THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

SAINT LUCIA

Case Number: SLUHCV2023/0410
formerly **SLUHCV2018/0355**

BETWEEN:

PETRONA GEORGE

Claimant

-and-

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Before the Honourable Mr. Justice Alvin Pariagsingh

Appearances: Mrs. Lydia Faisal and Ms. Mertle John for the Claimant
Ms. Tia Austin for the Defendant.

2024: June 17 – Trial
September 16, 19 – Written Submissions
October 01 – Written Submissions
October 08

JUDGMENT
Claimant's Constitutional Claim

Constitutional law, right to property Section 6 of the Constitution of Saint Lucia, Pension Rights under Section 97 of the Constitution, failure to pay a commensurate salary for duties performed outside the claimant's official classification, the breach of pension entitlement, the public service classification system, withdrawal of a concession, vindicatory damages and costs

[1] **PARIAGSINGH J: -** By an originating motion filed on 19 July 2018, the claimant sought declarations that her rights guaranteed under sections 6 and 97(2)(b) of the Constitution of Saint Lucia[1] (the Constitution) has been breached. She also seeks damages, interest and the costs of her claim.

[1] Chapter 1:01 of the Revised Laws of Saint Lucia

[2] The reliefs claimed by the claimant are as follows:

1) A declaration that the claimant's rights guaranteed under Section 6 of the Constitution of Saint Lucia Cap 1.01 of the Laws of Saint Lucia have been infringed by the Ministry of Health in its failure to pay her a salary commensurate with the functions performed by her between 1990 and 2016.

2) A declaration under Section 105 of the said Constitution that the claimant's rights under Section 97(2)(b) of the said Constitution, relating to pension entitlement, have been breached and that she was and remains entitled to a pension under the Pensions Act.

3) An order for the defendant to pay the claimant the difference in salary (to be assessed) due to her for her service with the Ministry of Health for the period 1990 to her retirement in October 2016.

4) Interest to be paid to the claimant on such sums, at such a rate and for such a period as the Court deems just.

5) Damages for the breach of her constitutional rights under Sections 6(1) and 97(2)(b) (by virtue of Section 105) of the Constitution of Saint Lucia.

6) The benefit of the pension that the claimant would have received under the Pensions Act but for the failure of the Ministry of Health to appoint her to the post commensurate with the functions she performed from 1990 to 2016.

7) Any further or other relief to which the claimant may be entitled.

THE CONCESSION

[3] At trial, the defendant conceded and consented to reliefs [1], [3], and [4] above. These concessions were recorded in the order dated 17 June 2024. Additionally, these concessions were not first made at trial. At the initial hearing on 18 March 2024 before this Court, after an in-depth examination of the issues for trial, the defendant’s counsel indicated that the sole issue in this case was quantum, as liability was not being contested.

[4] For completeness, the following recitals form part of the orders of 18 March 2024 and 17 June 2024 respectively:

> '**AND UPON** the Defendant indicating that liability is not in issue and the only remaining issue is that of damages.
>
> **AND UPON** the Defendant indicating its consent to reliefs 1(1), 2(1), and 2(2) of the Claimant's Originating Motion filed on 19 July 2018.'

THE APPARENT WITHDRAWAL OF THE CONCESSION:

[5] In its submissions filed after the trial, there appears to be some reneging by the defendant on these concessions. In its submissions filed on 16 September 2024, the defendant identified two issues for resolution, without making any submissions on quantum. These issues are:

1) Whether the claimant was appointed to the position of Accounts Clerk?

2) Whether Ms. George is entitled to benefits such as gratuity and pension?

[6] In both sets of submissions, the claimant raised concerns about this apparent reneging. The claimant contends that as liability had been conceded, the defendant is estopped from raising these issues. In any event, the claimant asserts that the evidence resolves these issues in her favour.

[7] In its submission dated 1 October 2024 (filed out of time, which will be considered when assessing costs), the defendant seems to retract the withdrawal, stating:

> "…the defendant has no issue with liability, as it accepted that the claimant was carrying out the duties of an Accounts Clerk. However, the defendant posits that the claimant was not officially appointed to this post and, therefore, cannot claim benefits such as gratuity and pension."

[8] Neither party referred the Court to case law concerning the effect of such a concession, but certain conditions must be satisfied for the withdrawal of a concession to be valid. A concession may be withdrawn in instances of mutual

mistake, mistake as to law or fact, or where no detrimental reliance by the other party exists.

[9] The Court has a wide discretion to allow or disallow the withdrawal of a concession, particularly where justice demands it. If retracting the concession would unfairly prejudice the other party or undermine the judicial process's integrity, the Court may refuse to allow the concession to be withdrawn.

[10] In this case, permitting the defendant to withdraw its concession of liability would not be fair or equitable. It would unfairly prejudice the claimant and undermine the integrity of the judicial process. The defendant’s liability was conceded on 18 March 2024, and this issue would not be revisited.

FACTUAL BACKGROUND

[11] Ms. George commenced her employment with the government on 10 March 1970 as a Maid at the Research and Control Department. Following the department’s closure in 1980, she was transferred to the Ministry of Health and later posted to the Environmental Health Department in 1990. Although her official title remained "Maid", her responsibilities expanded to include tasks typically performed by an Accounts Clerk, such as the collection and management of revenue, issuing health certificates, and preparing financial statements.

[12] The defendant argues that Ms. George’s remaining claims should be dismissed. They maintain that Ms. George was appointed as a Maid. It is contended that she ought not to be given anything else but the difference in salary based on the work she performed as Accounts Clerk. Further, the defendant asserts in its affidavits in opposition that the claim is improperly brought against the Attorney General, as issues of appointment and classification fall within the purview of the Public Service Commission.

ISSUES FOR DETERMINATION:

[13] The issues which arise for determination are:

1) Whether the claimant's constitutional rights under Section 6 of the Constitution of Saint Lucia were infringed due to the failure to pay her a salary commensurate with the duties she performed.

2) Whether the claimant's pension rights under Section 97 of the Constitution were violated due to her not being appointed as Accounts Clerk.

3) Whether the Attorney General is the proper party to defend this action, given that issues of appointment and classification are within the jurisdiction of the Public Service Commission.

4) What relief, if any, should be granted to the claimant.

THE EVIDENCE:

[14] At trial, the claimant, Ms. Petrona George, Mr. Mark Anthony Louis (the appointed expert), and Ms. Janet Barnard (the current Permanent Secretary in the Department of the Public Service) gave evidence.

[15] I found all to be credible witnesses whose testimonies I accept. The Court was particularly impressed by Ms. Barnard's forthrightness during cross-examination, as she readily accepted matters outside her knowledge and events predating her involvement.

[16] Mr. Louis was careful in qualifying his opinions, not claiming to have produced a perfect report, and also acknowledged potential limitations in his report. I found the claimant to be an honest and credible witness, and I accept her testimony without reservation.

ANALYSIS:

Infringement of Constitutional Rights:

[17] Declarations are orders of the Court made based on the evidence, not by the consent of the parties. Even in the case of a consensual position, the Court must be satisfied that a declaration is justified by the evidence. Reliefs (1) and (2) will be examined in this context.

[18] The claimant admitted in evidence that she was never officially appointed as an Accounts Clerk. However, her evidence clearly demonstrates that from 1990 to 2016, she performed duties far beyond the scope of her official title as "Maid".

[19] The duties she undertook were consistent with those of an Accounts Clerk, yet she was compensated at a significantly lower rate. The defendant's argument that Ms. George's position did not formally exist within the department's structure does not negate the fact that she performed these duties for over two decades. The failure to rectify this discrepancy amounts to a violation of her right to equal treatment under Section 6 of the Constitution.

[20] I find sufficient evidence presented by the claimant to grant the declaration, as consented to by the defendant.

Violation of Pension Rights:

[21] Ms. George's right to a pension is contingent upon her being appointed to the post of Accounts Clerk. Since it is undisputed that she was never appointed, she cannot have an entitlement to a pension under the Pensions Act. Accordingly, she is not entitled to the declaration sought by relief no. 2 in my view.

[22] However, I am of the view that the failure to appoint her to the position of Accounts Clerk, coupled with the defendant's admitted breach of her right under Section 6, ought to attract an award of damages to compensate her for the loss of pension

benefits which she would have enjoyed had she been appointed as an Accounts Clerk in 1990.

[23] The defendant relied on **Buchanan v The Custos of Kingston & Ors**[2]**.** This case is clearly distinguishable. In **Buchanan**, the claimant applied to become a Justice of the Peace, completed mandatory training, and was later informed that his application was not recommended due to undisclosed criminal convictions. The facts in the present case are different. Unlike **Buchanan**, where the claimant had not performed the functions of the office, Ms. George performed the duties of an Accounts Clerk for 26 years. Moreover, **Buchanan** was not a constitutional claim, and different considerations apply to the award of damages in constitutional cases as those which apply in other administrative claims such as the one brought by **Buchanan.**

[24] In this case, the defendant's reliance on **Buchanan** is heavily misplaced. As the defendant has not provided any evidence that appointment alone would not entitle Ms. George to a pension or gratuity, I find that the claimant is entitled to damages for her lost opportunity to obtain a pension.

Proper Party to Defend the Action:

[25] Although no specific submissions were advanced by the parties, the issue of whether the Attorney General is the proper party remains live on the pleadings. Therefore, I resolve it for completeness.

[26] The Ministry of Health and/or the Public Service Commissions are not independent bodies in a divisible state. They form part of the arms of an indivisible state. Any claim for relief for an alleged contravention of a constitutional right ought properly to be brought against the Attorney General. The authorities, as far back as **Maharaj (No. 2) v Attorney General**[3], have affirmed this point. In **Charles v Attorney**

[2] [2024] JMSC Civ. 19.
[3] (1978) 30 WIR

General[4], the Board recently reiterated that in a constitutional motion brought against the state, a claimant does not need to assert that a specific state body was responsible for the breach; what matters is establishing that the state was responsible.

[27] Accordingly, while the defendant argues that the Attorney General is not the proper party, the Court finds that the claim is correctly brought against the Attorney General.

DAMAGES:

[28] In this case, the claimant is entitled to damages for the breach of her constitutional rights under Section 6 of the Constitution of Saint Lucia. The measure of these damages must be both compensatory and vindicatory, reflecting the financial loss she suffered as well as the broader purpose of vindicating her constitutional rights. The Court must determine the quantum of damages that properly compensates the claimant for the harm caused by the defendant's failure to pay her a salary commensurate with the duties she performed from 1990 to 2016, as well as for the lost opportunity to receive a pension and other benefits.

Damages to Remedy the Difference in Salary (1990 to 2016):

[29] The first head of damages relates to the claimant's lost salary due to the failure of the Ministry of Health to properly classify her position and compensate her accordingly. From 1990 to 2016, Ms. George performed the duties of an Accounts Clerk while being officially designated and paid as a "Maid". The expert witness, Mr. Mark Anthony Louis, calculated the claimant's lost salary based on two scenarios:

1) **Scenario 1:** In this scenario, the claimant is treated as non-established staff. She would be compensated at the Grade 3 level, which is equivalent to the salary earned by individuals performing similar duties as an Accounts

[4] [2023] 1 WLR 177

Clerk. This scenario assumes that the claimant was never treated as a Public Officer but rather as an employee on a non-established contract.

2) **Scenario 2:** In this scenario, the claimant is treated as a Public Officer. Had she been properly classified as a Public Officer; she would have been eligible for promotion. Specifically, she would have been promoted from Grade 3 to Grade 4 as of 1 January 1997. This promotion would have resulted in higher salary adjustments throughout her tenure.

[30] The defendant, having conceded the breach of the claimant's Section 6 right, cannot now argue that damages should be assessed solely on the basis that the claimant was not officially appointed. The Court finds that the issue of non-appointment has already been conceded, and therefore, the damages flowing from this breach must reflect the financial loss suffered by the claimant as if she had been appointed to the post of Accounts Clerk in April 1990.

[31] Mr. Louis provided an unchallenged calculation of the lost salary in the sum of **$136,079.40**. This sum represents the actual financial benefit the claimant would have acquired if she had been appointed as an Accounts Clerk from 1990 until her retirement in 2016 at age 65. There was no substantial cross-examination or objection from the defendant regarding the methodology or figures used to arrive at this sum. Accordingly, I accept Mr. Louis's expert opinion and find that the claimant is entitled to **$136,079.40** in lost salary, representing the difference between her salary as a Maid and what she should have been paid as an Accounts Clerk.

Damages to Remedy the Loss of Opportunity to Obtain a Pension:

[32] The second head of damages concerns the claimant's lost opportunity to receive a pension, which she would have been entitled to had she been properly appointed as an Accounts Clerk in 1990. As previously discussed, the claimant's pension was calculated based on her designation as a "Maid", a position that is significantly lower in grade than Accounts Clerk, the work she performed. If Ms. George had

been appointed as an Accounts Clerk in 1990, she would have been entitled to pension benefits and a gratuity.

[33] The expert witness, Mr. Louis, calculated the claimant's pension and gratuity entitlement under two scenarios without any objection from the defendant. Had Ms. George been appointed as an Accounts Clerk and worked until her retirement at age 65, her full pension would have been **$1,254.87 per month**. Alternatively, if she had opted for a reduced pension with gratuity, she would have received **$941.15 per month**, along with a gratuity of **$56,469.00**.

[34] Additionally, Mr. Louis calculated that the claimant would have been entitled to receive an underpayment of pension benefits totaling **$78,115.45**. This underpayment represents the difference between the amount paid to the claimant by the National Insurance Corporation and what should have been paid to her by the Government had she been classified as an Accounts Clerk.

[35] There was no challenge from the defendant to these figures, and the Court finds the expert's calculations to be sound and reliable. Given the claimant's long service and the duties she performed, she would likely have been entitled to these pension benefits if her appointment had been regularized during her tenure. As such, the claimant is awarded damages for the lost opportunity to receive a pension, calculated as follows:

1) A reduced pension with gratuity: **$941.15 per month** for 96 months (date of retirement to the date of judgment) **$90,336.40.**

2) A gratuity of **$56,469.00**.

3) Underpayment of pension: **$78,115.45**.

[36] As it relates to the reduced pension, the Court is not placing the claimant in the pension scheme under the Pensions Act. It is making an award of damages

comparable to what the claimant would have received. As such there must be a cut off date for the monthly pension. As submitted by Counsel for the parties, this cutoff date should be the date of this judgment.

[37] In my calculation this is 96 months (October 2016 to October 2024) which totals the sum of **$90,336.00**. Any or all other benefits currently being received by the claimant, in particular any pension from the National Insurance Corporation, are to immediately cease upon payment of the awards made in her favour.

[38] I have not ordered that the claimant's NIC pension to immediately cease, nor that she only receives the difference between the Government pension and her NIS pension, because she is currently receiving her pension benefit for the 8 years between her retirement and the date of this judgment. There is no certainty as to when the claimant's pension will naturally end or when the awards in her favour will be paid. Therefore, the fairest approach is to allow her to receive the full reduced pension for 8 years, with any shortfall covered by her NIC pension. Her NIC pension will cease only when the awarded payments are made in full.

[39] The foregoing sums reflect the pension benefits the that claimant would have received had she been appointed and retired as an Accounts Clerk. Accordingly, the claimant is entitled to damages totaling **$361,014.25** for her lost salary, pension and gratuity.

[40] The award of damages will attract interest at the rate of 3% per annum from the date of filing of the claim to the date of judgment. It will also attract post judgment interest at the statutory rate of 6%.

VINDICATORY DAMAGES:

[41] In addition to compensatory damages, this is a constitutional claim, primarily concerned with the vindication of a right. As such, the objective of damages in constitutional claims is not only to compensate the claimant but also to uphold the

significance of the constitutional right infringed. In **Attorney General v Ramanoop**[5], the Privy Council outlined the purpose of vindicatory damages, stating that such damages "go some distance towards vindicating the infringed constitutional right." How far they go depends on the circumstances, but they serve to reflect the importance of the right, the seriousness of the breach, and the need to deter future violations.

[42] In the present case, the Court recognises that the infringement of the claimant's constitutional rights went beyond mere financial loss. Ms. George was subjected to 26 years of neglect and administrative inaction regarding her rightful reclassification and remuneration. Despite numerous attempts to rectify the situation, including repeated internal communications and legal pre-action letters, the relevant authorities failed to address her concerns or respond adequately. This conduct, in and of itself, warrants the Court's disapproval.

[43] The treatment of Ms. George demonstrates a systemic failure by various public authorities, starting from 1990 when she began performing duties as an Accounts Clerk, up until her retirement in 2016. During this extended period, she received assurances that her position would be regularised, but no meaningful action was taken. Despite clear acknowledgements by her superiors, including a memorandum from Mr. Philip Dalsou, then Permanent Secretary in the Ministry of the Public Service, dated 21 September 2015, which urged an immediate review of her functions and recommended the payment of an honorarium, nothing was done to rectify her situation. This inaction persisted even when her pre-action letters, dated 21 June 2016, 21 October 2016, and 8 November 2016, went unanswered.

[44] Such prolonged inaction and the flippant treatment of the claimant's legitimate concerns reflect a failure by public authorities to act in good faith and in a timely manner. Public bodies have a duty to engage with individuals fairly, and to address grievances promptly, particularly where those grievances pertain to Constitutional

[5] [2005] UKPC 15

rights. The failure to do so not only undermines public trust but also suggests a disregard for the claimant's right as guaranteed by Section 6 of the Constitution.

[45] Further, the conduct of the public authorities in this case cannot be condoned by the Court. As far back as 22 November 2019, when this claim first came before the Court, the defendant indicated that a course of action would be pursued to resolve the matter. Yet, it was not until 18 March 2024—nearly five years later—that the defendant finally conceded that liability was not in dispute. This delay further illustrates the lack of urgency and respect with which the claimant's case was handled.

[46] In light of these factors, the award of vindicatory damages serves multiple purposes: to recognise the prolonged failure by the authorities to act on the claimant's behalf, to signal the Court's disapproval of their conduct, and to underscore the importance of respecting constitutional rights. Vindicatory damages are not punitive in nature but are intended to reflect public outrage at the breach of the claimant's rights, to emphasize the gravity of the violation, and to deter further breaches.

[47] Ms. George served the Government and people of Saint Lucia for 46 years, from 10 March 1970 to 8 August 2016, and her service was unbroken and dedicated. Despite this, for over two decades, she was unjustly compensated and ignored by the very public institutions she faithfully served. This prolonged failure to address her rights must be acknowledged through an appropriate award of vindicatory damages.

[48] Having considered the facts of the case, including the failure of the authorities to respond to her legitimate grievances and the flippant disregard of her pre-action letters, I find it appropriate to award the sum of **$10,000 as vindicatory damages**. This sum is meant to signal the Court's condemnation of the defendant's conduct, as well as to vindicate the claimant's constitutional rights. However, this sum will not attract any interest.

COSTS:

[49] This is an administrative claim where the costs regime is assessed costs. The defendant must pay the claimant's costs, to be assessed if not agreed, within 28 days of this judgment.

ORDERS:

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

1) Judgment is entered for the claimant against the defendant on her claim.

2) It is declared that the claimant's rights guaranteed under Section 6 of the Constitution of Saint Lucia have been infringed by the Ministry of Health in its failure to pay her a salary commensurate with the functions performed by her between 1990 and 2016.

3) The defendant shall pay the claimant:

   i. Damages totalling **$361,014.25**, with pre-judgment interest at a rate of 3% per annum from the date of the filing of the claim to the date of this judgment, and post-judgment interest at a rate of 6% per annum from the date of this judgment until satisfaction; and

   ii. Vindicatory damages of **$10,000.00**, without interest.

4) Any or all other benefits currently being received by the claimant, in particular any pension from the National Insurance Corporation, are to immediately cease upon payment of the foregoing awards made in her favour.

5) A copy of this judgment and the order after trial is to be served on the Chairman of the National Insurance Corporation pursuant to Part 42 Rule 42.12 of the Civil Procedure Rules (Revised Edition) 2023 by the claimant.

6) The defendant shall also pay the claimant's costs, to be assessed by this Court in accordance with the detailed costs assessment procedure, in default of agreement within 28 days of this judgment.

Alvin Shiva Pariagsingh
Judge

By the Court,

Registrar