

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

Antigua and Barbuda

Claim No: ANUHCV 2014/0490

BETWEEN:

GISEL ISAAC

Claimant/Respondent

and

THE HONOURABLE ATTORNEY GENERAL

THE HONOURABLE MICHAEL BROWN

Defendants/Applicants

Before

The Honourable Justice Jan Drysdale

Appearances

Justin L. Simon QC of counsel for the Claimant/Respondent

Dr. David Dorsett of counsel for the Defendants/Applicants

2022: July 4th

December 12th

RULING

- [1] The matter for consideration is a preliminary point as to whether these proceedings are academic.
- [2] The Claimant was the Executive Secretary of the Board of Education having been appointed to that position effective 1st February 2001.
- [3] On 18th July 2014 the Claimant received a letter signed by the Secretary to the Cabinet advising of her suspension by Cabinet for a period of twenty-eight days effective immediately. The reason cited for the suspension was that the Claimant had failed to follow clear and lawful orders issued to her by the Second Defendant.

- [4] Whilst on suspension, the Claimant through her counsel penned several letters to the Crown seeking clarification on various issues including the basis for the suspension and whether the same was with pay. The letter also noted that the terms of reference of the investigation, which was to be conducted, did not include the Second Defendant's complaint that the Claimant had failed to follow his instructions.
- [5] After the expiration of 28 days the Claimant returned to work and found that the locks to her office had been changed. She then spoke with the Human Resources Officer who advised that her suspension was for a period of 28 working days. Although she requested and was assured that she would be provided with those instructions in writing, she was never issued a written communication to that effect. Instead that day she heard a press release being read over the airways of the Observer Radio that informed of the same.
- [6] Sometime during the month of August 2014, the Second Defendant reported to the media that he would soon be in possession of a confidential report concerning the Claimant and would submit the same to Cabinet for consideration. He also advised that a meeting would be convened with the Claimant to discuss the contents of the report.
- [7] By letter dated 1st September 2018 the Claimant was invited to a Cabinet meeting scheduled for 3rd September 2018. However, on 2nd September 2014 one Tanny Rose was heard on ZDK Radio Station reading excerpts of what he said was a preliminary report of an investigation which had been conducted in respect of the Claimant's functioning as Executive Secretary. That a second similar program was aired on September 3, 2014 again with Tanny Rose. The comments stemming from those broadcasts were acerbic and derogatory of the Claimant.
- [8] By letter dated 3rd September 2014 the Secretary to the Cabinet was informed that given the publication of the report to which the Claimant had no input; considering that she had not received any communication informing of her expected return; coupled with her being locked out of her office that she believed that she had been constructively dismissed that she would not be attending the meeting with the Cabinet as requested.
- [9] Thereafter, the Claimant initiated these proceedings seeking the following reliefs:
1. 'A declaration that the decision of the Cabinet to suspend the Claimant from her duties as Executive Secretary of the Board of Education: is arbitrary, wrong in law, and without legal basis; and is void and of no effect.
 2. A declaration that the 2nd Defendant had no legal authority to issue directives or instructions to the Claimant in her role as Executive Secretary of the Board of Education.
 3. A declaration that the 2nd Defendant's action in instituting an investigation against the Claimant in respect of her duties as Executive Secretary of the Board of Education and for the reasons contained in the letter of suspension dated 18th July was without reasonable basis.

4. A declaration that the Claimant was entitled to an opportunity to be heard in any investigation instituted in respect of her performance of her duties as Executive Secretary of the Board of Education is contrary to natural justice.
5. A declaration that the failure to afford the Claimant an opportunity to be in the investigation instituted in respect of the performance of her duties as Executive Secretary of the Board of Education is contrary to natural justice.
6. A declaration that the publication of the report of the investigation without affording the Claimant an opportunity to be heard is contrary to natural justice, and was made with reckless disregard of contrary to natural justice, and was made with reckless disregard of the Claimant's rights and reputation.
7. Damages for diminution of reputation.
8. Aggravated or exemplary damages against the 2nd Defendant.
9. Such further or other order as the Court deems just.
10. Costs.'
11. In addition to these proceedings the Claimant also filed a claim with the Industrial Court alleging that she had been constructively dismissed and seeking damages for the same. The matter was vigorously contested but eventually after a consent order admitting liability, the Claimant was awarded damages for her unlawful dismissal.
12. Meanwhile as it relates to these proceedings an application to determine whether leave was required prior to the filing of the claim was made by the Defendants. This was premised on the argument that the Claimant's claim was essentially one of judicial review. The Court disagreed, finding that CPR 56 allowed for a claim to be made for a declaration as freestanding right as opposed to a claim for judicial review. This issue was pursued all the way to the Privy Council which in 2018 endorsed the decision of the High Court.
13. Thereafter another series of applications followed before finally this matter was set down for pre-trial review. At pre-trial review, the Defendants suggested that based on the decision in the Industrial Court that this matter was now academic. Given the suggestion made by the Defendants and the fact that the decision of the Industrial Court was not before this Court and counsel for the Claimant's disagreement that this was in effect the result of that decision, the parties were invited to provide the Court with written submissions and were also heard extensively on oral submissions.

Submissions of the Parties

14. The Defendants submit that the instant proceedings is academic and serves no useful purpose as the Claimant has for several years been constructively dismissed from her position as Executive Secretary of the Board of Education. Accordingly, they submit that the actions complained about by the Claimant have long been overtaken by her dismissal. Further the Claimant obtained substantial damages and compensation for being deemed to have been constructively dismissed.

15. The Defendants also contend that the application for administrative order that the Minister had no authority to issue her directives or instructions is bound to fail. They allege that the Minister pursuant to section 12(2) of the Board of Education Act 1994 and section 16(4) of the Interpretation Act is clothed with the requisite powers to act as he so did.
16. The Defendants further posit that the complaint that the Claimant's suspension was wrong is unfounded as the Claimant was appointed by Cabinet who had every lawful right to suspend her. Finally, as it relates to the claim for damages for loss of reputation consequent upon assertion the publication for the report, they allege that there is no evidence that the Defendants were responsible for the said publication. There being no proof that this was also destined to fail.
17. The Claimant set out the factual matrix of the various matters before the different courts and argues that her unfair dismissal claim raised very different matters, both as to fact and law, to those being raised in the High Court administrative claim which seeks relief of a totally different nature. That accordingly the decision of the Industrial Court to award damages for her unfair dismissal had absolutely no bearing on her claim before the High Court for the administrative relief sought. The Claimant asserted that the issues raised in the Claim are by no means academic and concerns whether the Second Defendant exercised powers lawfully; whether he acted without due regard to the Claimant's right for due process, and in the process damaged her reputation. Thus, the Claimant is entitled to pursue her claim for declaratory relief and damages for tortious misconduct.
18. The Claimant also submits that the issue of whether the Minister could have acted in the manner he did having regard to the legislation is a live issue for determination and requires judicial interpretation and clarification.

Discussion

19. An academic case is one where there is no extant or justiciable dispute so that remedy requested would be of no practical use or value. Generally, the Courts decline jurisdiction over such cases unless there are exceptional circumstances. The locus classicus for considering whether the Court should allow a party to pursue an academic point was articulated in the case of **R v Secretary of State for the Home Department ex parte Salem**.¹ In that case, Lord Slynn of Hadley stated:

"... in a case where there is an issue involving a public authority as to questions of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House, there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se... **The discretion to hear disputes, even in the area of public law, must be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so as for example (but only by way of example) where a discrete point of statutory construction which does not involve detailed consideration of the facts, and where large**

¹ [1999] 1 AC 450

number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future" (emphasis mine)

20. Having considered the facts and the law I find that the constructive dismissal of the Claimant has rendered moot the issues of her unlawful suspension. Whilst admittedly the Industrial Court decision dealt with different issues to the case at bar, the effect of the decision on this matter is of importance. The purpose of a suspension is to determine whether the Claimant is fit to continue in employment. The unlawful termination of the Claimant effectively put an end to the employer employee relationship. Accordingly, the Claimant retains no personal stake in any unlawful suspension which preceded her unlawful dismissal. Further there is no evidence that the Claimant has not been properly compensated for any suspension and or resultant dismissal. Thus, the Claimant having found to be constructively dismissed the issues concerning the lawfulness of her suspension and the manner of her suspension are moot. Therefore, engaging in legal discourse over the lawfulness of the suspension is pointless as the Claimant is no longer an employee subject to the control and authority of the Defendants.
21. The Claimant having been deemed to have been constructively dismissed and demitting office, the claims that the Second Defendant had no legal authority to instruct her in her capacity as Executive Secretary and or her subsequent suspension from that post (contained at reliefs 1-5 of the Claim Form) are also now academic. Again, these are issues which arise in an existing employer employee relationship and not one which has been severed.
22. Much like the suspension claims, the claim that the Defendants unlawfully commenced an investigation into her performance as well as any right to be heard concerning the same is due to the supervening events of the Claimant's dismissal rendered moot. From all intents and purposes, the investigation if not a disciplinary measure was seemingly an investigative exercise to determine if disciplinary measures were warranted. Whether the former or latter the Claimant's deemed unlawful dismissal has rendered this as no longer a live issue. I note also that the Industrial Court when considering the issue of damages for the Claimant's dismissal found that her dismissal to be harsh, oppressive and in blatant disregard for industrial relations and specifically awarded the Claimant substantial damages for the same. This to my mind is an acknowledgement if not a determination that proper measures were not adhered to prior to the Claimant's constructive dismissal which is the same issue which this Court is being asked to adjudicate.
23. Having found that these reliefs sought are academic I have also examined whether there are any exceptions which would still require a determination of the issues. Unfortunately, there are no exceptions to the stated general rule exist in this case. The issues are personal to the Claimant and are not of public importance. The suspension is now a nonstarter the Claimant having deemed to have been constructively dismissed. There is also no group of persons affected or likely to be affected by these issues. Whilst counsel for the Defendant suggested that guidance still needs to be given to the Second Defendant on the ambit of his powers pursuant to the Act as Lord Diplock said in **Gouriet v Union of Post Office Workers**² "the jurisdiction of the court is not to declare the law generally or to give advisory opinions; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of anyone else". Thus, the Court will not render advisory opinions which is what clearly the Claimant has

² [1978] AC 435

sought relating to the exercise of the powers of the Second Defendant. 'The rule holds true even when there had previously been a legal conflict or claim, but it has become moot because a supervening event has rendered the legal issue inexistent.' **Express Telecommunications Co. Inc. (Extelcom) vs. Az Communications, Inc.**³

24. However, as it relates to relief 6 of the Statement of Case the Claimant claims a declaration that the publication of the report of the investigation without affording the Claimant an opportunity to be heard is contrary to natural justice and was made with reckless disregard of and contrary to natural justice and was made with reckless disregard of the Claimant's rights and reputation, I find that the same is not academic. The alleged diminution of the Claimant's reputation in the mind of right-thinking persons consequent upon the publication of a report in contravention of natural justice is an ongoing concern and survives any dismissal as the Claimant as the same if proven, may have long standing effects well outside the ambit of the Claimant's duration of employment as Executive Secretary. Further the parties both admit that there are disputed facts relating to this aspect of the Claim. Therefore, it is clear therefore that there is need for further ventilation and for this issue to be tested at trial.

ORDER:-

[25] In light of the forgoing, it is hereby ordered that:

- i. The reliefs contained at paragraphs 1-5 and any claims related thereto are hereby struck out as being moot.
- ii. This claim that the Claimant's reputation was diminished and damages for the same shall proceed to trial.
- iii. No order as to costs.

Jan Drysdale
High Court Judge

By The Court

Registrar

³ G.R. No. 196902, July 13, 2020.