

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2010/0040

IN THE MATTER OF THE CONSTITUTION OF GRENADA, SCHEDULE 1 TO THE
GRENADA CONSTITUTION ORDER 1973 NO. 2155 (UK), SECTIONS 83 AND 84(1)

AND

IN THE MATTER OF THE PUBLIC SERVICE COMMISSION REGULATIONS 1960,
SRO NO. 27 OF 1969, OF GRENADA, REGULATION 41

AND

IN THE MATTER OF AN APPLICATION BY THE APPLICANT DEANN SCOTT
PURSUANT TO PART 56 OF THE CIVIL PROCEDURE RULES 2000

AND

IN THE MATTER OF AN APPLICATION BY THE APPLICANT FOR AN
ADMINISTRATIVE ORDER FOR JUDICIAL REVIEW FOR CERTIORARI AND
PROHIBITION, AND FOR A DECLARATION AND DAMAGES, REGARDING THE
DECISION OF THE PUBLIC SERVICE COMMISSION FOR GRENADA DECLARING
THAT SHE VACATED HER POST OF STAFF NURSE AND CEASED TO BE A
PUBLIC OFFICER

BETWEEN:

DEANN SCOTT

Applicant

and

PUBLIC SERVICE COMMISSION FOR GRENADA

Respondent

Appearances:

Dr. Francis Alexis, Q.C, with him Mr. Ashley Bernadine for the Claimant
Mr. Cajeton Hood for the Respondent, with him Ms. Kinna Marrast-Victor

2015: July 22;
2017: March 16

JUDGMENT

- [1] **REMY, J.:** The applicant Ms. Deann Scott (Ms. Scott) is a public officer and a Registered Nurse. The Respondent is the Public Service Commission (the Commission) established under Section 83(1) of the Constitution of Grenada. Ms. Scott has applied to the Court seeking an order for Judicial Review of the decision of the Commission declaring that she vacated her post of Staff Nurse and ceased to be a public officer.

Facts

- [2] The facts of this matter giving rise to the application are as follows:
- (a) Ms. Scott was appointed to the post of Staff Nurse, General Hospital, Ministry of Health of Grenada in 1989. She was granted seven (7) months no-pay leave, by the Public Service Commission (PSC), from 19th July 2008 to 18th February 2009, for study purposes. While on leave, Ms. Scott, on line, pursued studies in Health Information Technology ("Health IT") with CISCO Systems Inc of the USA.
 - (b) Ms. Scott did not resume work on 19th February 2009 as she was required to do. She did not apply for an extension of her leave.
 - (c) Shortly before her leave expired, Ms. Scott from early February till September 2009 was communicating with her "official superiors", including the Permanent Secretary, about her request that she be transferred from ward duties at the hospital to a public office in an IT position.
 - (d) Between March and September 2009, Ms. Scott was also communicating with her "official superiors", including the Minister of Health, about IT presentations being made by her to medical staff.

- (e) Ms. Scott did not return to work while all these communications were going on. Ms. Scott neither applied for nor did she seek an extension of her leave.
- (f) On 1st September 2009 the Minister of Health emailed Ms. Scott inquiring of her employment status. Ms. Scott that day replied by email referring to the requested transfer. The Minister that day responded by email to Scott advising her to return to work.
- (g) Ms. Scott states that she returned to work on the 14th September 2009. In her affidavit dated the 16th February 2010, Ms. Scott deposed: "[H]aving had to do a Health IT presentation for medical staff on 8th September 2009, I returned to work as Staff Nurse on the ward on 14 September 2009."
- (h) By Government Gazette dated Friday 2nd October 2009 the Public Service Commission (PSC) notified that Ms. Scott failed to return to work on 9th June 2009 and declared that she vacated her post and ceased to be a public officer from 19th June 2009.

[3] Ms. Scott was aggrieved by the decision of the PSC.

[4] On the 16th day of February 2010, having obtained leave of the Court, Ms. Scott filed a Fixed Date Claim, seeking the following redress:

1. An order of certiorari to remove into this Honourable Court and quash as being **ultra vires**, null and void, invalid and of no effect in law, the decision of the Respondent the Public Service Commission for Grenada declaring that the Applicant Deann Scott vacated her post of Staff Nurse, General Hospital, Ministry of Health, and ceased to be a public officer with effect from 19th June 2009; as notified in the Grenada Government Gazette, Vol. 127 No. 44, Friday 2 October 2009, Page 312 No. 46.
2. An order of prohibition to prohibit the Respondent from acting against the Applicant in accordance with the decision of the Respondent.

3. A declaration pronouncing as ultra vires, null and void, invalid and of no effect in law, the decision of the Respondent the Public Service Commission for Grenada declaring that the Applicant Deann Scott vacated her post of Staff Nurse, General Hospital, Ministry of Health, and ceased to be a public officer with effect from 19th June 2009; as notified in the Grenada Government Gazette, Vol. 127 No. 44, Friday 2 October 2009, Page 312 No. 46.
4. A declaration that any remuneration, seniority or other employment related benefit of which the Applicant has been deprived on account of the decision of the Respondent shall be, and is hereby, fully and effectually restored as if the decision had never been taken.
5. Damages and compensation for losses suffered by the Applicant as a result of the decision of the Respondent.
6. Further or other orders.
7. Costs.

Issues

[5] The issues to be determined by the Court in this case are as follows:

- (a) Was the decision of the Public Service Commission (PSC) ultra vires?

The Court will deal with this issue under the following sub-heading:

- (i) Was the decision of the PSC illegal?
 - (ii) Was the decision of the PSC irrational?
 - (iii) Did the PSC have a settled practice in the context of an intention to proceed under Regulation 41 and, if yes, did Ms. Scott have a legitimate expectation that the PSC would observe that settled practice prior to making the Declaration with respect to her?
 - (iv) Was the decision of the PSC in breach of the rules of natural justice?
- (b) If the answer to (a) above is yes, is the Applicant entitled to the remedies which she claims?

The Law

- [6] The law is settled that "the High Court has an inherent jurisdiction to supervise and judicially control certain decisions and actions of public authorities constituted by law to make those decisions or to take those actions" - (**Chief Immigration Officer v Burnett** [1995] 50 WIR page 158).
- [7] An application for judicial review is not an appeal. It is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision making process itself.
- [8] The threefold "classical" grounds upon which administrative decisions are subject to control by judicial review are as follows: Illegality, irrationality and procedural impropriety. According to Fordham, (Judicial Review, 6th edition, page 487, parag. 45.1.1): "Several authorities seem to hold that the "conceptual basis" for all judicial review grounds is the principle of 'ultra vires'."

Issue #1 - Was the decision of the PSC ultra vires?

- [9] By Fixed Date Claim filed on the 16th day of February 2010, the claimant alleges, inter alia:
- (a) The decision of the PSC is erroneous as being unreasonable, irrational and unfair; reached without regard to relevant considerations, taken on irrelevant considerations, and otherwise unlawful.
 - (b) All those erroneous aspects of the decision of the PSC are jurisdictional in nature, and thus render the decision ultra vires, null and void, and of no effect in law.
 - (c) The Commission failed to observe the *audi alteram partem* rule or the rule of natural justice entitling a person to be afforded a fair hearing in proceedings which might result in their being removed from a public office.

- [10] The PSC disputes Ms. Scott's claim. Learned Counsel for the PSC, Ms. Kinna Marrast-Victor in the closing paragraph of her written submissions filed on the 10th day of June 2015, contends:

"... It is submitted that the PSC acted properly in all of the circumstances. The Applicant having absented herself from work without reason and for a period in excess of one month, the PSC was entitled to declare that the Applicant had resigned pursuant to Regulation 41(1). Further, in the circumstances, there was no commitment by the PSC and neither could the Applicant reasonably expect that a notice would precede the declaration of resignation. Finally, upon a proper interpretation of Regulation 41 and the need for efficiency in performing its constitutional functions, the PSC was not required in the circumstances to have a hearing."

(a) Was the decision of the PSC illegal?

- [11] According to De Smith (De Smith's Judicial Review, 6th edition, page 225, parag. 5-002):

"An administrative decision is flawed if it is illegal. A decision is illegal if it:

- (a) Contravenes or exceeds the terms of the power which authorizes the making of the decision.

....."

- [12] At paragraph 5-003, the learned writer goes on to say:

"... The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision maker ... The courts when exercising this power of construction are enforcing the rule of law, by requiring administrative bodies to act within the 'four corners' of their powers or duties."

- [13] The Public Service Commission (PSC) derives its statutory authority from the Constitution of Grenada (hereinafter referred to as "the Constitution"). Section 84(1) of the Constitution provides as follows:

"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."

- [14] Section 83(13) of the Constitution says that the PSC may by regulation or otherwise regulate its own procedure.

- [15] The PSC's decision in relation to Ms. Scott was made pursuant to section 41(1) of the Public Service Regulations (the Regulations), which states as follows:

"An officer who is absent from duty without leave for a period of one month may be declared by the Commission to have resigned his office and thereupon the office becomes vacant and the officer ceases to be an officer." The marginal note reads "Abandonment of office".

- [16] The notice captioned "DECLARATION OF ABANDONMENT OF OFFICE" with respect to Ms. Scott was published in the Grenada Government Gazette on the 2nd October 2009. The notice was dated 21st September 2009 and reads as follows:

"DECLARATION OF ABANDONMENT OF OFFICE

Take notice that Ms. Deann Scott, Staff Nurse, General Hospital, Ministry of Health, failed to report for duty with effect from 9th June 2009.

The Public Service Commission hereby declares that Ms. Deann Scott, Staff Nurse, General Hospital, Ministry of Health, vacated her post with

effect from 19th June 2009 and ceased to be a Public Officer, with effect from 19th June 2009.

21st September, 2009.

Office of the Public Service Commission."

[17] In his oral submissions at the hearing of the Fixed Date Claim, Learned Queen's Counsel Dr. Alexis contended as follows:

- (a) Because the notice on its face is removing her for 10 days' absence, it is displaying on its face an error of law, because Regulation 41(1) requires absence from duty without leave for one (1) month. The Notice is defective because of the error of law on the face of the record, for which the record can be quashed without more.
- (b) By the same token, the PSC was misconstruing Regulation 41(1) and asking itself the wrong question, namely "Was Scott away from duty for 10 days".
- (c) By treating the claimant the way they did, the Commission removed her from office.

Error of Law

[18] Dr. Alexis contends that, in the Notice, the PSC recited absence by Ms. Scott from duty for ten (10) days, from 9th June 2009 until PSC said she vacated her post with effect from 19th June 2009, as the basis for the declaration in the notice. However, adds Dr. Alexis, Regulation 41(1) of the Regulations requires absence from duty without leave for one month as the basis for such a declaration. Accordingly, submits Dr. Alexis, the notice is defective on account of error of law on the face of the record; for which the declaration may be quashed.

- [19] Prior to the landmark decision of **Anisminic Ltd. v Foreign Compensation Commission** [1969] 2 AC 147, (Anisminic) the law drew a distinction between errors of law on the face of the record and other errors of law. The effect of the decision in **Anisminic** is that this distinction is now obsolete. (Halsbury's - parag. 612.) As stated in **R v Hull University Visitor, ex p Page** [1993] AC 682, 701 F-G:

"The decision in Anisminic ... rendered obsolete the distinction between error of law on the face of the record and other errors of law by extending the doctrine of ultra vires, so that any misdirection in law would render the relevant decision ultra vires and a nullity."

- **Boddington v British Transport Police** [1999] 2 AC 143, 154 C. (Fordham page 507, parag. 48.2.4.)

- [20] Eddy Ventose in *Commonwealth Caribbean Administrative Law* (at page 128) states: "... In the case of **Re Dyoll Insurance Limited** - JM 2007 SC 17, the Court explained that "the expression "error of law" encapsulates illegality as a ground of review". In the instant case, the Court will not focus on the issue of whether or not there was an error of law on the face of the record. Rather, the Court will address the broader issue of whether the decision of the PSC was lawful. In any event, notwithstanding the submission of Learned Queen's Counsel Dr. Alexis, the Court notes that the Applicant has not alleged anywhere in the Fixed Date Claim that the declaration may be quashed on account of error of law on the face of the record.

- [21] The Notice which appeared in the Gazette states that Ms. Scott failed to report for duty on the 9th June 2009 and was declared to have vacated her post and ceased to be a public officer on the 19th June 2009. The Notice seems to imply that only 10 days had elapsed between the date that Ms. Scott failed to report for duty and the day she was declared to have vacated her post.

- [22] At the hearing of the Fixed Date Claim, Dr. Alexis submitted that the PSC asked itself the wrong question, namely "Was Ms. Scott absent from work for 10 days?"

In response to this submission, Learned Counsel for the Respondent Mr. Hood submitted that "the PSC is not saying that there was a ten day period of absence". Mr. Hood contended that "it's straining the facts to an inordinate limit to say so". Mr. Hood referred the Court to the written submissions filed on behalf of the PSC on the 10th June 2015, where Learned Counsel Ms. Victor contends that the PSC acted, among other things, on the following fact as set out in the Affidavit of Adrian Francis, the Senior Administrative Officer of the PSC, filed on the 6th April 2010:

"At least one month had elapsed since her (Ms. Scott's) leave expired and in fact approximately four months had elapsed between the date she was to return to her duties and the time of the declaration that she had resigned her post."

[23] It is not in dispute that the Applicant was absent from duty without leave for a period well in excess of one month specified by the statute. Indeed, the Applicant herself acknowledges that this is so. In her letter dated the 18th day of July 2009, the Applicant states, "I was due to return to work as of March 1, 2009, but preferred to do so only as an IT person ..." In actual fact, she was due to return to work as of the 19th February 2009. So, as at the date of that letter, Ms. Scott had been absent from duty without leave for approximately five months.

[24] Based on the above, the Court finds that the PSC did not ask itself the wrong question, namely "Was Ms. Scott absent from work for ten days?" Rather, that based on the Affidavit evidence before the Court, as well as the written and oral submissions of Learned Counsel for the PSC, the PSC asked itself whether Ms. Scott was absent from work without leave for more than one month.

Removal from office

[25] It is not in dispute that the PSC made the Declaration that Ms. Scott resigned her office and ceased to be an officer in an abandonment of office pursuant to

Regulation 41 of the PSC Regulations. It is also not in dispute that this was an exercise by the PSC of the power vested in it by section 84(1) of the Constitution to "remove" from office.

- [26] In her submissions filed on 10th June 2015 Learned Counsel for the Respondent Ms. Marrast-Victor submits that "actions declaring an officer to have resigned his post are often discussed under the rubric 'abandonment of office'." Learned Counsel cites the decision of the OECS Court of Appeal in **Huggins v the Attorney General of St. Lucia** - CA No. 18 of 2008, where Learned Justice of Appeal Davidson Baptiste stated:

"Abandonment of a public office is a species of resignation, but differs from resignation in that resignation is a formal relinquishment, while abandonment is a voluntary relinquishment through non-user."

- [27] Learned Counsel contends that, whereas in **Huggins**, the Court found that Mr. Huggins had not abandoned his office when in fact he was seeking reinstatement but had gotten no response from the authorities; in the instant case, the Applicant (Ms. Scott) "voluntarily relinquished her duties for four months having not returned to work and clearly stated that she would return to work 'only' as an IT person", unambiguously showing her intention to abandon and relinquish her office of Staff Nurse".
- [28] Learned Counsel further contends that an issue for the Court is: "Whether in the circumstances of this case, the PSC was entitled to act under Regulation 41 with regard to an officer who had stayed away from work for over four months." She adds that the question for deliberation is "whether in the circumstances of this case the PSC could have properly decided that the Applicant had resigned her post".

[29] Learned Counsel contends that the PSC acted on the following as set out in the Affidavit of Adrian Francis, the Senior Administrative Officer of the PSC, filed on the 6th April 2010:

- (a) Though the Applicant's leave ended, she did not resume her duties.
- (b) At least one month had elapsed since her leave expired and in fact approximately four months had lapsed between the date she was to return to her duties and the time of the declaration that she had resigned her post.
- (c) There was no physical impediment preventing the Applicant from returning to work. The Applicant simply refused to return to work as she did not want to return to her post.

[30] It is the further contention of Learned Counsel that "by regulation, these were all the matters which the PSC was required to consider in determining whether the Applicant had resigned her post."

[31] At the hearing of the Fixed Date Claim, Learned Counsel Mr. Hood submitted that there are three requirements before the abandonment is pronounced:

- (a) The person must be absent from duty.
- (b) The person should have been absent from duty without the leave of the Commission.
- (c) Once this state continues for one month (more than one month will make it worse), the PSC may declare that person to have abandoned the post.

Mr. Hood added that, if the above requirements have been fulfilled, (which he submits, they have,) the issue now is one of the exercise of the discretion of the PSC.

[32] Ms. Scott was absent from duty without an extension of her leave from 19th February 2009. Learned Counsel for the Respondent correctly submits that "the

PSC was entitled as from one month from February 19, 2009, by operation of law, to declare the Applicant as having abandoned her post".

- [33] The Notice which declared that Ms. Scott had abandoned her post was dated the 21st September 2009, and was gazetted on the 2nd October 2009.
- [34] Ms. Scott deposed in her Affidavit dated the 16th day of February 2010, that she returned to work on the 14th September 2009. She added that, "after reaching home from work" on Wednesday 7th October 2009, she received a telephone call from the Chief Nursing Officer (CNO) informing her that there was a Notice in the Gazette which stated that she (Ms. Scott) had vacated her post since 19th June 2009, and ceased to be a public officer. Ms. Scott further deposed that she "last worked" for the period 14th September 2009 to 7th October 2009.
- [35] Learned Counsel Mr. Hood seemed to be disputing the fact that Ms. Scott was at work as stated above. The PSC, however, does not deny that Ms. Scott returned to work on the 14th September 2009. Indeed, in his Affidavit In Reply filed on the 6th day of April 2010, Mr. Adrian Francis, the Senior Administrative Officer of the PSC, deposed inter alia, "I am informed by the said CNO and I verily believe that on the 14th September, 2009 she (Ms. Scott) reported to the hospital. She was assigned to the Obstetric Unit. ..." Mr. Francis goes on to state that: "... On the 16th September she (Ms. Scott) failed to report for duty. During this time she kept insisting that she be assigned to work with the Chief Planner, Ward Sister, Departmental Sister, Matron or the Director of Hospital Services to continue her research to finding for what she claimed to be 'hospital problems'. During this time she resisted being placed on the night shift."
- [36] Mr. Francis does not specify exactly the time frame to which "this time" refers. However, he deposes in his affidavit (of the 6th April 2010 referred to above), that he takes no issue with paragraphs 5.1, 5.2, 5.3 and 5.4 of Ms. Scott's affidavit. The Court notes that, in those paragraphs of Ms. Scott's affidavit (referred to at

paragraph 29 above), she deposes that she was at work from the period 14th September to 7th October 2009. Significantly also, Mr. Francis deposes as follows:

“... Accordingly, on the 21st September, 2009, the Respondent (the PSC) took a decision to deem the Applicant (Ms. Scott) as having vacated her job. In this regard instructions were given that same day to have a “Notice of Abandonment” published in the Gazette.”

He goes on to depose:

“... The fact that the Applicant returned to work on the 14th September did not affect the decision of the Respondent as this was considered not to have affected any of the other considerations mentioned ... above. The Respondent considered that this did not cure the default of the Applicant (Ms. Scott) over the many months.”

[37] As stated above, the Declaration of Abandonment of Office (the Notice) which was published in the Gazette of 2nd October 2009, was dated the 21st September 2009. Arguably, therefore, the “effective date of the Respondent’s declaration” is the 21st September 2009, seven days after Ms. Scott had returned to work on the ward.

[38] In making its Declaration of Abandonment under Regulation 41(1), the PSC effectively terminated Ms. Scott’s employment. Section 49(a) of the Constitution of Grenada states:

“The services of an officer may be terminated only for one or more of the following reasons -

(a) Where the officer holds a permanent appointment (whether pensionable or non-pensionable) -

- (i)
- (ii)
- (iii)
- (iv)
- (v)

- (vi)
- (vii)
- (viii)
- (ix) abandonment of office under regulation 41."

[39] In the Court of Appeal decision in **Duncan v Attorney General** [1998] 3 LRC 414, a case cited by Dr. Alexis, Byron CJ (Ag), as he then was, stated that "the qualifications which affect the power on the Public Service Commission" include, among others, "the obligation to apply the constitutional provisions and conform to the rules and regulations it administers".

[40] Learned Counsel Mr. Hood concedes that an officer must be absent from duty without leave for at least one month at the time that the declaration of abandonment is made by the Commission. In the view of the Court, it cannot be the intention of the legislature that an officer be removed from office after he or she has resumed his or her post. Further, the Court is of the view that an officer cannot return to work and yet be said to be absent from duty at the same time.

[41] In the view of the Court, the PSC was entitled to invoke Regulation 41(1) at any time after one month had elapsed since the expiry date of Ms. Scott's leave. The Court is of the further view that once Ms. Scott returned to work, the PSC was not entitled to invoke Regulation 41(1); the PSC could no longer declare that there was an abandonment.

[42] The Court is of the view that the PSC did not adhere to its own procedural rules; that it did not stay within "the four corners" of its own Regulation, namely Regulation 41(1), and did not give effect to it.

[43] The Court finds that although Regulation 41(1) gave power to the PSC to make the Declaration, that power had been improperly exercised. Accordingly, the Court finds that the decision of the PSC is flawed and is therefore illegal or unlawful.

- [44] My above finding makes it unnecessary to adjudicate on the issue of whether the decision of the PSC was irrational or unfair.

Remedies

- [45] The Court will now address the remedies which the Applicant seeks. She seeks an order of certiorari, as well as an order of prohibition. She also seeks a declaratory order.
- [46] In dealing with judicial review, the Court has two functions - assessing the legality of actions by administrators and, if it finds unlawfulness on the administrators' part, deciding on what remedy it should give. -- **R (Bibi) v Newham London Borough Council** [2001] EWCA Civ 607.
- [47] It is settled law that all the remedies which the claimant seeks are discretionary. The Court has a discretion whether to grant a remedy at all and, if so, what form of remedy to grant. (Halsbury's Laws of England, Vol. 61, 5th ed, page 639, parag. 692.)
- [48] The law is also settled that, in deciding whether to grant a remedy, the court will take into account factors such as the conduct of the party applying, and consider whether it has been such as to disentitle him to relief. Factors such as unreasonable or unmeritorious conduct, acquiescence in the irregularity complained of or waiver of the right to object, may all result in the court declining to grant relief. Another consideration in deciding whether or not to grant relief is the effect of doing so. Factors which may be relevant include whether the grant of the remedy is unnecessary or futile, whether practical problems, including administrative chaos and public inconvenience, would result, the effect on third parties, and whether the form of the order would require close supervision by the court or be incapable of practical fulfillment.

The Order of Certiorari

- [49] An order of Certiorari is now referred to as a quashing order. The learned writers of *Judicial Review - Law and Practice* (Jordan Publishing, 2nd edition, page 82, parag. 2.41) state: "A quashing order is an order of the High Court by which it quashes a decision of an inferior Court or tribunal, public authority or other body, which is susceptible to judicial review."
- [50] How should the Court balance the various factors in determining whether to exercise its discretion to grant the remedy of Certiorari in the instant case? How should the Court exercise its discretion in the instant case?
- [51] It is trite law that the discretion of the Court must be exercised judicially. In **R (Edwards) v Environment Agency** [2008] UKHL 22 [2009] 1 All ER 57 at [63], Lord Hoffman stated: "the discretion must be exercised judicially and in most cases in which a decision has been found to be flawed, it would not be a proper exercise of the discretion to refuse to quash it."
- [52] In light of the above, the Court, having found that the decision of the PSC was illegal, quashes the said decision.
- [53] In the exercise of its discretion, the Court has taken into account the conduct of the Applicant. Although the Court is of the view that the Applicant in the instant case acted inappropriately, the Court finds that her conduct is not such as to justify refusal to grant her the relief sought. The Court is also of the view that the apparent motive of the Applicant in seeking to put pressure on the authorities, in the circumstances, is not a reason to refuse relief.
- [54] The Court has also taken account of the needs of good public administration, but considers that, given the illegality of the decision, it would not be a good exercise of its discretion to refuse to quash the said decision.

[55] The Applicant also seeks an "order of prohibition to prohibit the Respondent (the PSC) from acting against the Applicant (Ms. Scott) in accordance with the decision of the Respondent." Whereas "certiorari quashes a decision of a public authority after it has acted unlawfully, an order of prohibition prevents the public authority from acting in a way that is unlawful. This order is usually granted before the public authority has acted unlawfully." (Eddy Ventose - Commonwealth Caribbean Administrative Law, page 417.) In light of the above, the order of prohibition would be otiose.

[56] The Applicant also seeks a Declaration pronouncing as ultra vires, null and void, invalid and of no effect in law, the decision of the PSC. Based on the Court's findings above that the decision of the PSC is unlawful, that order is granted.

[57] The Applicant seeks the additional relief, namely:

"A declaration that any remuneration, seniority or other employment related benefit of which she has been deprived on account of the decision of the PSC shall be, and is hereby, fully and effectually restored as if the decision had never been taken."

[58] At paragraph 11.1 of her affidavit sworn to on 16th February 2010, Ms. Scott deposes as follows:

"I am adversely affected personally and directly by the decision of the PSC. It is I who am being made to cease to be a public officer, with the consequential loss to me of the employment benefits which would have accrued to me from my twenty years of service as a public officer, and another five years of training to be a Nurse."

[59] Ms. Scott does not specify what these "employment benefits" are, nor does she specify the nature of these benefits. Consequently, the Court is in no position to make any award in that regard.

[60] Ms. Scott also claims "damages and compensation for losses suffered by her as a result of the decision of the PSC". The evidence before the Court discloses that Ms. Scott received her salary while on no-pay leave, and was in fact paid until May 2009. As a result, if Ms. Scott is entitled to any damages, the Court is of the view that she has been adequately compensated.

The Order of the Court is as follows:

- (a) The Order of Certiorari quashing the decision of the Public Service Commission is granted.
- (b) The Order of Prohibition is not granted.
- (c) A declaration is granted that the decision taken by the Public Service Commission declaring that Ms. Scott had abandoned her post and ceased to be a public officer is unlawful.
- (d) There be no order as to costs.



J.A. Remy
High Court Judge (Ag.)