

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

GRENADA

CLAIM NO. GDAHCV2020/0243

**IN THE MATTER OF SECTIONS 84(1), 85(2) and 101 OF THE CONSTITUTION OF
GRENADA, SCHEDULE 1 TO THE GRENADA CONSTITUTION ORDER 1973,
CHAPTER 128A OF THE CONTINUOUS REVISED EDITION OF THE LAWS OF
GRENADA**

AND

**IN THE MATTER OF REGULATION 19 OF THE PUBLIC SERVICE COMMISSION
REGULATIONS 1969, SRO NO. 27 OF 1969, CHAPTER 128A OF THE CONTINUOUS
REVISED EDITION OF THE LAWS OF GRENADA**

AND

**AND IN THE MATTER OF A CLAIM BY VERONICA CHARLES, PERMANENT
SECRETARY (ACTING), FOR BREACHES OF HER CONSTITUTIONAL RIGHTS**

BETWEEN:

VERONICA CHARLES

CLAIMANT

AND

~~[1] THE SECRETARY TO THE CABINET~~
[2] THE ATTORNEY GENERAL OF GRENADA
[3] THE PUBLIC SERVICE COMMISSION

DEFENDANTS

Before:

The Hon. Mde Justice Agnes Actie

Appearances:

Mr. V. Nazim Burke for the Claimant
Mr. Adebayo Olowu for the Second Defendant
Ms. Karen Samuel for the Third Defendant

2021: February 19;
May 7.

JUDGMENT

- [1] **ACTIE, J.:** This claim arises out of an originating motion brought by the claimant, Ms. Veronica Charles, over the termination of her acting appointment in the office of Permanent Secretary in the Ministry of Social Development, Housing and Community Empowerment (“Ministry of Social Development”) and the reversion to her substantive office of Director of Social Development in the said Ministry. Ms. Charles also challenges the decision to place her on administrative leave and her subsequent transfer to the office of Institutional Strengthening Specialist in the Ministry of Climate Resilience, the Environment, Forestry, Fisheries and Disaster Management (“Ministry of Climate Resilience”).

Background

- [2] On 13th July 2020, Ms. Charles filed an originating motion against the defendants for the following relief:
- (1) A Declaration that the decisions of the first defendant to:
 - (a) terminate the acting appointment of the claimant as Permanent Secretary in the Ministry of Social Development on 22nd October 2019;
 - (b) send the claimant on forced leave on 29th October 2019; and
 - (c) purportedly transfer the claimant from the office of Permanent Secretary (acting) in the Ministry of Social Development to the office of Institutional Strengthening Specialist in the Ministry of Climate Resilience, were, in each instance, ultra vires and contrary to section 85(2) of the Constitution of Grenada and therefore unconstitutional, null and void, and of no effect in law.

- (2) A declaration that when Her Excellency, the Governor-General, acting in accordance with the advice of the Public Service Commission (PSC) by letter dated 18th May 2020 purported to terminate the acting appointment of the claimant in the office of Permanent Secretary (acting) in the Ministry of Social Development with effect from 31st October 2019, and reverted the claimant to her substantive office of Director of Social Development in the Ministry of Social Development with effect from 31st October 2019, Her Excellency, the Governor-General acted irrationally and/or unreasonably and/or arbitrarily and/or surrendered and/or abdicated the discretion vested in her by the Constitution of Grenada, each of which circumstance rendered the purported termination and reversion a contravention of section 85(2) of the Constitution of Grenada and therefore unconstitutional, null and void, and of no effect in law.
- (3) A declaration that the decision of the third defendant to pass over the claimant for promotion to the office of Permanent Secretary in the Ministry of Social Development, without any adequate reasons being given to her for so doing, was improperly motivated, unfair, irrational and in breach of her legitimate expectation and contrary to regulation 19 of the Public Service Commission Regulations.
- (4) A declaration that the decision of the third defendant to pass over the claimant for promotion to the office of Permanent Secretary in the Ministry of Social Development, without first giving her an indication as to why she is being passed over for promotion and an opportunity to make representation and/or be heard in that regard is in breach of natural justice and the claimant's constitutional rights to due process and protection of the law guaranteed by section 8(8) of the Constitution of Grenada Chapter 128 A of the Continuous

Revised Edition of the Laws of Grenada, and is therefore unconstitutional.

- (5) A declaration that when the third defendant by letter dated 18th May 2020 purporting to grant to the claimant administrative leave from 31st October 2019 to 8th November 2019, it abdicated its responsibility under section 84(1) of the Constitution of Grenada Chapter 128A of the Continuous Revised Edition of the Laws of Grenada, and was following the dictates of first defendant, the Minister of Social Development, the Cabinet of Ministers and/or some body or committee other than itself in coming to the decision to grant such leave to the claimant and is therefore unconstitutional, null and void, and of no effect in law.
- (6) A declaration that the decision of the third defendant by letter dated 18th May 2020 purporting to transfer the claimant definitively to the office of Institutional Strengthening Specialist (Grade K) Ministry of Climate Resilience effective from 11th November 2019, it abdicated its responsibility under sections 83(12) and 84(1) of the Constitution of Grenada, Chapter 128A of the Continuous Revised Edition of the Laws of Grenada, and was following the dictates of the first defendant, the Minister of Social Development, the Cabinet of Ministers and/or some body or committee other itself in coming to the decision to transfer the claimant and is therefore unconstitutional, null and void, and of no effect in law.
- (7) A declaration that the office of Institutional Strengthening Specialist, Ministry of Climate Resilience is not an equivalent post in the public service of Grenada to which the Claimant may be transferred pursuant to section 84(1) of the Constitution as it is not an established post in the public service of Grenada in that no

budgetary appropriation or allocation is made for the said office in the annual Estimates of Revenue and Expenditure for Grenada for the fiscal year 2020 and as such the claimant has been constructively dismissed or alternatively required to retire from the public service of Grenada as at 11th November 2019.

- (8) An order pursuant to section 101(3) of the Constitution of Grenada that the claimant, having been constructively dismissed or required to retire from the public service is to be paid all of her pension and retiring benefits as if she had attained the compulsory retirement age.
- (9) Damages, including vindictory damages, in such measure as the court considers appropriate, be awarded against the State of Grenada for the breaches of the claimant's constitutional rights.
- (10) Interest pursuant to sections 27 and/or 27A of the West Indies Associated States Supreme Court (Grenada) Act, Chapter 336 of the Continuous Revised Edition of the Laws of Grenada at such a rate and for such period as this honourable court shall deem fit and proper.
- (11) Such further or other orders as this honourable court seem just.
- (12) Costs.

[3] On 16th November 2020, the Secretary to the Cabinet (the First Defendant), filed an application seeking to be removed as a party in the proceedings. The unopposed application was granted and therefore the Secretary to the Cabinet was removed as a party to the proceedings.

[4] On 19th February 2021, the date set for trial, Counsel for Ms. Charles, Mr. V. Nazim Burke, at the end of his closing submissions stated that he intends to abandon the claims concerning Ms. Charles' allegations in relation to her legitimate expectation of a promotion and the allegation that the termination of her acting appointment as Permanent Secretary rendered her constructively dismissed or retired. Accordingly, the prayers in reliefs 3, 7 and 8 as contained in Ms. Charles' originating motion have been rendered nugatory.

[5] The sudden withdrawal of these two substantive challenges raised by counsel for the claimants at the end of the trial and in closing submissions was much to the surprise and chagrin of the court and defendants, especially Counsel for the Public Service Commission who prepared, filed substantial submissions and argued at length on those points. This arbitrary and astonishing withdrawal at the closing submissions stage on those two substantial grounds of the claimant's originating motion is unreasonable and, in the court's view, amounts to an abuse of process. The court deprecates such practices which are not in keeping with the overriding objective of CPR 2000 to save time, expense and not waste the court's limited resources.

Claimant's affidavit evidence in support of the originating motion

[6] The claimant, Ms. Veronica Charles, filed an affidavit in support of her originating motion on 13th July 2020 and says:

- (1) That she is 54 years old and joined the public service on 1st October 1986. Ms. Charles has held various positions in different ministries and departments. In 2011 she was appointed to the office of Director of Social Development in the Ministry of Social Development and held that office until April 2018.
- (2) By letter dated 23rd April 2018 from the Public Service Commission, she was appointed to act in the position of Permanent Secretary in the Ministry of Social Development for a period of one year. She

states that the position was temporarily vacant and that the last person who held the position vacated the post on or about 17th November 2018.

- (3) After the initial period of her acting appointment elapsed, she was invited to continue to act in the position by way of letter dated 19th June 2019 from the Public Service Commission. She states that she continued to act in the position from 17th April 2019 to 22nd October 2019. Further, she states that during her acting appointment there were no complaints levelled against her in relation to the performance of her duties as acting Permanent Secretary.

Communication with Cabinet Secretary

- (4) At approximately 8:30am on 22nd October 2019, she was summoned by the Cabinet Secretary, who is the Head of the Public Service, to her office and informed that a decision had been taken to terminate her appointment “because of two decisions you made that were not popular”. The two decisions in issue were in relation to the preparation of a supplemental budget for the Ministry and an enquiry to a house being built for a victim of domestic violence in the Prime Minister’s constituency. Ms. Charles replied to the Cabinet Secretary and gave her reasons for both decisions.
- (5) Ms. Charles states that later on that day she was notified by the Cabinet Secretary that she was to remain in the position until 28th October 2019, at which time she would be given further instructions. On 29th October 2019, she states that the Cabinet Secretary contacted her and notified her that she should do a handover and brief for Mrs. Chrissie Worme-Charles, Director of Social Development (acting) with the working of the office of Permanent Secretary and to proceed on administrative leave with immediate

effect. She states that she complied with this request and proceeded on leave as instructed.

- (6) During the period from 30th October to 4th November 2019, she communicated with the Cabinet Secretary both verbally and in writing concerning the instructions to hand over to Mrs. Worme-Charles. Thereafter, on or about 8th November 2019, she was contacted by the Cabinet Secretary, who verbally instructed her to report to the Ministry of Climate Resilience from 11th November 2019. She acceded to this instruction and reported to the said Ministry.
- (7) On 15th November 2019 she states that she was provided with office accommodation and a list of duties by the Permanent Secretary. However, she was not given a job description. On 22nd November 2019, the Cabinet Secretary responded to her written correspondence concerning the written instructions to Mrs. Worme-Charles and informed her that the matter was submitted to the Public Service Commission. During the period from 15th November 2019 to 29th November 2019, Ms. Charles received written correspondence from the Permanent Secretary in the Department of Public Administration concerning the creation of the post of Institutional Strengthening Specialist. She states that the correspondence on 29th November 2019 revealed that Cabinet had approved the post at its meeting on 7th October 2019 and that she was identified as the person who is to assume that role.

Transfer, administrative leave and termination of acting appointment

- (8) On or about the month of June 2020, she received copies of three letters from the Public Service Commission concerning her previous acting appointment as Permanent Secretary; granting of

administrative leave and her transfer to the Ministry of Climate Resilience as Institutional Strengthening Specialist. She states that when the Cabinet Secretary spoke with her on 22nd October 2019 that a decision was taken to terminate her acting appointment she was aware that the Governor General, acting on the advice of the Public Service Commission, had taken no such decision.

- (9) Ms. Charles believes that the Cabinet Secretary acted outside of the scope of her authority and therefore Ms. Charles says her termination was unconstitutional pursuant to section 85(2) of the Constitution. Further, that the Public Service Commission abdicated its responsibility when it purported to transfer her to the post of Institutional Strengthening Specialist. Therefore, the granting of leave and her transfer were unconstitutional and in violation of sections 83(12) and 84(1) of the Constitution. Ms. Charles says that she was not given a reason for the termination of her acting appointment and that this treatment was in breach of the principles of natural justice pursuant to section 8(8) of the Constitution. Moreover, Ms. Charles states that the post of Institutional Strengthening Specialist is not an established post in the public service as at the date of her transfer on 11th November 2019. In light of the above, Ms. Charles is of the view that she was constructively dismissed or required to retire and is entitled to pensions and retirement benefits with effect from 11th November 2019.

- [7] As Indicated before, the claimant has now abandoned her claim for constructive dismissal and legitimate expectation.

Evidence of Beryl Isaac

[8] On 16th November 2020, Ms. Beryl Isaac, former Secretary to the Cabinet, filed an affidavit in opposition to the originating motion. The salient points in Ms. Isaac's affidavit are:

- (1) During her tenure it was customary for her to have discussions with officers on the needs and demands of the public service, for example when the post of Permanent Secretary in the Ministry of Social Development became vacant, she invited Ms. Charles to her office and informed her that the Government was minded to recommend her to act as Permanent Secretary in the said Ministry.
- (2) After the above conversation with Ms. Charles, Ms. Isaac states that the correspondence was submitted to the Public Service Commission which triggered the consideration, recommendation and appointment process to be undertaken. Notwithstanding that Ms. Charles commenced acting as Permanent Secretary prior to the receipt of her official correspondence. Ms. Isaac states that it was always within the discretion of the Public Service Commission whether or not to appoint Ms. Charles after considering the recommendation. Further, she states in June 2019, when Ms. Charles was on leave, the Public Service Commission appointed her to oversee the functioning of the Ministry of Social Development in the absence of Ms. Charles.

Meeting concerning budget of Ministry

- (3) Ms. Isaac states that she met with Ms. Charles in relation to certain actions concerning the budget for the Ministry which placed the Minister in an "acutely embarrassing position" and her insubordination. She alleges that Ms. Charles submitted the budget for the Ministry of Finance without her line Minister's approval. She states that this omission by Ms. Charles was "egregious" and a

“crucial” indication that she was not yet ready to continue on as a Permanent Secretary.

Meeting to discuss Ms. Charles’ performance

- (4) In the latter part of October 2019, Ms. Isaac avers that she invited Ms. Charles to her office to discuss Ms. Charles’ performance as acting Permanent Secretary and to advise her that a recommendation was going to be made for her not to continue on in her post. Ms. Isaac acknowledges that she informed Ms. Charles that her appointment as Permanent Secretary will be terminated. Ms. Isaac, then explains what she meant was that a recommendation would be made and not that she was personally terminating Ms. Charles’ acting appointment on behalf of the Government.
- (5) Ms. Isaac states that she informed Ms. Charles that her omission in relation the preparation of the supplementary budget, in particular failing to obtain the Minister’s approval was of major concern. Ms. Isaac states that she asked Ms. Charles to prepare a handover paper as a brief to whomever would be appointed to the post of Permanent Secretary, but did not name Ms. Charles’ successor to the post. Further, Ms. Isaac says that she was informed that Ms. Charles would be reverted to her substantive post as Director of Social Development and be transferred to the post of Institutional Strengthening Specialist in the Ministry of Climate Resilience. However, Ms. Isaac says she was not informed when the transfer was to take effect.

Transfer and administrative leave

- (6) On 30th October 2019, Ms. Isaac says that Ms. Charles called her and informed that the handover brief was complete. Ms. Isaac

requested Ms. Charles to personally deliver the brief to her and informed her that the office space as Institutional Strengthening Specialist was not yet ready and enquired whether she would be minded to go on leave for an addition week or so. Ms. Charles requested administrative leave and agreed to be placed on administration leave. Ms. Isaac then recommended to the Public Service Commission that Ms. Charles is to proceed on administration leave from 31st October to 8th November 2019. The post of Institutional Strengthening Specialist was created in or about early October 2019.

- (7) While she was the Chairperson of the Public Service Commission, she was privy to the minutes of Public Service Commission, where it took the decision to accept the recommendations in relation to Ms. Charles to advise the Governor-General.

Evidence of Naomi Jeremiah on behalf of the Public Service Commission

- [9] Ms. Naomi Jeremiah, Chief Personnel Officer of the Public Service Commission (acting), filed an affidavit on 16th November 2020 in opposition to the originating motion. With respect to the allegations contained in the originating motion Ms. Jeremiah tendered the following:

- (1) In relation to the termination of Ms. Charles' acting appointment, Ms. Jeremiah states that the Public Service Commission did receive submissions by Ms. Isaac, as Cabinet Secretary, on 4th November 2019 recommending the termination of Ms. Charles' appointment and reversion to her substantive post on the basis that her appointment appeared to be inefficacious. There was also a recommendation for administrative leave to be granted to Ms. Charles from 31st October – 8th November 2019 to facilitate the readiness of an office space for her.

- (2) Further, the Public Service Commission also received a request from the acting Permanent Secretary in the Ministry of Climate Resilience for the filling of the new post which was created by the Cabinet of Grenada at its meeting on or about 1st October 2019. The new post was to be paid in Grade K.
- (3) Ms. Jeremiah states that upon receipt of those recommendations, the Public Service Commission considered them and took the decision to advise the Governor-General of the request for the termination of Ms. Charles' appointment with effect from 31st October 2019. The Public Service Commission, then took the decision to revert Ms. Charles to her substantive post, grant the administrative leave and appoint and transfer her to the new post in the Ministry of Climate Resilience. These actions were taken in 18th November 2019 as stated in paragraph 18 of the affidavit of Ms. Beryl Isaac dated 16th November 2020.
- (4) The Governor-General, acting on the request of the Public Service Commission, communicated her decision to retroactively terminate Ms. Charles' acting appointment and revert Ms. Charles to her substantive post. Ms. Jeremiah states that by oversight these decisions were not promptly communicated and were only brought to the Commission's attention because Ms. Charles was still being remunerated as an acting Permanent Secretary up to May 2020. Ms. Jeremiah states this oversight or delay is not novel and avers that official communication of decisions, including appointments from Public Service Commission have come after they have already taken effect.
- (5) In relation to the matters concerning Ms. Charles' claims of her being passed over for promotion, Ms. Jeremiah says that the Public

Service Commission is guided by its regulations and it is not aware of any right as alleged by Ms. Charles.

Issues

[10] In light of the above, the following issues are to be determined:

- (1) Whether the decision by Her Excellency the Governor-General acting in accordance with the advice of the Public Service Commission to terminate the acting appointment of Ms. Charles, as Permanent Secretary and reverting her to the substantive office as Director of Social Development was irrational, arbitrary or unreasonable and/or amounted to an abdication of her discretion in contravention of section 85(2) of the Constitution of Grenada.
- (2) Whether the Public Service Commission denied Ms. Charles an opportunity to be heard prior to its actions and decisions in breach of natural justice and right to due process of law under section 8(8) of the Constitution.
- (3) Whether the Public Service Commission abdicated its duty or authority under sections 83(12) and 84(1) of the Constitution and was following the dictates of the Minister of Social Development, the Cabinet of Grenada or a third party when it decided to grant administrative leave to Ms. Charles from 31st October 2019 to 8th November 2019 and transferred her to the post of Institutional Strengthening Specialist within the Ministry of Climate Resilience.
- (4) Whether Ms. Charles is entitled to damages.

Discussion

Actions of the Cabinet Secretary

[11] Although the Cabinet secretary was removed as a party, however her affidavit forms part of the evidence relied on by the Attorney General. It is important at this

stage to discuss the actions of the Cabinet Secretary in communicating certain recommendations from the Cabinet to Ms. Charles.

- [12] The Cabinet Secretary is a constitutional post. **Section 68 of the Constitution** provides:

Section 68

- (1) There shall be a Secretary to the Cabinet whose office shall be a public office.
- (2) The Secretary to the Cabinet, who shall have charge of the Cabinet Office, shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet and **for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may direct.** (Bold emphasis mine)

- [13] As provided by the said section, one the main duties of the Cabinet Secretary is to communicate the decisions of the Cabinet to the appropriate person or authority. The appropriate authority in this case being the Public Service Commission. It is the evidence that Ms. Beryl Isaac, the Cabinet Secretary, informed Ms. Charles that a recommendation was made for the termination of her acting appointment and for her to be reverted to her substantive post as Director of Social Development. Further, Ms. Beryl Isaac directed Ms. Charles to proceed on leave and report for duties for a new post in the Ministry of Climate Resilience, among other things.

- [14] The court is of the view that Ms. Beryl Isaac, as Cabinet Secretary at the time, overstepped and exceeded her duties when she prematurely notified or directed Ms. Charles of the termination of her acting appointment. The authority to make those decisions to terminate the acting appointment and transfer were within the purview of the Public Service Commission which must properly deliberate and consider such recommendations before making any determination. Even if a recommendation had been made to the Commission it was not within the purview

of Cabinet Secretary to request that Ms. Charles proceed on Administrative leave prior to the approval of Public Service Commission.

[15] Therefore, the fact that Ms. Beryl Isaac as the Cabinet Secretary informed Ms. Charles that a decision was taken to terminate her acting appointment and to proceed on administrative leave, even before the Public Service Commission considered the recommendation and rendered its decision, was unlawful. These actions were ultra vires **Section 85 of the Constitution** and therefore unconstitutional.

[16] However, the court notes that the on 18th November 2019, the Public Service Commission lawfully exercised its constitutional discretion to advise the Governor-General to terminate Ms. Charles' acting appointment and revert her to the substantive post of Director of Social Development, albeit retroactively. The commission granted administrative leave to Ms. Charles and transferred her to the new post in the Ministry of Climate Resilience. The court notes the Commission's admission that there was some oversight and delay in promptly communicating the above decisions to Ms. Charles. That oversight was brought to the fore and remedied when the Commission officially communicated its decision to Ms. Charles by letter dated 18th May 2020. However, these were in the court's view issues that ought to have been raised in judicial review proceedings and not for constitutional redress.

Whether the decision by Her Excellency, the Governor-General acting in accordance with the advice of the Public Service Commission to terminate Ms. Charles' acting appointment reverting her to the substantive was irrational, arbitrary or unreasonable and/or amounted to an abdication of her discretion in contravention of section 85(2) of the Constitution of Grenada

[17] Counsel for the second defendant, Mr. Adebayo Olowu, in his written submissions filed on 30th December 2020 in relation to the action by Governor-General to terminate the acting appointment submits that Ms. Charles' argument is without merit. Mr. Olowu submits that Ms. Charles' appointment was an acting position given that position for the post of Permanent Secretary in the Ministry of Social

Development was vacant. Ms. Charles' acting appointment was to continue until further notice. He submits that section 85 of the Constitution has a proviso that no person may be appointed to hold the post of Permanent Secretary, where the Prime Minister has indicated his objection.

- [18] Given the language of the above section, Mr. Olowu submits that the appointment to the substantive post of Permanent Secretary must have the approval of the Prime Minister. Therefore, Mr. Olowu submits that whilst an acting Permanent Secretary cannot be removed without proper recommendations and the approval of the Governor-General, a public officer is only appointed to act as a Permanent Secretary with the non-objection of the Prime Minister. In like manner any future substantive appointment would also require the Prime Minister's non-objection. Further, Mr. Olowu submits that given the constitutional mandate given to the Prime Minister, it must be construed to mean that in relation to an acting appointment, the Prime Minister continues to have that power to determine whether he will object to that person continuing in the acting appointment.
- [19] In response to those submissions, Counsel for the claimant, Mr. V. Nazim Burke, concedes the point that no public servant may be appointed to hold the post of Permanent Secretary where the Prime Minister has indicated his objection. However, he submits that the exercise of such privilege conferred on the Prime Minister is not intended to be irrational, unreasonable, high-handed or arbitrary. Mr. Burke argues that the Prime Minister's actions are subject to the rules of natural justice and the constitutional duty of fairness. This required Ms. Charles to be informed of the decision and the reason for the decision.
- [20] It is the evidence of Ms. Charles that she was informed by the Cabinet Secretary that a decision had been taken to terminate her acting appointment as Permanent Secretary because of decisions she made concerning the supplemental budget of the Ministry and an allegation surrounding her enquiry about the building of a house in the Prime Minister's constituency. It is also the evidence of Ms. Jeremiah

that on 4th November 2019, the Commission received the recommendation from the Cabinet Secretary to terminate Ms. Charles' acting appointment, revert her to the substantive post, inter alia.

[21] **Section 85 of the Constitution** provides:

- (1) This section applies to the offices of Secretary to the Cabinet, **permanent secretary**, head of a department of government and deputy head of a department of government.
- (2) Subject to the provisions of section 91 of this Constitution, the power to appoint persons to **hold or to act** in offices to which this section applies (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 shall vest in the Governor-General, acting in accordance with the advice of the Public Service Commission:**

Provided that-

- (a) the power to appoint a person to hold or act in an office of permanent secretary on transfer from another such office carrying the same salary shall vest in the Governor-General acting in accordance with the advice of the Prime Minister;
- (b) before the **Public Service Commission tenders advice to the Governor-General with respect to the appointment of any person to hold an office** to which this section applies (other than an appointment to an office of permanent secretary on transfer from another such office carrying the same salary) it **shall consult with the Prime Minister and if the Prime Minister signifies his objection to the appointment of any person to the office, the Commission shall not advise the Governor-General to appoint that person.** (Bold Emphasis mine)

[22] A fair reading of the above section indicates that the power to appoint certain persons, including acting appointments in the position of Permanent Secretary and the power to remove vests with Governor-General acting in accordance with the advice of the Public Service Commission who is required to consult with the Prime Minister.

- [23] The case law on reasonableness is trite as stated in **Associated Provincial Pictures House Ltd. v Wednesbury Corporation**¹, where Lord Green opined that a court is entitled to investigate a decision of an authority if it considered matters which it ought not to or neglected to consider matters which it ought to or whether it exceeded its powers conferred on it by Parliament.
- [24] The evidence before this court is that the Public Service Commission received a recommendation from the Cabinet Secretary, who communicated the decision of the Executive concerning the recommendation for the termination of Ms. Charles' acting appointment as Permanent Secretary. In light of the above authority in **Wednesbury**, it is evident that for Ms. Charles to criticise the exercise of the Governor-General's discretion to terminate her acting appointment, she must lead facts or evidence to impugn the advice tendered to Her Excellency by the Public Service Commission thereby rendering the Governor-General's decision unreasonable, arbitrary or irrational.
- [25] Ms. Charles has not led any evidence that the Commission followed the dictates of any person or third party when it advised the Governor-General to terminate the acting appointment. The mere fact that the Executive, through the Cabinet Secretary, made that recommendation to the Public Service Commission, without more, is insufficient to criticise or impugn the decision of the Governor-General. Ms. Charles has not pleaded, asserted or led any evidence that the Governor-General took into account irrelevant considerations or refused, failed or neglected to consider matters which she ought to. Moreover, there is no evidence or allegation that the Governor-General exceeded the powers conferred on her by the Constitution. Accordingly, the court is of the view that there is no basis to impugn the exercise of the Governor-General's discretion to terminate the acting appointment of Ms. Charles as Permanent Secretary and revert her to the substantive post of Director of Social Development within the Ministry of Social Development.

¹ [1948] 1 KB 223 at pages 233-234.

Whether the Public Service Commission denied Ms. Charles an opportunity to be heard prior to its actions and decisions in breach of natural justice and right to due process of law under section 8(8) of the Constitution

[26] Mr. Burke states that **Section 8(8) of the Constitution** provides that where proceedings for the determination of the existence or extent of a civil right are instituted by any person before any court or the other authority, the case shall be given a fair hearing, before an independent and impartial tribunal within a reasonable time. Counsel submits that this section encapsulates the right to protection of the law. Mr. Burke relies on the Privy Council case of **Sam Maharaj v Prime Minister**². Mr. Burke submits that Ms. Charles was denied the right to natural justice in that she was passed over for promotion and denied the opportunity to make representation and/or be heard. Further, he submits that the above actions were a breach of the principles of natural justice and breach of Ms. Charles' constitutional right to due process and protection of the law as guaranteed by section 8(8) of the Constitution.

[27] Conversely, Counsel for the Public Service Commission, Ms. Karen Samuel, submits that **Section 8(8) of the Constitution** has not been triggered. She further submits that Ms. Charles has not brought proceedings for determination of the existence or extent of a civil right concerning the allegation that she was entitled to be promoted in respect of which the Public Service Commission might be deemed a tribunal for the purposes of section 8(8).

[28] The court agrees with Ms. Samuel's submission that the invocation of **Section 8(8) of the Constitution** is not germane or applicable to the circumstances of this case as the Public Service Commission is not a body or tribunal which is given a mandate to determine civil rights. However, the court is of the view that the rules of natural justice and fairness are pertinent to the circumstances of this case. In relation to fairness, the House of Lords in the case of **Doody v Secretary of State**

² [2016] UKPC 37

for the Home Department and other appeals³ provides useful guidance. Lord Mustill stated:

What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive the following. (1) **Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances.** (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) **Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification, or both.** (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer⁴. (Bold emphasis mine)

[29] It is uncontroverted that the decisions of the Public Service Commission were made without giving Ms. Charles an opportunity to be heard and to make representations in response. Allegations of insubordination and dereliction of duty as charged by the Cabinet Secretary as one of the main reasons for the recommendation to terminate Ms. Charles' acting appointment, are serious allegations to level against a senior and experienced public servant. Fairness dictated that Ms. Charles, at the very least, must have been given an audience with the Public Service Commission to address those concerns and allegations against her performance and duties. The evidence before this court is that Ms. Charles vehemently denies those allegations and sought to adduce evidence to

³ [1993] 3 All ER 92.

⁴ Ibid at page 106.

aid her defence. She ought to have been afforded such an opportunity to adduce such evidence before those decisions were taken.

- [30] The learning from former Chief Justice Sir Dennis Byron in **Corporal Philbert Bertrand v The Secretary, PSC**⁵, is applicable in the circumstances where he states:

However, it seems clear from this case that three essential elements of the rule require restatement. One is the duty to disclose the information on which judgment is likely to be based in order to give an opportunity to controvert, correct and comment on it. Another is the necessity to give particulars of the charges on which judgment will be based. The Third is the elementary and obvious imperative **that judgment should not be reached until the parties have had an opportunity to be heard**⁶. (Bold emphasis mine)

- [31] Applying the learning from former Chief Justice Byron, the court is of the view that in light of the serious nature of the allegations against Ms. Charles the decisions taken by the Public Service Commission to: 1) advise Her Excellency, the Governor-General of the request for the termination of the Claimant's acting appointment as Permanent Secretary in the Ministry of Social Development, Housing & Community Empowerment with effect from 31st October 2019; (2) approve the reversion for Ms. Charles to her substantive post of Director of Social Development; (3) grant administrative leave; (4) and to appoint Ms. Charles to the new post of Institutional strengthening Specialist in the Ministry of Climate Resilience, The Environment, Forestry, Fisheries and Disaster Management without first giving her an opportunity to be heard and make representations, was a breach of the principles of natural justice and fairness.

Whether the Public Service Commission abdicated its duty or authority under sections 83(12) and 84(1) of the Constitution and was following the dictates of some other person or body when it decided to grant administrative leave to Ms. Charles and transferred her to a new post

Administrative leave and transfer

⁵ Dominica Civil Appeal No. 10 of 1999.

⁶ Ibid at para. 11.

- [32] Mr. Burke submits that the duties and functions of the Public Service Commission are clearly stipulated in sections 83(12) and 84(1) of the Constitution. **Sections 83(12) and 84(1) of the Constitution** provide:

Section 83(12)

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.

And section 84(1)

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.

- [33] Mr. Burke submits that the Commission ought not to take directions from any other person or authority. Mr. Burke avers that the decision to send Ms. Charles on administrative leave was taken on or before 30th October 2019. In like manner, the transfer of Ms. Charles from the office of Director of Social Development to the post of Institutional Strengthening Specialist was taken on or before 8th November 2019. He submits that these decisions either came from the Cabinet Secretary, acting on a frolic of her own, or under the direction of the Minister of Social Development, the Cabinet of Ministers or some other person or authority. Mr. Burke further submits that the letter dated 18th May 2020 from the Commission purporting to retroactively grant administrative leave to Ms. Charles from October 31st 2019 to 8th November 2019 was an attempt to “rubber stamp” the decision of a person or body other than itself.

- [34] Counsel for the Public Service Commission, Ms. Karen Samuel, submits that Ms. Charles fails to clearly illustrate that the parties had influenced the decision taken by the Commission, which is essential in substantiating such a claim. Ms. Samuel relies on the decision of Wilkinson J in **Ausbert Regis, Commissioner of Police v The Attorney General of Saint Lucia**. In any event, she submits that the act of

requiring an officer to proceed upon leave in order to make proper arrangements for an office cannot constitute a breach of the officer's constitutional rights. Counsel relies on the judgment of Glasgow J in **Strachan v Public Service Commission & Anr**⁷ in relation to the lawfulness of Ms. Charles' transfer to the Ministry of Climate Resilience.

[35] The mere fact that the decisions by the Public Service Commission to grant administrative leave to Ms. Charles and to transfer her to the new post of Institutional Strengthening Specialist came *ex post facto*, in and of itself, does not mean that the Commission abdicated its responsibility or followed the dictates of a third party. The mere fact that a recommendation was made to the Commission does not mean that the commission did not properly exercise its discretion to consider it. Ms. Jeremiah in her evidence has stated the reasons for the delay in officially communicating the decisions of the Commission to Ms. Charles were due to inadvertence and human error. While such instances of administrative inefficiency is unacceptable in an essential department as the Public Service Commission, the court is of the view that the claimant has not lead evidence that the Commission followed the directive of a third party. Accordingly, there is no merit to the allegations based on the evidence before this court.

[36] Moreover, the principles in **Wednesbury** as stated above are applicable in the circumstances. There is no evidence before this court that the Commission acted outside of its duties. There is no allegation or assertion that the Commission took irrelevant matters into account or omitted to consider matters which it ought to. There is no assertion or allegation that the recommendation from the Cabinet Secretary for the termination of Ms. Charles' acting appointment on the basis of her insubordination and inefficacious performance as a Permanent Secretary, was an irrelevant consideration for the Commission. Given the lack of supporting evidence by Ms. Charles, the court finds no reason to impugn the decisions of the

⁷ GDAHCV2018/0354.

Public Service Commission in retroactively transferring Ms. Charles to her new post and granting her administrative leave.

Damages

- [37] A fair reading of the pleadings in the motion, including the orders and declarations sought, suggest that Ms. Charles was seeking to impugn the decisions of public authorities and bodies. This matter in the court's view should have been brought by way of judicial review proceedings, especially in light of the actions of the Cabinet Secretary and not under the court's constitutional jurisdiction for breaches of fundamental rights and freedoms.
- [38] Moreover, damages are compensatory in nature. The uncontradicted evidence before this court from Ms. Jeremiah is that Ms. Charles enjoyed the salary of acting Permanent Secretary in Ministry of Social Development until the end of May 2020, some seven months after she took up the new post in the Ministry of Climate Resilience.
- [39] The claimant having part success on her claim in obtaining declaratory relief has not pleaded any other specific loss. In **Inniss v Attorney General of St Christopher and Nevis [2008] UKPC 42**, in considering this issue of compensatory Damages Lord Hope of Craighead said⁸: -
- The function that the granting of relief is intended to serve is to vindicate the constitutional right. In some cases, a declaration on its own may achieve all that is needed to vindicate the right. This is likely to be so where the contravention has not yet had any significant effect on the party who seeks relief.
- [40] This court is of the view that a mere declaration of the breach of the claimant's rights to a fair hearing is appropriate in this case. The court is of the view that that Ms. Charles did not suffer any pecuniary loss during the transition to her new post. The court is also of the view that this case is not one in which an additional award

⁸ Paragraph 21.

could be made and accordingly her claim for damages, including vindictory damages is refused.

Conclusion

[41] In light of the foregoing reasons, the originating motion filed on 13th July 2020 is granted in part and it is ordered and declared that:

- (1) The decisions of Ms Beryl Isaac, the then Secretary to the Cabinet to: (1) discuss with the Claimant about her performance as an acting Permanent Secretary in the Ministry of Social Development; (2) inform, direct and/or advise the Claimant that her acting appointment as Permanent Secretary in the Ministry of Social Development will be terminated and she will be reverted to her substantive post of Director in the Ministry of Social Development; (3) direct the Claimant to proceed on administrative leave on 29th October 2019; (4) request that the Claimant prepare a handover brief for her successor as Permanent Secretary; and (5) direct the Claimant to report for duty to the post of Institutional Strengthening Specialist in the Ministry of Climate Resilience, The Environment, Forestry, Fisheries and Disaster Management from 11th November 2019 were, in each instance, ultra vires and contrary to sections 84(1) and 85(2) of the Constitution of Grenada and therefore unconstitutional, null and void, and of no effect in law.
- (2) The decisions taken by the Public Service Commission to: (1) advise Her Excellency, the Governor-General of the request for the termination of the Claimant's acting appoint as Permanent Secretary in the Ministry of Social Development, Housing & Community Empowerment transfer with effect from 31st October 2019; (2) approve the reversion for the Claimant to her substantive post of Director of Social Development; (3) grant administrative leave; (4) and to appoint the Claimant to the new post of

Institutional Strengthening Specialist in the Ministry of Climate Resilience, The Environment, Forestry, Fisheries and Disaster Management without first giving the Claimant an opportunity to be heard and make representations was a breach of the principles of natural justice and fairness.

- (3) Save the above declarations, all other reliefs as claimed by the Claimant, including interest are refused. The declarations and orders in relation to the issues of constructive dismissal, legitimate expectation and breaches of section 8(8), 83(12), 84(1) and 101(3) of the Constitution of Grenada, are now irrelevant and redundant in light of the counsel for the claimant having withdrawn those issues.
- (4) No order as to costs.

Agnes Actie
High Court Judge

By the Court

Registrar