

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0481

IN THE MATTER OF THE GRENADA CONSTITUTION

AND

IN THE MATTER OF SECTIONS 84 AND 111 OF THE CONSTITUTION

AND

**IN THE MATTER OF REGULATION 49 OF THE PUBLIC SERVICE COMMISSION
REGULATIONS MADE PURSUANT TO SECTION 83(13) OF THE CONSTITUTION**

AND

**IN THE MATTER OF AN APPLICATION FOR CONSTITUTIONAL REDRESS
PURSUANT TO SECTION 101 OF THE CONSTITUTION**

BETWEEN:

ROYDEN BEHARRY

Claimant

and

THE ATTORNEY GENERAL OF GRENADA

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Ruggles Ferguson KC for the Claimant

Ms. Camille Gooding-DeSouza for the Defendant

2024: March 19th
September 16th

JUDGMENT

- [1] **ACTIE, J.:** The issue arising in this constitutional claim is whether the claimant is a public officer and is entitled to be reinstated to the public service or paid pension benefits consequent upon his dismissal pursuant to Sections 111 and 84 of the Constitution. It is necessary to give a brief background of the facts.

Background

- [2] In 2013, the claimant entered a written contract with the Government of Grenada as a Project Officer in the Ministry of Youth, Development, Sports, Culture and the Arts (hereafter referred to as “the Ministry of Youth”) pursuant to a two-year written contract signed by the Secretary to Cabinet. There was no renewal of the contract upon expiry in 2015, but the claimant continued to work in the capacity of Project Officer up until the year 2019.
- [3] By Memorandum dated 24th April 2019 the Permanent Secretary of the Department of Public Administration (DPA) wrote to Permanent Secretary, Ministry of Sports Youth and Culture informing of the cabinet’s approval of an award of a government contract to the claimant as Coordinator of Youth Development in the Ministry of Youth Development, Sports and Culture for one year with effect from 18th January 2019. Again, there was no renewal of the contract upon its expiry in 2020, but the claimant continued as Coordinator of Youth Development until he was sent on leave in August 2022. On his return from leave on 20th December 2022, he was terminated by a letter from Alva Brown, Permanent Secretary, with effect from 6th December 2022 and was paid three months’ salary in lieu of notice.
- [4] The claimant contends that the positions of Project Officer and Coordinator of Youth are public offices pursuant to **Section 111** of the **Constitution**. The claimant further contends that pursuant to **Section 84** of the **Constitution**, the Public Service Commission (hereafter referred to as “the PSC”) has exclusive authority to appoint and dismiss public officers within the Public Service and that his termination as a public officer must be in keeping with **Regulation 49** of the

Public Service Commission Regulations. He alleges that that his employment as a public officer could not be lawfully terminated by the Permanent Secretary.

[5] The claimant in a fixed date claim filed on 29th September 2023 seeks the following reliefs:

- i. A declaration that the office of Project Officer and Coordinator of Youth Development within the Ministry of Youth Development, Sports, Culture and the Arts is a public office.
- ii. A declaration that the claimant was a public officer at the time his employment as Coordinator of Youth Development was terminated.
- iii. A declaration that the PSC has exclusive authority to appoint public officers whether employed on contract or otherwise.
- iv. A declaration that upon the expiration of the claimant's contract of employment as a project officer within the Ministry of Youth Development, Sports, Culture and the Arts, in 2015, his continued employment as a public officer was as a permanent employee subject to the presumed two-year probationary period.
- v. Alternatively, a declaration that upon the expiration of the claimant's contract of employment as Coordinator of Youth Development in February 2022 within the Ministry of Youth Development, Sports, Culture and the Arts, his continued employment as a public officer was as a permanent employee subject to the presumed two-year probationary period.
- vi. A declaration that the purported termination of the employment of the claimant as a public officer notified to him by way of letter dated 20th December 2022 from Mr. Alva Browne, Permanent Secretary with responsibility for Youth, Sports and Culture was contrary to section 84(2) of the Constitution and void.
- vii. Alternatively, a declaration that the termination of the employment of the claimant was for the purpose of reorganization of the Department of Youth within the meaning of section 84(8) of the Constitution.
- viii. A declaration that the claimant's employment as a public officer has not ceased and that he is entitled to salary and benefits for the period from 2nd December 2022 to the present and to reinstatement as a

public officer. Alternatively, a declaration that the claimant is entitled to pension pursuant to section 84(8) of the Constitution.

Defendant's case

- [6] The defendant asserts that the claimant was never appointed by the PSC and is therefore not a public officer within the context of **Section 111** of the **Constitution**. The defendant states that the claimant was a non-established contractual worker, and that the terms of employment made no provision for compulsory retirement age or payment of any pensionable emoluments, and that as such, his employment could be terminated by notice or payment in lieu of notice. Accordingly, the claimant was rightly terminated with payment being given in lieu of notice.

Legal Analysis

Whether the claimant was a public officer

- [7] The critical issue to be determined is the nature of the claimant's employment with the Government of Grenada. Mr. Ruggles Ferguson K.C. for the claimant submits that the claimant was a public officer within the meaning of **Section 111** of the **Constitution** which provides the following:

“‘Public office’ means any office of emolument in the public service;
‘Public officer’ means a person holding or acting in any public office;
‘Public service’ means, subject to the provisions of this section, the service of the Crown in a civil capacity in respect of the government of Grenada.”

- [8] Ms. Camille DeSouza, counsel for the defendant, argues that although the claimant may have been a public worker, he was not a public officer within the constitutional construct having regard to the restricted meaning ascribed to “public officer” in the Antigua Court of Appeal case of **Gaston Browne v D. Giselle Isaac-Arrindell**¹. Michel JA in **Gaston Browne** referenced the Court of Appeal decision in **Charles Savarin v John Williams**² where the court had to determine whether the appellant was holding or acting in an office in the public service of Dominica,

¹ ANUHCv2009/0934

² Dominica Civil Appeal No. 3 of 1995

so as to disqualify him from being eligible for election as a member of the Dominica House of Assembly. The court held that the appellant did not hold or act in an office in the Public Service of Dominica by reason of the fact that he held the office of General Manager of the National Development Corporation. Sir Vincent Floissac CJ said:

"The constitutional definition of the phrase 'the public service' was clearly intended to be read and interpreted in the light and context of Chapter VI. So read and interpreted, the phrase must be confined to the institutional service governed and protected by Chapter VI."

[9] Sir Vincent Floissac CJ further reasoned that:

"According to those Constitutional definitions, 'public office' means 'any office of emolument in the public service' and 'public officer' means 'a person holding or acting in any public office.'

By Constitutional definitions, the phrases 'public office' 'public officers' and 'the public service' are correlative terms. The scope of the Constitutional meanings of those phrases is necessarily circumscribed by the Constitutional context of those phrases. An important ingredient of that context is Chapter VI (sections 76 to 87 inclusive) of the 1967 Constitution which deals specifically with the Public Service and which has been reproduced in Chapter VI (sections 84 to 96 inclusive) of the 1978 Constitution.

I refrain from reciting the elaborate provisions of Chapter VI of the 1967 and 1978 Constitutions. Suffice it to say that Chapter VI provides for the appointment of persons to hold or act in offices in the Public Service and for the removal of such officers from their public offices. It provides for such appointment and removal by or in accordance with the advice of the appropriate Constitutional Commission (namely the Public Service Commission or the Judicial and Legal Services Commission as the case may be). It confers on such public officers a right of appeal to the Public Service Board of Appeal.

The Constitutional definition of the phrase 'the public service' was clearly intended to be read and interpreted in the light and context of Chapter VI. So read and interpreted, the phrase must be confined to the institutional service governed and protected by Chapter VI."

[10] Counsel for the defendant argues, and the court accepts, that the provision of **Section 111** of the **Constitution** of Grenada is identical to that of the Commonwealth of Dominica and Antigua Constitutions. Counsel for the defendant further argues that the restricted meaning to be ascribed to public officers for the purposes of the constitution illustrates that although the claimant may have been a public worker, he was not a public officer within Section 111, as he was not

appointed by the PSC. Such an argument necessitates an examination on the appointment of the claimant.

Whether the claimant was appointed by the Public Service Commission

[11] **Section 84(1)** of the **Constitution** reads:

“Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office, and the power to grant leave, shall vest in the Public Service Commission”

[12] In addition, **Section 84(2)** of the **Constitution** reads:

The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or, with the consent of the Prime Minister, to any public officer.

[13] The PSC has the exclusive power to appoint or confirm appointments and to remove public officers. Mr. Ferguson K.C asserts that in Grenada, permanent secretaries have been delegated the power to appoint officers to minor positions in the public service. However, King’s counsel contends that his research has not turned up any delegation pursuant to Section 84(2) other than the 1971 delegation referred to in **Joseph Charter v Alexis Simon**³ which authorised Permanent Secretaries and Heads of Departments to make appointments for minor salaried positions.

[14] The claimant has failed to prove to the court that the positions of Project Officer and Coordinator of Youth fall within the definition of minor salaried positions to validate his appointment pursuant to the delegated authority to the Permanent Secretary and Heads of Departments.

[15] What is before the court is the claimant’s first contract signed by the Cabinet Secretary on behalf of the Government of Grenada. There is no evidence of a contract signed by the claimant in the position of Coordinator of Youth other than the memorandum from the Permanent Secretary of the Department of Public

³ Grenada Civil Appeal No.5 OF 2001

Administration (DPA) addressed to Permanent Secretary, Ministry of Sports Youth and Culture informing of Cabinet's approval of an award of a government contract to the claimant. Also, there is nothing before the court to demonstrate that the PSC appointed or confirmed the claimant to hold any of the two positions, which is a requirement under **Section 84(1)** of the **Constitution**.

- [16] The restrictive approach to be taken to the interpretation of **Section 111** of the **Constitution**, as espoused in the cases of **Gaston Browne**⁴ and **Charles Savarin**⁵, precludes this court from declaring the claimant as a public officer.

Whether the continued employment of the claimant after expiration of his contract amounted to an implied permanent appointment

- [17] Mr Fergusson K.C. argues that by the expiration of the two-year contract on 14th May 2015, the claimant was treated as appointed by the PSC by the application of the principle of law contained in the case of **Christelene Henry v Public Service Commission**⁶. In that case, the applicant was appointed as an officer in the public service. Her letter of appointment stated that she had to serve a one-year probationary period. After the expiration of the probationary period, she continued to serve without receiving any letter of confirmation. By letter dated 24th January 1995, the PSC purported to terminate her "probationary appointment". The court decided that since the PSC did not exercise its power under the regulation to extend the period of probation nor did it dismiss the claimant within the probationary period, her employment as a public servant was impliedly confirmed upon expiration of the one-year probationary period. The court held that thereafter, the PSC acted unconstitutionally in attempting to dismiss her as it sought to do.

- [18] The extant claim before this court is easily distinguished from the claim in **Christelene Henry v Public Service Commission**⁷ which involved a public officer, appointed by the PSC unlike the claimant's claim. This critical

⁴ ANUHCv2009/0934

⁵ Dominica Civil Appeal No. 3 of 1995

⁶ Grenada Suit No. 13 of 1997

⁷ Grenada Suit No. 13 of 1997

circumstance, as determined in the previously discussed issue, does not arise in the extant matter, as the claimant was not appointed by the PSC.

- [19] On the other hand, counsel for the defendant relies on the case of **Rawle v James Cubitt & Partners (a firm) et al**⁸, wherein Parker LJ made reference to **Messer v Barrett Co Ltd**.⁹ in the following manner:

“The headnote reads: ‘Where there is a contract of hiring for a definite period followed by an indefinite hiring the hiring can be terminated at any time upon reasonable notice.’

In the judgment of Middleton JA there appears the following passage:

‘Mr Bristol contends that it was automatically terminated at the end of the second year and each succeeding year, on the anniversary of the hiring, without any notice. The opposite contention is that it would continue so long as the parties mutually agreed and could only be terminated by reasonable notice. We think the latter view is to be preferred.’

In my judgment, the position as revealed in *Messer v Barrett* must be the same in this country, and the position must be that when a contract for a fixed term terminates and the parties continue the one to be employed and the other to pay, what must be inferred must depend on the circumstances of each individual case. If there is nothing to point to an intention on the part of both parties to create a renewal of the same duration as the original fixed term, then the implication must inevitably be that the employment was for an indefinite period and subject to termination by reasonable notice.”

- [20] **Chitty on Contracts**¹⁰ recites the following:

"There may also be an implied contract when the parties make an express contract to last for a fixed term, and continue to act as though the contract still bound them after the terms has expired. In such a case the court may infer that the parties have agreed to renew the express contract for another term."

- [21] A court may imply a contract where the parties enter into a fixed term contract and at the expiration of the contract they continue to act as though the contract was

⁸ [1985] Lexis Citation 1672

⁹ [1927] 1 DLR 284

¹⁰ 1st vol., 25th edn

still binding.¹¹ In **Harvey Setterfield v Anse Chastanet Hotel (Sycum) Limited and Jade Mountain Limited**¹², St. Rose-Albertini. J stated that “It is true that a fixed term contract terminates once the expiration date arrives however the onus rests with the employer to set the record straight prior to or on the termination date or face the real consequence that by its own silence an employee may be led to conclude that **the contract is tacitly renewed**”¹³. [emphasis mine]

[22] A “public officer” is one who discharges any duty in which the public is interested, and more particularly if he receives payments from public money. However, it doesn’t mean that every public officer is deemed to be permanent and entitled to a pension. Morley J in **Claude Gerald v PSC et al**¹⁴, referred to the case of **Charter v Simon et al**¹⁵ which provided authority for the position that persons serving public functions on contract are not equated to being permanent and pensionable officers.

[23] As argued by counsel for the defendant, the conduct of the parties suggested a common intention to renew the claimant’s later employment as Coordinator of Youth for an indefinite period, and not for a permanent appointment to the position. There is no evidence before the court to suggest otherwise, nor to suggest that the claimant was treated by the Government of Grenada as a permanent public officer.

[24] The claimant entered a contractual relationship with the Government of Grenada which he cannot unilaterally convert to a permanent public office position. The court in the absence of evidence to prove otherwise accepts the defendant’s argument that the claimant’s appointment was pursuant to contract which was implicitly renewed.

¹¹ DOMHCVAP2013/0007 Mariette Warrington v Dominica Broadcasting Corporation; Baird Textile Holdings Limited v Marks & Spencer Plc [2001] EWCA Civ 274; and Diane Modahl v British Athletic Federation [2001] EWCA Civ 1447

¹² SLUHCM2018/0053

¹³ SLUHCM2018/0053 Harvey Setterfield v Anse Chastanet Hotel (Sycum) Limited and Jade Mountain Limited

¹⁴ MNIHCV2019/0059

¹⁵ Grenada Civil Appeal No. 5 of 2001

Whether the claimant is entitled to reinstatement or pension

- [25] The claimant further seeks a declaration that his termination was for the purpose of reorganization of the Department of Youth within the meaning of section 84(8) of the Constitution and consequently he is entitled to a salary from 2nd December 2022, reinstatement or in the alternative to a pension.
- [26] The court having ruled that the claimant is a contractual worker and not a public officer puts the issue of pension as a public officer to an end but for completeness will address the issue
- [27] The claimant relies on **Section 84(8) of the Constitution** which makes provision for pension and retiring benefits for public officers. The section reads:
- “Every officer who is required to retire on abolition of his or her office or for the purpose of reorganization of his or her Ministry or Department shall be entitled to pension and retiring benefits as if he or she had attained the compulsory retiring age”.
- [28] Clearly given the restricted meaning of a public officer, it is axiomatic that the section speaks to public officers appointed in accordance with the Constitution and not to everyone employed by contract or temporary workers, regardless the length of their contract.
- [29] **Section 84(8)** refers to “Every officer who is required to retire”. The claimant must first establish that he is a public officer who was required to retire to qualify for a pension or other retirement benefits¹⁶.
- [30] The claimant’s contractual engagement was subject to termination either by effluxion of time or by notice, as was done in this case. Such a contractual termination cannot equate to a “requirement to retire” for the purpose of reorganization to entitle the claimant to a pension or retiring benefits within the realm of Section 84(8) of the Constitution.

¹⁶ GDA CIVIL APPEAL NO. 11 of 2003 Grenada Technical and Allied Workers’ Union et al v Public Service Commission – Para 15

Summary

[31] It is well established that the PSC has the sole power to appoint or confirm the appointment of a public officer in the public service. However, the Government is empowered to enter contractual employment relationships with persons to assist in the public offices. Such persons are bound by the sanctity of their contractual terms and cannot unilaterally convert those appointments into positions of permanence without the concurrence of the PSC.

[32] Parliament cannot usurp the powers of the PSC. **Section 83 (12) of the Constitution** proscribes interference with the role of the PSC. The section states “the Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority”. Accordingly, any appointment made in contravention of Section 84 of the Constitution, which is the supreme law of the land, cannot constitute a permanent appointment. The court in the circumstances, is of the view that claimant has failed to prove the constitutional redress as claimed.

ORDER

[33] Given the above circumstances, the claim stands dismissed with no order as to costs.

Agnes Actie

High Court Judge

By the Court

Registrar