

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim No: **NEVHCV2019/0142**

BETWEEN

MURIEL THOMPSON

Claimant

AND

THE PUBLIC SERVICE COMMISSION

1st Defendant

Appearances:

Mr. Patrice D Nisbett, for the Claimant.

Mr. Nassibou Butler of counsel for the public service commission

2021: July, 9th
November, 19th

JUDGMENT

- [1] **Moise, J.:** By way of Fixed Date Claim filed on 6th April, 2020, the claimant seeks a review of the decision of the Public Service Commission, in recommending the termination of her employment with the Nevis Island Administration. She claims that by way of letter dated 24th January, 2018, she was informed of this decision and alleges that the Public Service Commission had breached the rules of natural justice and acted in a manner which was illegal, unreasonable and irrational. She also alleges that the actions of the Public Service Commission were procedurally improper and amounted to a breach of a legitimate expectation which she claims to have had. On that basis she seeks orders of certiorari quashing the decision, mandamus, reinstating her to her employment, as well as damages, interest and costs. I have decided that the claimant is entitled to an order of certiorari, quashing the decision and remitting the matter back the Public Service Commission for reconsideration. I would however deny the remaining remedies which she seeks, except that she is entitled to costs. My reasons are contained in the remainder of this judgment.

The Facts

- [2] In 1997, Ms. Thompson gained employment with the Nevis Island Administration (NIA). She was appointed to the post of junior clerk with the Alexandra Hospital. Sometime later, she was assigned to the dental unit for a period of 3 years before being appointed to the post of senior clerk within the Ministry of Health and assigned to the Alexandra Hospital.
- [3] Ms. Thompson states that in 2013 she applied for a placement at the Monroe College to pursue her studies in hospital administration. She was accepted and initially intended to proceed to the college's campus in New York. She also applied for and was granted study leave in order to facilitate her studies. She was to leave Nevis in September, 2013 and return in August 2017 after completing her studies; at which point she was obligated to report back to work. The NIA also agreed to provide an annual stipend of \$2,000.00US to Ms. Thompson during the course of her studies.
- [4] It is Ms. Thompson's evidence that rather than moving to the college's campus in New York, she proceeded to the campus in Saint Lucia in 2013. She embarked on her studies there until she started experiencing considerable financial hardship in the latter stages. She states that, despite numerous enquiries on her part, she never received the \$2,000.00US annual stipend which was promised to her by the NIA. She asserts that the financial hardship, coupled with the pressures of the course work, rendered her seriously ill with physical and mental exhaustion. She claims that she was going through a depression, which led to a long period of isolation from all human interactions. She however did not seek medical attention as she knew that her condition was a result of stress.
- [5] Ms. Thompson asserts that the college agreed to allow her to complete the final year of her course remotely. She therefore returned to Nevis in 2016 but nonetheless completed her course and graduated in August, 2017. She apparently did not initially inform the ministry of her return in 2016. However, it was her evidence that even before completing her studies, in May 2017, she contacted an official from the Ministry of Human Resources and informed them of her health condition. She also enquired as to the procedure for returning to work and was allegedly advised that she should

indicate by way of letter, when she was ready to resume work. This, she claims, was after she had explained her condition to the relevant personnel.

- [6] Ms. Thompson states that she then received a letter dated 12th January, 2018 demanding that she attend a meeting with the Public Service Commission (The Commission) to be held on 22nd January, 2018. According to the letter, the purpose of the meeting was to discuss Ms. Thompson's intentions as it relates to her employment with the public service. The letter does not indicate that the meeting was to take the form of a disciplinary hearing; neither does it indicate that the issue of the termination of her employment was up for consideration. When Ms. Thompson attended, she was asked various questions by members of the Commission. Essentially, she was asked to explain her absence from work. She states that she informed them of her medical condition which impacted her ability to function in a proficient and effective manner. It was her evidence that no further enquiry was made of her at the meeting or thereafter. However, on 10th February, 2018, she received a letter dated 24th January, 2018 informing her that a decision had been taken to recommend the termination of her employment with the public service on the premise that she had abandoned her post in keeping with section 28(3) of the Public Service Order number 11 of 2014.
- [7] Ms. Thompson therefore complains that the Commission did not treat her in a manner which was fair. She states that the very meeting was a farce and that the regulations regarding disciplinary proceedings were not followed. She also states that the Commission was partial and prejudicial towards her.
- [8] Ms. Thompson states that after she received the letter from the Commission, she contacted officials from the Ministry of Health. She exhibits a letter written to the Junior Minister in the Ministry of Health in which she outlined the issues relating to the termination of her employment and sought assistance in resolving the matter. She states that she held ongoing discussions with ministry officials, seeking a review of her employment with the public service and a reinstatement to her post. In fact, she exhibits a memo, signed by the Junior Minister in the Ministry of health, which indicates that the Cabinet of the NIA had considered the matter and came to the conclusion that Ms. Thompson was unfairly treated and that the Commission should be encouraged to re-open the matter. According to that memo, the Cabinet had agreed that Ms. Thompson should be reinstated as a full time non-essential worker pending the Commission's final decision. It is apparent that this

desire of the Cabinet had not been brought to fruition. I do note however, that there are limitations placed on the powers of the Cabinet to simply appoint public officers in this way.

The Defendant's response

- [9] At the time of Ms. Thompson's dismissal, Dr. Patrick Welcome served as chairman of the Commission. He gave evidence on behalf of the Commission and recounted the steps taken leading up to Ms. Thompson's dismissal. No evidence was presented from Ms. Ornette Herbert, who was the acting Permanent Secretary in the Ministry of Human Resources at the time. Ms. Herbert's evidence would have been critical to the issues as it was she who initiated the proceedings against Ms. Thompson in the first place. It is apparent that there were conversations between the Permanent Secretary or other personnel within the Ministry and Ms. Thompson. With no one to clarify the nature of these conversations, the court is left with Ms. Thompson's evidence as being generally uncontroverted.
- [10] Dr. Welcome accepts that Ms. Thompson had been granted study leave. He states however that she was required to enter into a bond signed by two sureties. This apparently was never done and Ms. Thompson indicates that no bond was ever presented to her to sign. Dr. Welcome states also that, in accordance with the conditions of her study leave, Ms. Thompson was to return to work upon completion of her course. She however did not return to work. It was Dr. Welcome's evidence that Ms. Thompson returned to Nevis in 2016, a year prior to the date at which her course with the Monroe College was to end. He states that Ms. Thompson had never presented a valid degree from the Monroe College. However, the graduation certificate has since been presented to the court. Dr. Welcome states further, that Ms. Thompson never presented any expert report on the medical conditions she claims to have had.
- [11] Dr. Welcome states that on 29th November, 2017, the Commission received a letter from the Permanent Secretary in the Ministry of Human Resources. This letter recommended that Ms. Thompson's employment be terminated. It states that Ms. Thompson had returned to Nevis in 2016. The letter acknowledged that Ms. Thompson had indeed communicated with the ministry and was advised to write a letter indicating her intentions. However, the Permanent Secretary complained that this was not done and that Ms. Thompson had not returned to work. After her

study leave had expired she was contacted by the Ministry in order to enquire into her intentions. The letter does not state that Ms. Thompson had made any mention of her health issues to the Ministry; neither did it attach any of the letters allegedly served on Ms. Thompson. I repeat here that Ms. Thompson was quite adamant in her evidence that she did speak with ministry officials about the problems she was experiencing.

[12] Dr. Welcome states that he chaired the meeting which was held on 22nd January, 2018. He states that the Commission had enquired of Ms. Thompson as to her reasons for not returning to work. Ms. Thompson responded by saying that she was not fit to return to work so she was "just at home." The minutes of the meeting indicate that Ms. Thompson had in fact informed the Commission that the date of the meeting "was one of her better days." This was in reference to the condition she claimed to have been suffering from. She stated that if she returned to work she would "just be lashing out at people." In cross examination, Ms. Thompson states that she did inform the Commission that she was ready to return to work. However, the minutes presented in evidence by the Commission makes no mention of this. I do note however, that Dr. Welcome accepted in oral evidence that what was presented as the minutes of the meeting was only a summary and not a verbatim report on everything which was said.

[13] Dr. Welcome insisted that Ms. Thompson did not present any medical report to the Commission, nor did she explain the nature of her illness. He states that he asked Ms. Thompson how long she had been back in Nevis. She responded that she had been back "for some time now." He asked her to explain her reason for not informing anyone in authority of her condition and why she had not consulted a doctor. It was his evidence that she provided no response to these questions. At the end of the meeting, Ms. Thompson was thanked for coming and advised that she will get further communication. There was in fact no further communication other than the letter informing her that her employment was terminated.

[14] Dr. Welcome states that at all material times, Ms. Thompson knew that the termination of her employment was being considered. In fact, in cross examination he states that the meeting was called specifically to address the Permanent Secretary's recommendation that she be terminated. He states that the Human Resource Department had tried on numerous occasions to contact Ms. Thompson, via different means, but to no avail. He insisted that letters were written to her and that

she held meetings with the officials from the Ministry. He also insisted that there was a letter written to her regarding the charges against her and the possibility of termination of her appointment. However, there was no evidence presented to substantiate this assertion. He states further that Ms. Thompson had been employed in the public service since 1997 and ought to have been fully aware of the fact that her actions amounted to a breach of the rules of the public service. She simply had not reported to work. He states therefore that the Commission had simply made its decision based on the evidence before it. It did not treat Ms. Thompson unfairly.

[15] When pressed by a question from the court, Dr. Welcome did acknowledge that based on his experience with the case he did question whether everything was alright with Ms. Thompson. He stated that this was one of the reasons he requested the meeting with her, as what was reported to the Commission didn't seem like normal behavior to him. He also acknowledged that it was open to the Commission to order a medical examination of Ms. Thompson. He stated that in hindsight that would have been a good approach to take.

The Issues

[16] Ms. Thompson has hinged her case on the very broad spectrum of public law. The court is called upon to consider the following:

- (a) Whether the decision of the Commission was illegal, irrational or procedurally improper (including whether there had been a breach of both substantive and procedural legitimate expectations); and
- (b) Whether the Commission was guilty of a breach of the rules of natural justice;

[17] Insofar as the defendant is concerned, it is denied that the decision to terminate Ms. Thompson's employment with the public service was illegal, irrational or procedurally improper. It is denied that there has been any breach of the rules of natural justice. However, the defendant also asserts that Judicial Review ought not to be available to Ms. Thompson as she has alternative remedies available to her which she has not pursued. It is also argued that her claim should be dismissed on the basis of delay in her pursuing this matter in the first place.

Illegality and Procedural Impropriety

[18] Illegality was defined in the case of *Council of Civil Service Unions v. Minister of the Civil Service*¹ by Lord Diplock when he stated that “[by] *illegality as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulated his decision making power and must give effect to it.*” Further elaboration was made on the doctrine in the case of *Padfield et al v. Minister of Agriculture*² where the following was stated:

“Unlawful behavior by the Minister may be stated with sufficient accuracy for the purpose of the present appeal... (a) by an outright refusal to consider the relevant matter, or (b) by misdirecting himself in point of law or (c) by taking into account some wholly irrelevant or extraneous consideration or (d) by wholly omitting to take into account a relevant consideration...”

[19] Essentially, the decision of a public authority may be reviewed on the grounds that it has acted outside of the powers conferred upon it by statute or any relevant law, applied the wrong law to the issues at hand or taken into account matters which are wholly irrelevant to the issues under his consideration, or omitted to take into account matters which are relevant. As it relates to the issue of relevant considerations, Lord Browne Wilkinson, in the case of *Wheeler v. Leicester City Council*³, noted that “*the exercise of a discretionary power is unlawful if those exercising the discretion had regard to legally irrelevant matters or failed to take into account legally relevant matters.*” Therefore, the public authority must consider matters which it has a legal obligation, or perhaps even a discretion, to consider and discard matters which are legally irrelevant to the issue under his consideration.

[20] Insofar as the law on procedural impropriety is concerned, in *Council of Civil Service Unions v. Minister of the Civil Service* Lord Diplock described this heading in the following manner:

“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

¹ [1984] UKHL 9

² [1968] 1 All ER 694

³ [1985] 2 All ER

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..."

[21] Therefore the courts have been deliberate in noting that where a public authority comes to exercise a discretion, which may be adverse to a person, he must observe the rules of natural justice in doing so. This means that he must give the individual an opportunity to be heard. He must also ensure that there is no bias on his part and no conflict of interest which arises in his deliberation which may undermine the integrity of the process; and very importantly, the process adopted for the decision he is to make must be fair overall. That is separate and apart from the actual statutory procedure which has been put in place by the legislature or any procedures which arise from standing orders and terms of references or the like. It is said that in such circumstances, the person against whom the decision may be made has a legitimate expectation that the rules or practices will be followed and that the process will be fair to him or her.

[22] In the circumstances of this case, there is no dispute that Ms. Thompson was a public officer within the broad definition established in section 119(1) of the **Constitution of Saint Christopher and Nevis**. The Public Service Commission is an institution established by section 77 of the Constitution and its role in the appointment, discipline and dismissal of public officers is enshrined in section 78(1) of the Constitution. The section states as follows:

Subject to section 87, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), and 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 Governor-General, acting in accordance with the recommendation of the Public Service Commission.

[23] Therefore, in order for a public officer to be removed from office, the Commission must first make the recommendation to the Governor General. In keeping with the provisions of the constitution,

Parliament has passed the **Public Service Act⁴ (the Act)**, which outlines in more detail, the manner in which the Commission exercises this discretion conferred on it by the Constitution. However, apart from assessing the procedures outlined in the Act itself, the court must also assess the provisions of various standing orders and regulations which have been promulgated by the Minister of the Public Service in keeping with section 53 of the Act. That section empowers the minister to ***“make regulations respecting the Public Service in order to give effect to the provisions of this Act...”*** However, in assessing these orders it is apparent that they do not necessarily conform to a number of the specific provisions of the Act. This creates, to my mind, a rather confusing body of law which the relevant authorities would do well to evaluate.

[24] In the particular circumstances of this case, section 39 (2) of the Act states that a public officer holding a permanent appointment may only be terminated if one of the number of factors identified in the section arises. One such circumstance is where the public officer has abandoned his or her post. Section 40 of the Act goes on to state as follows:

- (1) Where a public officer is absent without leave for a continuous period of one month, such officer shall be deemed to have resigned from his or her office and the office shall become vacant.***
- (2) The public officer referred to in subsection (1) shall cease to be a public officer, unless declared otherwise by the Governor General, acting in accordance with the recommendation of the commission.***

[25] Despite the express wording of this particular section, Order 28(3) and (4) of the Public Service Orders 11 of 2014 states as follows:

- (3) Where a public officer absents himself or herself from duty for a period exceeding five working days without permission being granted, then such officer shall be deemed to have abandoned his or her post, and the matter shall be reported to the Service Commission accordingly.***

⁴ Number 19 of 2011

(4) Where a public officer is found to have abandoned his or her post in accordance with the provisions of this section, without justification, then such officer shall, in accordance with the provisions of the Code of Discipline, be liable to dismissal.

[26] The first observation to be made here is that the Standing Orders have significantly reduced the number of days in which a Public Officer is deemed to have abandoned his or her post on account of non-user of the office. The Act gives a completely different meaning as to what constitutes abandonment. Under the common law a deemed abandonment is said to be a resignation from the office altogether. In most regulations, the powers conferred on the Commission are somewhat more akin to the provisions of section 40 of Act. Although order 28(3) uses the terms "deemed to have abandoned", it appears to have a somewhat distinct effect.

[27] However, the distinction may very well be that in section 40 of the Act, the public servant is deemed to have resigned from the public service altogether and ***shall cease to be a public officer*** if he fails to report to work for a period of at least one month. The post also only becomes vacant after the expiration of the one month period. On the other hand, in the Standing Order, it is the post which is abandoned and the question of whether the Public Officer should be dismissed from his employment becomes a matter for consideration under the disciplinary rules applicable to the Public Service. I am also of the view that where section 28(3) of the standing orders indicates that an officer is ***"liable to dismissal"***, it means that the dismissal is not automatic. Dismissal is the most draconian power available to the Commission in such a circumstance. But it is not the only sanction which can be placed on a public officer. This is clearly outlined in sections 31 and 37(2)(c) of the Act.

[28] Whilst I appreciate the distinction in their wording, this does not take away from the fact that the overlap between these two provisions, sections 40 of the Act and 28(3) of the Standing Orders, can create some uncertainty in the process. The challenge with this case in particular is that Ms. Thompson had been away from her office for in excess of a month. Either way the provisions of the Act or the standing orders may apply. However, the letter written to the Commission on 29th November, 2017 by the Permanent Secretary didn't specifically indicate whether she was invoking the provisions of section 28(3) of Standing Orders or section 40 of the Act. Neither provision was

ever put to Ms. Thompson until such time as she was informed of her termination. It was only then was it indicated to her that Order 28(3) formed the basis of the discretion being exercised by the Commission.

[29] In my view therefore, it is important for the court to consider the full range of the powers available to the Commission in its deliberations in Ms. Thompson's case, as it does appear to me that the Commission may have failed to consider legally relevant issues which ought to have influenced the outcome of their inquiry into Ms. Thompson's matter. She may also not have known the full extent of what the meeting was about and its true implications prior to the decision being made.

The Provisions under the Act

[30] On the face of it, section 40 of the Act creates an automatic resignation on the part of the public officer, once he or she has not been present for work without leave for a continuous period of one month. However, in the case of *Felix Dasilva v Attorney General of St. Vincent & the Grenadines et al*⁵ Joseph J came to consider a similar clause to this section which then existed in the regulations for Saint Vincent and the Grenadines. In that territory, the period of deemed abandonment was 10 days with a similar discretion granted to the Commission as in subsection (2) of the legislation in Nevis. Joseph J states therefore, that ***"the expression 'unless declared otherwise by the Commission' was inserted to ease the rigidity of that regulation and to give the Commission a discretion after the passage of ten days to hold that there has not been an abandonment."*** I am aware that there was an appeal against that decision, which was itself overruled subsequently by the court of appeal. However, I am of the view that this particular dictum from Joseph J remains useful guidance.

[31] I would add, that it would be important for the Commission to be very aware of this discretion and the need to take into account the myriad of circumstances in which a public servant may not turn up to work for a continuous period. It cannot be the case that Parliament had ever intended for a procedure which excludes the public servant from making any representations in consideration of this issue. It is my view that the Commission ought, where the circumstances so warrants it, to

⁵ Suit No. 356/1989

consider that discretion before a final determination is made on whether and how the Governor General should be advised in accordance with the section.

The Standing Order

[32] Insofar as section 28(3) of the Standing Order is concerned, the provision is somewhat less rigid than as contained in the Act and Ms. Thompson was in fact stated to have been dismissed under this section. Whilst non-user of the office for 5 days constitutes a deemed abandonment of the post, the regulation makes it mandatory that the Commission be informed of this and makes express provision for the public officer to be called upon to provide a justification for his or her absence at a hearing. This is especially important given the rather brief period of time within which the abandonment is deemed to come into effect; a mere 5 days. The process for doing so is said to be in accordance with the disciplinary code of the public service.

[33] In the case of ***David Penn v. The Governor of the British Virgin Islands***⁶⁶ Byer J came to consider the provisions of the Legislation in force in the British Virgin Islands. There the legislation states that ***Unless declared otherwise by the Governor, an Officer who is absent from duty for a continuous period of ten working days without reasonable excuse, shall be deemed to have resigned from the relevant service and thereupon his or her office becomes vacant and the officer ceases to be an officer.*** In interpreting that section Byer J stated as follows:

[49] From this Section, it is clear that there are two operative parts. Firstly, the officer must have been absent without reasonable excuse and secondly, that there shall be an automatic action thereafter of him having been "deemed to resign" without more.

[50] It is therefore pellucid, that upon this Section becoming operational by the actions of the officer himself, the employment of that officer comes to an end-pure and simple.

[51] Thus, there must be at first an investigation whether the first limb has been satisfied. By the triggering of this investigation, it must be accepted that there would be a

requirement to ensure that any inquiry is conducted with procedural fairness. In other words, to ensure that the affected person is given an opportunity to be heard and is in fact heard.

[34] Although the express words may be different, I find the dicta of Byer J to be somewhat helpful to the present case. There are two limbs here. A public servant can only be liable for dismissal under Order 28(3) if he or she has been found to have abandoned his or her post. However, this can only be the case if it is found that he or she had done so by being absent without permission for 5 days without justification. Therefore, as noted by Byer J, an investigation must be carried out by the Commission before any decision is made. In doing so, the Commission must have due regard to procedural fairness in its dealings with the public servant who must be called upon to justify his or her absence from work.

[35] Order 28(3) does not go so far as to say that the post becomes vacant and that the officer ceases to be a public officer in light of his or her absence from work. In light of the express wording of section 40 of the Act in force in Nevis, I am of the view that the Standing Orders cannot simply reduce on the statutory period outlined in the legislation. Therefore in interpreting the express words of the Standing Orders, when balanced against section 40 of the Act, I am of the view that the public officer cannot be deemed to no longer be a public officer unless the period of one month has elapsed and the procedure adopted for termination under section 40 must be invoked. Under Order 28(3) however, the absence from work for over 5 days becomes a disciplinary matter which may invoke separate proceedings, where the ultimate sanction may be dismissal from office. That however, is discretionary and if section 28(3) is employed, then the Commission must consider whether another sanction is more appropriate, even if it finds that there was no justification for the officer's absence from work.

[36] In light of that, if the Commission was of the view that section 28(3) was what was applicable to Ms. Thompson's case, then it must have also had a duty to consider the full breadth of its powers and obligations under that section in dealing with her. Even before a dismissal from office can be recommended, an adequate inquiry must be conducted into whether there was a justification for Ms. Thompson's absence from work. That inquiry must follow the procedure set out in the code of

discipline for public servants or section 37 of the Act. I turn now to consider the different procedures to be adopted in coming to this conclusion.

The Procedure under Section 46 of the Act

[37] Insofar as it relates to abandonment under section 40 of the Act, **the Public Service Act** goes on in section 46, to outline the procedure to be adopted before a public officer's employment can be terminated. This expressly includes circumstances under which it is suspected that the public officer has abandoned his or her post as mentioned in section 39. The section states as follows:

(1) Where,

(a) the head of the public service represents to the commission that an officer's appointment be terminate, and the commission recommends to the governor general that such officer's appointment be terminated, or

(b) the governor general considers that the appointment of an officer be terminated, acting on the advice of the commission

for any reason specified in section 39, not being dismissal in consequence of disciplinary proceedings, the procedure specified in subsection (2) shall apply.

(2) The procedure referred to in subsection one shall be as follows:

(a) The head of the public service shall notify the public officer, in writing, of the opinion stating the grounds on which the opinion is based;

(b) a public officer aggrieved by the opinion may apply to the commission for a review of the opinion and may make oral or written representations in support of his or her case, either in person or through a representative of his or her choice;

(c) irrespective of whether a public officer makes a representation, under paragraph b, the commission shall consider all evidence in the case, and shall then make a recommendation to the Governor General, as to whether the appointment of the public officer ought to be terminated, and the governor general shall act in accordance with the recommendation of the Commission to terminate or not to terminate the public officer's appointment, and the public officer shall be notified in writing.

[38] It is in assessing the terms of this section that one finds some confusion in the final decision of the Commission. The letter written to the Commission on 29th November, 2017 may very well fall within the parameters of this section of the Act. The letter expressly recommends that Ms. Thompson's appointment be terminated and Dr. Welcome acknowledged at trial that the meeting was held in order to consider the Permanent Secretary's recommendation. The letter goes on to state the amount of time within which she had not reported to work. That certainly exceeded a month, bringing Ms. Thompson within the parameters of section 40 of the Act. On the other hand, Order 28(3) of the Standing Orders makes no provision for a recommendation for termination to be made. The Order simply states that if a public officer is absent from work for a period exceeding 5 days the Commission should be informed of this and it is the Commission who initiates an inquiry into whether the officer should be dismissed. It appears that the Commission may not have fully considered the provisions of section 40 of the Act and dealt with Ms. Thompson in accordance with the provisions of section 28(3). If they had done so however, they must also be taken to be bound by the procedures under which this inquiry was to take place. This appears to be the procedure for discipline of a public officer as outlined in the code of discipline or section 37 of the Act.

The Disciplinary Procedures

[39] Order 28(3) explicitly indicates that the procedures to be adopted are those which relate to the code of discipline of public officers. I again continue to express difficulty with the substance of the standing order as it relates to the circumstances of this case. None of the procedures outlined in this code of discipline appeared to have been followed by the Commission as it relates to Ms. Thompson's matter. Although the letter states that she was dismissed under that order, the procedure adopted simply did not seem to fall within its provisions.

[40] In the code of discipline, absence from duty without leave or approval for a period of five days amounts to misconduct of a serious nature, for which a public officer may be dismissed from office. The procedure however, creates a discretion for the Commission to appoint **a Committee of Enquiry of not more than three persons, to conduct the necessary enquiry into any charge against an officer for the commission of misconduct of a serious nature.** It is perhaps unnecessary to outline the full extent of the powers of this committee as it is clear on the facts of this case that no such committee had been set up. However, outside of that, the code creates no procedure as to how the Commission is to conduct the inquiry in the absence of this committee. I would add though, that the information necessary for the committee of enquiry to have done its work would have been most useful to the Commission, as the code specifically provides that **"a charge brought against an officer pursuant to the provisions of subsection (3) shall be defined in a written statement, in which statement the nature of the case to be answered shall be set out."** It goes on to state that the written document provided to the public officer must include **advice to the officer that he or she may be assisted, if he or she so wishes throughout the hearing by a trade union representative, an attorney-at-law or a friend.** None of these privileges were afforded Ms. Thompson.

[41] If Ms. Thompson's dismissal was done in accordance with order 28(3) then outside of the Code of Discipline, the only other provision which could have related to the procedure to be adopted was section 37 of the Act itself. That section creates the procedure for the discipline of public officers. Even then, when one examines the express provisions of that section, none of the procedures contained therein were followed in relation to Ms. Thompson's case; to the point where it is even doubtful that this was the process in fact invoked by the Commission at all. Subsection 1(a) states as follows:

Subject to the provisions of this Act, a public officer shall not be dismissed except in accordance with the following procedure:

(a) the Governor General, acting in accordance with the recommendation of the commission, shall cause the public officer to be notified, in writing, of the charge and to be called upon to state, in writing, before a specified day, which day shall

allow reasonable time for the purpose, any grounds upon which the public officer relies on to exculpate himself or herself.

[42] The section goes on to state that in the event that no written statement is provided by the officer, the Commission shall constitute a tribunal to consider the matter. Again this procedure was simply not followed; or at least there is no evidence to prove it. Very importantly, the section also creates a discretion for the Commission to conduct further enquiries should this be desirable to amplify any of the facts or issues which arose out of the initial investigation. When one considers the specific issues Ms. Thompson complained about as far back as May, 2017, it would seem to me that enough was not done to ensure that a proper inquiry was conducted in relation to Ms. Thompson's case, despite the express powers provided for the Commission to do so. What took place appeared to me to be a rather brief meeting solely to consider whether the Permanent Secretary's recommendation should be accepted and Mr. Thompson terminated.

Analysis

[43] In applying these principles and the law to the circumstances of this case, I am of the view that the actions of the Commission were in fact ultra vires as it had failed to take into account legally relevant issues in coming to a conclusion regarding Ms. Thompson's employment. There were also a number of breaches of the procedure as well as a disregard for the basic rules of natural justice so as to render the process by which the decision was made improper.

[44] Firstly, as it relates to the procedural issues, I agree that Ms. Thompson had not turned up to work after her study leave had expired for a period of more than one month. In such a circumstance she can be deemed to have abandoned her office. However, in summoning Ms. Thompson to a meeting on 22nd January, 2018, the Commission could have only been exercising the discretion available to it under section 40(2) of the Act, as nothing was done to comply with the code of discipline or section 37 of the Act. If that were the case, then the procedure outlined in section 46 of the Act had to have also been followed. That was clearly not done. The Act requires that an opinion outlining the charges against Ms. Thompson had to have been presented to her. She must have been invited to make representations in opposition to the opinion, whether in writing or orally. I would add that in such circumstances, the Commission would do well to inform a public servant of

her right to representation, perhaps even legal representation, in such circumstances. None of this was done.

[45] When one examines the letter written to Ms. Thompson inviting her to this meeting, it simply does not indicate that the meeting was in the nature of a disciplinary hearing, or an enquiry into her absence from work. There is no evidence that the letter from the Permanent Secretary recommending her termination was even disclosed to her, prior to the meeting. No opinion outlining the basis of the charges against her were presented and I am not of the view that an opportunity was given to her to adequately prepare for the charges which would have been put to her in the meeting.

[46] On the day of the meeting Ms. Thompson was asked certain questions and based solely on the oral responses she gave, the Commission felt quite satisfied that her termination should be recommended. Yet that recommendation was made in accordance with Order 28(3) without any of the procedures relating to that order having been satisfied. This does not seem to adequately comply with the requirements of section 46 of the Act either and certainly does not satisfy the legitimate expectation that natural justice would be meted out to her. That was not a sufficient opportunity for her to be heard in the circumstances of this case, to the extent that it is even difficult to determine which of the procedures were being followed by the Commission prior to the issuing of the termination notice in the first place.

[47] In addition to that, the Commission had to have considered the question of whether Ms. Thompson had in fact abandoned her job based on the criteria set by the law. The question of her actual intention to resign from her post must have been considered when balanced against her actions and the reasons she gave for being absent from work. I am satisfied that the manner in which the decision was made did not give adequate consideration to the issues raised. Abandonment comes with a specific intent and it is important for the commission to be satisfied that this was the case in relation to Ms. Thompson's actions. In the disciplinary process that issue is determined by whether or not there was a justification for her being away from work for that period of time. If it is that one is considering section 46 of the Act, then the Commission had to have considered whether there were factors which would justify recommending a different approach to the Governor General.

[48] I accept Ms. Thompson's evidence where she states that even before the expiration of her leave she had approached the Human Resource Department and complained about certain mental health challenges she was having. She complained that she was under such stress that she had to complete her studies remotely and returned to Nevis. The financial support which had been promised her had never materialized. There appeared to have been further communication on that issue and I accept Ms. Thompson's evidence insofar as she states that she had communicated with personnel from the ministry regarding her challenges. She was requested to write a letter indicating when she was ready to return to work and relied on that representation. When I consider the range of powers available to both the Commission and the head of the human resource department I am of the view that Ms. Thompson was simply not treated fairly. However, Ms. Thompson alleges that the meeting with the Commission was a farce and that the Commission was bias towards her. I would not go so far. After hearing from Dr. Welcome, I fully appreciate that the Commission may not have deliberately set out to disregard the procedure in this way. But the extent to which observance of the procedure had been breached is somewhat striking.

[49] Much was made of the fact that Ms. Thompson had not presented a medical report of her condition. However, as was accepted by Dr. Welcome during the course of the trial, it was open to the Commission to order a psychiatric evaluation of Ms. Thompson itself. In fact Order 42(2) of the Standing Order relied on by the Commission to terminate Ms. Thompson's appointment states that ***"[a] public officer may be called upon at any time by the Service Commission to submit himself or herself for examination by a District Medical Officer, and may, on the basis of the results of the examination, be required to appear before the Medical Assessment Panel."*** It appears that this discretion was entirely overlooked, despite Ms. Thompson's issues.

[50] To my mind, a distinction may be drawn between a public officer who suffers a physical ailment such as a broken leg, and one who claims to be suffering from a depression of some sort. It would not take much of an expert to acknowledge that these types of illnesses may manifest themselves differently and ultimately influence the behavior of the public officer. What may at first appear to be outright insubordination may simply be mental health challenges appearing in this way. Dr. Welcome himself stated at trial that he did find Ms. Thompson's behavior to be somewhat strange. He stated, upon inquiry from the court, that more could have been done to inquire into her mental health status, before coming to a conclusion.

[51] To my mind, when one exercises discretion which may affect the lives and livelihood of people, it sometimes takes a deeper dig into one's sense of humanity to give full effect to the principles of natural justice. I fear that Ms. Thompson's complaints were overlooked in a process that had simply disregarded the proper procedure which the Commission was to follow and the broad range of powers it was entitled to exercise in dealing with this issue. In my view, when one examines what Ms. Thompson complained of, the failure to consider the powers conferred on it by section 42(2) of the Standing Orders, means that the Commission failed to take relevant issues into consideration before coming to its conclusion. A report on Ms. Thompson's mental health status would have been more than helpful in the circumstances of this case and it was open to the Commission to obtain one. What compounds this matter even further, is that she was allowed to navigate this hearing with no assistance as was required by the very code of discipline which she was accused of disregarding.

[52] I note also that the Public Service Act empowers the Permanent Secretary, in section 42, to inform the Commission of any physical or mental health challenges which a public officer may have. In those circumstances, the public officer may be retired on mental health grounds. This may not be exactly what Ms. Thompson may have wished for, but at the very least, she would have been entitled to certain financial benefits which would not have been available to her otherwise. Perhaps even medical leave may be recommended for a period of time. This was yet another avenue available to the authorities to deal with Ms. Thompson in a manner which was fair and they failed to do so by completely overlooking the full range of the powers available to them.

[53] In the absence of any evidence to the contrary, it appears that the Permanent Secretary never considered those issues and simply made a recommendation to terminate Ms. Thompson's employment. Even after the matter was referred to it, the Commission had a duty to enquire into this. It is somewhat disconcerting that an individual who had worked with that particular Ministry for 16 years prior to furthering her studies in the very field of public health administration, would simply be terminated without an inquiry into whether her complaints of mental health challenges were well founded. It is not as if there was no background to her complaints. She was awarded a stipend by the government which never materialized during the course of her studies. In addition to that, the study leave granted to her would have seen an incremental reduction in her salary as the time of

her studies progressed. There is evidence to suggest that she had been allowed to finish her course online on account of these challenges which caused her some level of stress.

[54] There is enough here for a more thorough investigation into Ms. Thompson's mental health status to have taken place prior to a determination of the status of her employment. Leadership must mean more than an exercise of authority. The legislation creates so many avenues to adequately address an issue of this nature, yet the ultimate decision to terminate Ms. Thompson's appointment was taken without consideration of any of these provisions.

[55] I am therefore of the view that the decision of the Commission was ultra vires. If it was in fact acting within the provisions of the Public Service Orders 11 of 2014, then it failed to take into account relevant issues and certainly did not apply the procedure which was applicable to the powers contained therein. If the powers contained in sections 37 or 46 were to apply, then certainly the procedure was not followed and relevant legal issues were disregarded. In addition to that, the rules of natural justice were not applied, as Ms. Thompson was not given adequate opportunity to present her case. Though the breach of procedure may not have been intentional, the disregard of these various provisions of the law was not minimal. I would therefore be minded to quash the decision on those grounds.

Irrationality

[56] I make just one brief comment on the allegation that the decision of the Commission was irrational. The doctrine is well known to the law and I would not repeat it here. I state only that the decision in and of itself is not so outrageous in its defiance of logic. I express deep concern about the procedure adopted and the lack of procedural fairness. However, Ms. Thompson did not return to work and was liable to be dismissed if the test under the regulations had been satisfied. Had proper enquiries been made, it may very well have been open to the Commission to take the decision it did. That would also be the case if the provision of section 46 of the Act were employed. If there was a grievance with that decision, then certainly an appeal to the Board of Appeal would have been in order. I would not quash this decision on the grounds of irrationality.

Discretionary Bars

[57] The submissions of counsel for the Commission related mainly to the question of whether Ms. Thompson should be denied a remedy on account of the discretionary bars to bringing her claim for judicial review. As was noted in the case of *Roland Browne v The Public Service Commission*⁷, ***“despite the success of the judicial review claim, the relief may be refused where the judge applies CPR 56.5 and makes a positive finding under that rule.”*** Rule 56.5 states that a court may refuse leave or deny a remedy if it is satisfied that there has been unreasonable delay before making the application. Counsel for the Commission would also wish for the court to deny relief to Ms. Thompson on the ground that she has alternative remedies available to her. I will examine each of these submissions.

Alternative Remedies

[58] The argument made by counsel for the Commission is simply that Ms. Thompson had the option of first seeking a review of the Commission's recommendation in keeping with the provisions of section 37(3) of the Public Service Act. Subsection (4) states that the Commission must consider all the representations and comments received by it after such a review is requested and advise the public officer and Governor General in writing. This is not the appeal process, but rather an opportunity for the Commission to review its own previous decision. There appears to be no statutory time limit to this review.

[59] In addition to that, counsel also refers the court to section 87 of the Constitution, which provides for an appeal against any decision of the Governor General made on the recommendation of the Commission. It is argued that Ms. Thompson did not make use of this process before seeking to file a claim for judicial review. In her application for leave she noted that her reason for not seeking to appeal the decision was that the time for doing so had expired. Counsel argues that this is not a good reason and that her claim should be denied on that basis. However, during the course of the trial, Ms. Thompson also indicated that she was not even aware at the time, that there was a right

⁷ SLUHCVP 2010/023

of appeal. However, it is open to the court to consider the evidence as a whole in determining whether to adopt this discretionary bar to Ms. Thompson's case.

[60] It is a well-established principle that ***"a remedy by way of judicial review is not to be made available where an alternative remedy exists."***⁸ In fact, the courts have stressed that if parliament has provided an alternative remedy, such as a right of appeal it will rarely be appropriate to grant permission to make a claim for judicial review. In the case of ***Sivasubramaniam v. Wadsworth County Court***⁹, it was noted that leave should be granted in rare or exceptional cases if the statutory procedure is less satisfactory than judicial review. No doubt the court's public law power should in and of itself not be abused if a more appropriate remedy is available to an applicant.

[61] However, it must also be observed that an alternative remedy is referred to as a discretionary bar. It is not that the court is unable to entertain a case for judicial review where there is an alternative remedy. As was noted by Baptiste JA in the case of ***Unicomber (Saint Lucia) Limited v. Comptroller of Inland Revenue***, ***"the existence of an alternative remedy does not necessarily preclude the grant of judicial review. Where the alternative remedy is inappropriate, unsatisfactory or ineffective to address the complaints, judicial review can lie."***

[62] In my view, a distinction must be drawn between an appeal against a decision of a public authority and the review of the process by which the decision was made. Ultimately, the process of judicial review seeks to hold public authorities accountable for the manner in which they exercise their powers and to ensure that there is no abuse of power in that process. Also, it is important for institutions like the Commission to ensure that statutory procedures are complied with and that natural justice is observed in its deliberations. I appreciate that the board of appeal can review the process itself, but to say that an appeal is always an effective alternative remedy in the face of clear breaches of the rules of natural justice and procedural fairness is tantamount to suggesting that the Commission is somewhat shielded from any judicial review of its actions. I do not agree with that.

[63] In fact, in the case of ***Unicomber (Saint Lucia) Limited v. Comptroller of Inland Revenue*** Baptiste JA came to consider an argument as it relates to a right of appeal against the decision of

⁸ see Lord Scarman in the case of *Ex p Preston* [2002] EWCA Civ. 1738 at page 47

⁹ [2017] ECWA Civ 424

the comptroller of customs. While he found that some of what was complained of by the appellant could have been considered on appeal, he went on to note that “[t]here are, however **fundamental issues relied on by the appellant relating to the comptrollers failure to deal with it in a fair manner, natural justice and abuse of power.**” Baptiste JA went on to note that, notwithstanding the right of appeal, fairness has an important place in the law of judicial review. The Commission cannot treat a public officer in a manner which is not fair and act in a manner which is ultra vires and not be susceptible to scrutiny by the court in the exercise of its public law powers where it is appropriate to do so. It is not a question of the Commission having made the wrong decision, or merely employing the wrong procedure.

[64] The circumstances of this case are such that there has been a significant breach the rules of natural justice and procedural fairness. It may not rise to the level of an abuse of power, but I am of the view that it is enough to warrant the court’s intervention in at least demanding that the Commission carry out its inquiry in accordance with proper procedure. It is even doubtful that one can fully appreciate what the very nature of the hearing on 22nd January, 2018 was in the first place. This is what is under scrutiny in this case.

[65] I am not of the view that an application for the Commission to review its own recommendation is an appropriate alternative remedy for Ms. Thompson to have pursued. Firstly, this is the very Commission who had not given her a fair hearing in the first place. The process by which this recommendation to the Governor General was made had simply not observed any of the protocols established under the legislation, sufficient for Ms. Thompson to have been fully aware that it was a disciplinary hearing at all. Secondly, she was not provided any of the protections which the code of discipline and even natural justice has outlined. She was not informed of the very nature of the allegation against her beforehand. She was not informed of her right to put written representations to the Commission and, very importantly, her right to representation at the hearing, including legal representation, was not communicated to her. To my mind, what transpired at the hearing leading up to this decision is sufficient to allow a judicial review of the process.

[66] As relates to a right of appeal, I am also not of the view that this is an appropriate and adequate alternative remedy. As noted by Baptiste JA **“the exercise of the Comptroller’s powers and duties can be challenged by judicial review if the appellant shows that the comptroller failed**

to discharge his statutory duty to him or abused his power or acted outside of them." A similar situation arises on the present case. What Ms. Thompson is entitled to is not a decision which is necessarily in her favour. The rightness or wrongness of that decision is certainly a matter for an appeal. But she is entitled to due process and natural justice. This was not meted out to her and she is entitled to have the court review the manner in which her case was dealt with by the Commission.

[67] In addition to that, I have also found that it is unclear as to precisely which provision of the legislation or the standing orders the Commission was following. Is it that she is dismissed for absenting herself from work for 5 days? In that case, the procedure was not followed. However, the letter to the Commission from the Permanent Secretary was not entirely in keeping with that procedure. It recommended termination when order 28(3) does not allow for such a procedure. Even if that were not the case, no tribunal had been set up to follow the procedure in either case. This is enough to find that the appeal is insufficient to address Ms. Thompson's grievances and I would not be minded to dismiss this case on the alternative remedy argument. The peculiar circumstances of this case warrant the judicial intervention which she seeks. I would only state however, that the court is not minded to grant her the full extent of the remedies which she seeks; some of which would be more appropriate for the appeal board once a proper hearing has been afforded her by the Commission.

Delay

[68] The law is that there is no unqualified right to any remedy in judicial review claims. Even after hearing a matter in full, the court is entitled to determine whether it would deny a remedy to a claimant on account of delay. Insofar as that is the case, Lord Diplock stated the following in the case of *O'Reilly v Mackman*¹⁰.

"The public interest in good administration must require that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."

¹⁰ [1983] UKHL 1

[69] Counsel for the defendant referred to the case of ***M&M Transport v. NASPA***¹¹ where this court has fairly recently noted that ***“the intention behind the notion of good administration is that an individual who is aggrieved by a decision of a public authority ought not to sit idly by for an unreasonable period of time before moving the court to review this decision.”*** This is because there may be negative effects to good administration if there is too long a period between the making of the decision and the review to be undertaken by the court. In cases involving the Public Service Commission for example, delay may have a significant impact. It may be that the post is no longer vacant. Or perhaps witnesses who testified before the previous hearing may no longer be available if the process is to recommence. In the circumstances of the present case, the question of whether Ms. Thompson can now be properly evaluated by a mental health practitioner is a matter for consideration, given the delay. These are indeed factors which the court has considered in deciding this case.

[70] Generally, in the realm of public law, the courts have also been careful to point out that undue delay can also amount to an abuse of its process and the court should be guarded against this. In the case of ***Attorney General v. Marvin Phillips***¹², Barrow JA noted that a delay of 3 years before commencing constitutional proceedings was inordinate. In the absence of a cogent explanation, the court ought to have struck out the claim on the ground of delay. Barrow JA went on to state that Mr. Phillip's excuse of having to consult a number of attorneys, who had themselves delayed in bringing the action was not a viable one. Further he noted that, where there had been a fixed time period within which to appeal the decision of the Board, it would amount to an abuse of process if the claimant had simply sought to seek constitutional relief on account of his failure to meet the requisite deadline. If his attorneys were negligent in doing this, then the constitutional powers of the court ought not to be invoked in such a circumstance.

[71] It cannot be doubted that Ms. Thompson had delayed in commencing these proceedings. The application for leave was filed 2 years subsequent to the letter of 10th February, 2018. Notwithstanding this I do note however, that this bar is discretionary and there is no legislative or

¹¹ NEVHCV2016/0073

¹² SKBCVAP2004/0014

other time limit which creates an absolute bar to judicial review upon the expiration of a particular time. It all depends on the circumstances of the case, the explanation provided by the claimant and the effects of the delay on good administration. In ***Attorney General v. Marvin Phillips*** Barrow JA gave due regard to the peculiarity of the facts in that case. However, when I examine the circumstances of the present case I am satisfied that the court's discretion ought to be exercised in Ms. Thompson's favour; especially when one considers the fact that this is a public officer who claims to have been suffering from a depression at the time she was put through the hearing before the Commission with no representation afforded to her.

[72] I state firstly that there are a number of factors which are somewhat troubling regarding the manner in which Ms. Thompson's matter had been addressed in the first place. To my mind, these also affect the issue of delay. She said in evidence that she was not even aware that she had a right to appeal to the Public Service Board of Appeal. When she received the letter informing her of her termination, she proceeded to the Ministry of Health to seek assistance in her reinstatement. It appears from the evidence that the Permanent Secretary in the Ministry of Health did try to assist her and took the issue to the Cabinet. The Cabinet allegedly made certain representations which were contained in a memo in December of 2018, which appears to have represented that a temporary appointment may be made whilst her matter is reviewed by the Commission. It is unclear as to whether the Commission was ever aware that such a review was requested. However, Ms. Thompson indicated that she was in discussions with the Ministry and did not seek legal representation at the time.

[73] I start on the premise that the court is fully aware that the Commission is a separate institution from the political branches of government. In conferring certain powers on the Commission, the Constitution clearly intends to ensure that it is insulated from direct control of the Cabinet of Ministers. In taking the matter to the Minister, Ms. Thompson may not have actually been following the established protocol. However, despite the fact that ignorance of the law is generally not an excuse, in the peculiar circumstances of this case, I find these actions further highlight the challenges which she claims to have been facing when balanced against the manner in which she was treated by the Commission. These may adequately explain the delay in bringing this matter before the court, or at the very least amount to an exceptional reason why the court would not place a discretionary obstacle in her way.

[74] Firstly, it must be observed that Ms. Thompson is a lay person who had called on the Ministry to complain that she was experiencing some form of physical and mental depression. When she was called before the Commission, none of the procedures which were applicable to her case were employed. The code of discipline would have mandated that Ms. Thompson be informed of her right to representation, or assistance as it is put in the regulation. This includes her right to an attorney being present. She was not even informed of the nature of the charge, neither what was to be expected from the Commission after the hearing. It is no surprise when she says that she wasn't even aware that she had a right of appeal. Had she been informed of her rights and had the process itself been generally fairer to her, then perhaps she may have been in a better position to appreciate what needed to be done, before, during and after the hearing before the Commission.

[75] In taking the circumstances of this case into account as a whole, I am not of the view that it would be detrimental to good administration to provide a remedy to Ms. Thompson; especially in light of what allegedly triggered her challenges before the Commission. She took her matter to the Ministry for assistance and I find, based on the facts of this case, that her reasons for not pursuing judicial review earlier are accepted by this court. An overall sense of justice must at some point be brought to bear in relation to the complaints being made by her. Insofar as delay is a discretionary bar, I will exercise the discretion to grant her the remedies which are appropriate to her case, despite the delay in commencing these proceedings. It appears to me to be the only just outcome in relation to this case.

The Appropriate Remedies

[76] As I have indicated, I am satisfied that the decision of the Commission to recommend Ms. Thompson's termination ought to be quashed. I would therefore grant her this remedy for the reasons I have already explained. What is left to consider however, is whether she is entitled to an order for her reinstatement in the public service and/or damages as she has claimed? I am not of the view that this is an appropriate remedy in the circumstances.

[77] It is my view that the Commission ought to have done an enquiry into Ms. Thompson's mental health status. However, it cannot go without criticism that even in these proceedings she had not been evaluated and the court is not in a position to adjudicate on that issue. What I have found is that there was prima facie evidence of what she was communicating to the Permanent Secretary and the Commission regarding what she was experiencing at the time. The court is therefore not in a position to demand that the Commission exercises the discretion afforded to it one way or another. Judicial Review is not a process by which the court usurps the authority of the Commission. What is important is for a proper procedure to be followed and for the Commission to take into account all legally relevant issues.

[78] It may very well not be too late to at least attempt to seek some advice from the Medical Board in order to determine what an appropriate outcome of Ms. Thompson's case should be. Once a proper procedure is followed and she is afforded the legitimate expectation that natural justice would be observed, then a final decision is a matter for the Commission. She has a right of appeal against such a decision if she is aggrieved.

[79] I note also that notwithstanding the recommendation that Ms. Thompson be terminated, the letter written to her indicates that this was effective 16th December, 2017. There is no explanation for this. I find it somewhat confusing myself. If she is deemed to have abandoned her post from the date she was to return to work, then why was this date arbitrarily selected? All these issues must be reviewed by the Commission and it must ensure that Ms. Thompson is treated fairly.

[80] In the circumstances I make the following orders and declarations:

- (a) It is declared that the Commission did breach the principles of natural justice in its deliberation into Ms. Thompson's case;
- (b) It is declared that the decision of the Commission to recommend Ms. Thompson's dismissal from the public service was ultra vires and procedurally improper;
- (c) the decision to recommend Ms. Thompson's termination as stated in letter dated 24th January, 2018 is hereby quashed;

- (d) Ms. Thompson's matter is therefore remitted back to the Commission for consideration;
- (e) All other orders and declarations being sought by the claimant are denied;
- (f) Ms. Thompson is entitled to prescribed costs in the sum of \$7,500.00EC in keeping with the provisions of the CPR.

**Ermin Moise
High Court Judge**

By the Court

