointment meet the criteria, viz-a-viz, qualification and experience, in my view, which they did. The issue of the appointment being retroactive, in my view, is a matter that ought to have been raised with the persons making the recommendation, that is, the Government, and the body giving effect to it, that is, the PSC.

²² Chapter 1.11 of the Revised Laws of Saint Lucia

[40] Even if I am wrong, and the PSC was under an obligation to consider the 2009 Cabinet Conclusion, any reconsideration would have to be done by the Government, which is not a party to this claim, and not the PSC.

[41] Much was said about the applicability of the 2009 Cabinet Conclusion to the Claimant, including by an expert called by the Claimant, Mr. Mark Louis. Having carefully considered this issue, I decline to make any comment on it. My reason for this flows from the preceding paragraph. The Government is not a party to this claim and there is no evidence of what were the considerations which were taken into account in making the recommendation to appoint and reclassify the Claimant effective December 2022.

[42] To determine if the 2009 Cabinet Conclusion applied to the Claimant would be to give my own opinion on a decision or omission which is not being challenged in this matter. That said, it is worth noting that the 2009 Cabinet Conclusion No. 1160 is titled “Strengthening the National Information & Communication Technology Office,” and Appendix II of the Cabinet Note does not at all refer to any IT Manager II. I decline to do so, notwithstanding the very comprehensive evidence of Mr. Mark Louis, as I would not want to prejudice any further or other action the Claimant may take.

[43] The resolution of the last sub-issue—whether the PSC considered irrelevant information or failed to consider relevant information in arriving at its decision, overlaps with the first sub-issue. There is no evidence that the PSC took into account any irrelevant information or failed to consider relevant information in making the appointment.

[44] The 2022 Cabinet Conclusion and 2023 recommendation made it clear that the Claimant’s post was changed from Information Technology Manager to Information and Communication Technology Manager. It reclassified the Claimant’s position and placed a start date for the new reclassified post.

[45] In conclusion on this issue, the evidence before the Court indicates that the PSC had no choice but to implement the appointment effective December 19, 2022, as recommended. The decision, therefore, cannot be deemed unlawful.

Issue 2- Whether the decision was unreasonable?

[46] The test for “irrationality” or unreasonableness was also set out by Lord Diplock in **Council of Civil Service Unions** as follows:

“By ‘irrationality’ I mean what can by now be succinctly referred to as ‘*Wednesbury* unreasonableness’ (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1947] 2 All ER 680, [1948] 1 KB 223). **It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.** Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court’s exercise of this role, resort I think is today no longer needed to Viscount Radcliffe’s ingenious explanation in *Edwards (Inspector of Taxes) v Bairstow* [1955] 3 All ER 48, [1956] AC 14 of irrationality as a ground for a court’s reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. ‘Irrationality’ by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.”²³

[47] The Claimant submitted that the PSC acted unreasonably by permitting ‘... the government of the day free rein over the Claimant when the Defendant/Commission failed to make the necessary inquiries and carry out important investigations to ensure that the Claimant was not treated unfairly.’²⁴

[48] Reliance was placed on the case of **Secretary of State for Education and Science v Tameside Metropolitan Borough Council**²⁵ in the Claimant’s submissions. Whilst Lord Diplock did set out the approach to determining the reasonableness of the public authority’s decision, I find what is stated after the resolution of the unreasonableness point²⁶ to be apt. In particular, it is stated:

“There has never been the least suggestion in this case that the Secretary of State acted otherwise than in good faith. So one can take the reasons contained in his letter of June 11 as indicating with candour those matters which had influenced his

²³ At page 951

²⁴ (para 51 of Claimant’s Submissions filed on December 02, 2024)

²⁵ [1977] AC 1014 and quoted from page 1064 paragraph E to page 1065 paragraph A

²⁶ (page 1065 paragraph C to page 1066 paragraph A)

mind in reaching his conclusion that the council proposed to act unreasonably. The material parts of that letter have been cited and the events to which it relates have been analysed in so many judgments in the courts below and speeches in this House that it would be tedious for me to repeat them here. The references in the letter to staffing arrangements, planning of curricula and courses and building work have not been relied upon in the proceedings for mandamus as capable of justifying the Secretary of State's decision. It seems likely that he had been inadequately informed of the facts. What is left then are his criticisms of the way in which the council proposed to allocate to grammar schools the pupils who would be leaving the primary schools in July 1976, at the end of the summer term. There were two aspects of this. First, there were pupils whose abilities and aptitudes suited them for a grammar school education, but who had been allocated to schools which were now to remain secondary modern schools. Secondly, there were pupils who had already been allocated to three of the five grammar schools, but whose abilities and aptitudes made them more suitable for the less academic training provided in secondary modern schools. This second category has not bulked large in the arguments before the courts below or in this House. The evidence discloses that in any system involving selective entry at the age of 11 plus some misfits manifest themselves as the educational year progresses and are transferred to more suitable schools. The council proposed that misfits resulting from the non-selective allocation of unsuitable pupils to grammar schools should be dealt with in this, the usual, way, though there would no doubt be more of them than if the original allocation had been selective.

The argument has largely turned upon the council's proposals for allocating pupils to the 240 places which would be available for entry to the lower forms at Ashton and Hyde grammar schools. What was proposed by the council for these places was selection by a combination of reports, records and interviews. Selection based on reports and records obtained from the pupils' primary schools, together with the use of one of several alternative aids for evaluating possible differences in the standards of assessment adopted in reports from different primary schools, is a well tried system of selection which had been in use in areas as far apart as Lancashire and Barnet and had been adopted in Tameside itself as the selection process in the preceding year. A proposal to adopt it for the school year starting in September 1976 in circumstances in which it could be carried out effectively could not be "unreasonable" in the sense required by section 13."

[49] It is clear from this authority that public bodies must take reasonable steps to acquaint themselves with the relevant information. However, this does not require independent investigations where a lawful recommendation has been made. The PSC received a complete and legally sound recommendation from the Ministry of the Public Service. There was nothing on the face of that recommendation requiring further inquiry.

[50] The Court, therefore, finds that the PSC did not have a duty to conduct additional investigations into the Claimant's claim. The decision was therefore not unreasonable.

Issue 3 – Whether the decision was unfair?

[51] In **Council of Civil Service Unions**, Lord Diplock expounds on this ground as follows:

“I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because **susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.** But the instant case is not concerned with the proceedings of an administrative tribunal at all.”²⁷

[52] The PSC relied on the decision of Ellis J (as she then was) in **Nicholas Tranquille v Commissioner of Police**²⁸ where it is stated:

“38. However, it is settled law that administrative actions are presumed to be legal and valid. This presumption is rebuttable. The classic statement of this legal principle is set out in the judgment of R v Inland Revenue Commissioners ex p Rossminster [1980] AC 952 at 1013 F-H: “Where Parliament has designated a public officer as decision-maker for a particular class of decisions the High Court ...must proceed on the presumption *omnia praesumuntur rite esse acta* until that presumption can be displaced by the [claimant] for review- upon whom the onus lies of doing so.”

39. Accordingly, the burden is on the party who seeks to set aside any determination, order or decision to bring sufficiently cogent evidence to show that the decision is invalid, unreasonable or unlawful.”

[53] The PSC submitted that the decision is not unfair to the Claimant. It contends that the Claimant has not shown how the Defendant was unfair to her. It is submitted that the failure to make enquires or to consider the 2009 Cabinet conclusion did not result in an unfairness to her.

²⁷ At page 951

²⁸ [2022] ECSCJ No. 278 at [38] and [39]

[54] For the reasons above, it is my view that consideration of the 2009 conclusion by this Defendant could not have addressed the Claimant's concern. It is only the Government who could have addressed her concern. The PSC was duty bound to make the appointment, as it did, in accordance with the recommendation received in 2023.

Issue 4 – Whether the Claimant had a legitimate expectation to be appointed retroactively from 2009?

[55] By the same token, the Claimant's reliance on legitimate expectation is equally misplaced. The Claimant argues that she had a legitimate expectation that she would be reclassified effective 2009. She relies on the case of **Elvis Daniel & Ors. v Public Service Commission and Ors**²⁹ per Baptiste JA (as he then was), where the Court stated that:

“2. The principle of legitimate expectation is based on the proposition that when a public body states that it will do something, a person who has reasonably relied on that statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. For a legitimate expectation to arise there has to be a clear, unambiguous and unqualified representation. By virtue of article 16, the Government committed itself to the grant of no pay leave for up to six months to the appellants to contest general elections; reinstatement to their posts or posts of equivalent status in the public service if unsuccessful; and no loss of benefits. The terms of article 16 are clear, unambiguous and devoid of relevant qualification, and certainly engendered a legitimate expectation on the part of the appellants.”

[56] The Claimant bases her legitimate expectation on the 2009 Cabinet Conclusion³⁰. The Claimant's legitimate expectation is not based on any clear, unambiguous and unqualified representation. It was based on a Cabinet Conclusion, which she accepted in cross-examination does not specifically reference her position being reclassified.

²⁹ [2019] ECSCJ No. 25 and No. 28

³⁰ (see para 56 of the Claimant's written submissions filed on December 02, 2024)

[57] In my view, the issue of legitimate expectation does not arise on the evidence, and if it does, it is not against the PSC. The PSC never made any such representation to the Claimant. If any expectation existed, it was directed at the Government, not the PSC.

[58] Accordingly, her claim of legitimate expectation fails.

[59] Though not specifically pleaded, the Claimant sought to suggest as part of her case that she was treated differently from other persons similarly circumstanced to her. This was not a discrimination case, and the fleeting mention of this fact in a judicial review claim does not assist her.

Issue 5: Can the Court Grant the Remedy Sought?

[60] There was a concession on this issue by the Claimant's Attorney at the commencement of the trial. This claim was brought as a judicial review claim. Blenman JA in **Gary Nelson v Attorney General of Antigua and Barbuda**³¹ at paragraph 55 stated:

“....Judicial review is concerned with the review of the decision making process and not with the merits of the decision. It is not an appeal against the decision; rather it's a supervisory jurisdiction that reviews the decision making process. It is the law that the court will review the decision of a body or an administrative or quasi-judicial tribunal under three distinct or principal heads namely: illegality (unlawfulness); irrationality (unreasonableness) and procedural impropriety (unfairness).”

[61] It is not the function of the Court in judicial review proceedings to substitute the decision it believes the public body ought to have arrived at. It is a review of the process by which the decision was arrived at, and not the decision itself. The Court, exercising its supervisory jurisdiction, will not substitute a decision for a public body which is vested with the authority to make the decision.

³¹ [2014] ECSCJ No. 107

[62] The Defendant relied on the authority of the **Attorney General of Trinidad and Tobago v F.R.**³² at [275] where it is stated:

“The judge could not direct or determine the manner in which the State allocates its limited financial resources. To the extent that she did so in making the impugned orders, she erred and was plainly wrong. Because the orders infringed the doctrine of the separation of powers, they are void.”

[63] Though **F.R.** was a purely constitutional claim, the Court reinforced the importance of the Court not directing the State how to allocate its financial resources. This is in the context of the Court enjoying a far more liberal remedy-granting jurisdiction in constitutional matters as opposed to a pure judicial review claim.

[64] The parties both made submissions on the case of **Permanent Secretary, Ministry of Foreign Affairs & Prime Minister v Feroza Ramjohn & Ganga Kissoon**³³. In this case, the Privy Council disallowed a claim for damages by Mr. Kissoon on the basis that it was not pleaded, as in the case at bar, notwithstanding the wording of **CPR 56.1(4)** that:

“In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings, grant –

- (a) an injunction;
- (b) an order for the return of any property, real or personal; or
- (c) restitution or damages”

[65] In my view, the Court cannot exercise the power under **CPR 56.1(4)** as the grant of any remedy will involve making orders against persons who are not parties to this claim and who had no opportunity to be heard.

CONCLUSION:

[66] The Claimant has not demonstrated that the PSC acted unlawfully, irrationally, or unfairly. The claim is, therefore, dismissed.

³² Civil Appeal No. P307/2023 (Trinidad and Tobago) Unreported

³³ [2011] UKPC 20

COSTS:

[67] Although the Defendant has sought its costs, the general rule is that costs are not usually ordered in judicial review proceedings unless the institution of the proceedings was unreasonable; **CPR 56.11(6)**.

[68] In this case, I am unable to conclude that the Claimant has acted unreasonably. Accordingly, I make no order as to costs.

ORDERS:

[69] For the reasons above, I make the following orders:

- 1) The Claimant's claim filed on January 10, 2024 is dismissed; and
- 2) There be no order as to costs.



Alvin S. Pariagsingh
Judge

By the Court,

Registrar