

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2018/0453

BETWEEN:

ANIL SURAGE
CLINSON JOHN
EDNA DESCARTES
LEON ST. AIMEE
MERTON LOUIS
MERVIN ROBINSON
NADEL LAURE
DENVER FLORENT
RENATUS NERVAIS

Claimants

and

THE ATTORNEY GENERAL OF ST. LUCIA
THE NATIONAL INSURANCE CORPORATION

Defendants

APPEARANCES:

Ms. Lydia Faisal for the Claimants

Mr. Seryozha Cenac and Mr. George K Charlemagne for the First Defendant

Mrs. Esther Greene-Ernest for the Second Defendant

2019: October 14th
October 30th

JUDGMENT

[1] **SMITH J:** The claimants' main contention is that deductions made from their salaries in accordance with section 13(2) of the **National Insurance Regulations**¹ ("the NIC Regulations") and section 19 (3) of the **Pensions Act**² are an unlawful

¹ Cap.16.01 Laws of Saint Lucia.

² Cap.15.26 Laws of Saint Lucia.

deprivation of their property and should be refunded to them. They seek declarations that section 13(2) of the NIC Regulations and section 19(3) of the **Pensions Act** infringe their rights under the **Constitution of Saint Lucia**³ (“the Constitution”) and consequential orders for the return of salary deductions. The first defendant resists the claim saying that the deductions were and are being lawfully made. The second defendant assumed a neutral stance and offered no submissions.

Background

- [2] It is not in dispute that the claimants enlisted in the Royal Saint Lucia Police Force on 10 February 2003. The affidavit evidence of Milton Desir, Deputy Commissioner of Police, is that during the recruitment phase those enlisted are termed “recruits”. The claimants respond that the term “recruits” or “cadets” do not appear anywhere in the **Police Act**⁴ and therefore they must be considered as constables under the **Police Act** from 10 February 2003.
- [3] Milton Desir deposed that the claimants, on enlistment, received a stipend of EC\$1,173.54. The claimants respond that on enlistment they were paid a salary from which income tax was deducted; they made no contribution to the National Insurance Corporation and were not “insured persons” under the **National Insurance Corporation Act**⁵ (“the NIC Act”).
- [4] Milton Desir further deposed that in order to pass out and become full-fledged police officers, the recruits had to pass the training course as well as meet the qualifying criteria under section 16 of the **Police Act**. It is not in dispute that the claimants underwent a six-month training course. They allege that during those six months they performed police duties at “mass-crowd events”, patrolled streets and conducted arrests.

³ Cap1.01 Laws of Saint Lucia.

⁴ Cap.14.01 Laws of Saint Lucia.

⁵ Cap.16.01 Laws of Saint Lucia.

- [5] On the 27 August 2003, each claimant signed a “Memorandum of Appointment Oath”. The memorandum contained an oath and each claimant signed beneath the oath, presumably after having orally read it out. Beneath the oath, appeared the following:

“APPOINTMENT

THIS IS TO CERTIFY that [each claimant’s name appears] was this 27th day of August 2003 appointed a constable for the RSLPF

Signature [Commissioner of Police]

Date commenced duty 27/08/03”

- [6] Ms. Adrai Sonson, the Accountant General, deposed that:

“From the government’s accounting records, Course 24 officers were termed ‘cadets’ in February 2003, and received a stipend of EC\$1,173.54 for their period of training. On appointment as grade 5 constables (level one constables) in August 2003, they received a salary of EC\$1,617.26 which was first paid in November 2003 along with some underpayments dating back to August 2003, their date of appointment. NIS deductions were only made to the claimants’ salaries from August 27 or 28 August 2003 ...”

- [7] The claimants each received a Graduation Certificate dated 29 August 2003, which certified that they had successfully completed a course of training in sixteen listed areas of law enforcement. The Commandant of the Police Training School, the Assistant Commissioner of Police for Training and the Commissioner of Police signed each certificate.

- [8] An amendment to the **Pensions Act**⁶ came into effect in May 2003, which introduced subsection (3) to section 19 of that Act. The new section 19(3) declared that the provisions of the **Pensions Act** shall not apply to officers first appointed to the public service after 1 February 2003. Section 13 of the NIC Regulations came into effect on 3rd March 2003 and declared that all persons employed by the Crown after 31 January 2003 shall be deemed to be in insurable employment and treated in like manner as insured persons under the Act. Deductions in accordance with section 19(3) of the **Pensions Act** and section 13(2) of the NIC

⁶ Act No. 19 of 2003.

Regulations were made from the salaries of the claimants commencing in August of 2003.

The Claimants' Case

- [9] Distilled to their essence, the claimants' arguments are that, firstly, at the time of the commencement of their employment on 10 February 2003 as police officers, they came under the provisions of sections 6(4) and (5) and 19(1) of the **Pensions Act**. Secondly, notwithstanding any subsequent amendments to the law, section 97 of the **Constitution of Saint Lucia** protected the pension benefits granted by the **Pensions Act** by mandating that the law to be applied with respect to any pension benefits shall be the law that was in force on the date when a public officer's period of service commenced. Thirdly, the law in force at the time the claimants' period of service commenced were sections 6(4) (5) and 19(1) of the **Pensions Act**. Fourthly, section 13(2) of the NIC Regulations and the amendment to section 19 of the Act which conjointly purport to retrospectively dis-apply the provisions of the **Pensions Act** to public officers first appointed to the public service on or after 1 February 2003 infringes section 97(2) of the Constitution and is of no effect. The claimants therefore remain pensionable under the provisions of section 6(4) and (5) of the **Pensions Act** and ought not to have been treated as if the NIC Regulations applied to them.

The First Defendant's Case

- [10] The Attorney General's contention is that a public officer only becomes eligible for a pension when appointed to a pensionable post. Since the claimants were only appointed police constables on 27 August 2003 (and not on 10 February as alleged) when section 13(2) of the NIC regulations and the amendment to the **Pensions Act** were already in effect, the post of constable was no longer pensionable, if it ever was. Neither the NIC Regulations nor the amendment to the **Pensions Act** applied retrospectively to the claimants as they were appointed as constables after the changes were made to the law.

[11] **Issues**

- (1) When did the claimants become constables?
- (2) Are the claimants entitled to a pension under the **Pensions Act**?

When did the Claimants become Constables?

[12] Ms. Faisal submits that the **Police Act** contains no provisions for training of recruits and therefore, as she put it, the Act envisages that the “newly enlisted constable qualify under section 16 of the **Police Act** as constables on probation”.

[13] From a practical perspective, it is difficult to accept that submission. It would mean that the claimants became constables at the moment of enlistment. Put another way, it would mean that from that date they became police officers, albeit of the lowest rank, even before undergoing the six-month training.

[14] I accept that the **Police Act** makes no mention of the training that persons who enlist must undergo. Neither does it mention “recruits” or “cadets”. But, further, neither does it say that enlisted persons are constables on probation. It is an established fact, however, that those who enlist must undergo a six-month training course. The correct view surely must be that a person who enlists in the police force attains the designation of constable, the first and lowest rank in the police force, only after successfully completing the six-month training course, being issued with a graduation certificate and being sworn in and appointed as a constable. It is the law, however, that must ultimately decide the question.

[15] The **Police Act** provides as follows:

“16. QUALIFICATIONS FOR APPOINTMENT

- (1) A person shall not be appointed to the Force as an inspector, subordinate officer or constable unless—
 - (a) he or she has attained the age of 15 years but has not reached the age of 30 years. However, in any such case the Commissioner of Police may with the approval of the Governor General appoint a person who has already attained the age of 30 years; (Amended by Act 17 of 1970)

- (b) he or she is of the required height and chest measurements according to the standard fixed by the Commissioner of Police;
- (c) he or she passes a medical examination as to his or her bodily fitness to be held by such Medical Officer as may be appointed for the purpose by the Governor General;
- (d) he or she produces to the Commissioner of Police satisfactory proof of his or her good character; and
- (e) he or she satisfies the Commissioner of Police that he or she has attained a reasonable standard of education.

(2) Any candidate who with a view to appointment in the Force knowingly makes any false statement or produces any birth certificate or testimonial which is false in any material particular is on summary conviction thereof liable to a fine not exceeding \$240 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.”

[16] Indeed section 16 does not mention successful completion of a six-month training course as a prerequisite for appointment as constable. But nothing turns on that first the purposes of this determining this claim.

[17] Section 17 of the **Police Act** then provides:

“17. TERMS OF APPOINTMENT

- (1) Initial appointment to the Force shall be for a period of 2 years during which period a subordinate officer or constable shall be deemed to be on probation. At the end of the probationary period every inspector, subordinate officer or constable of good character and considered qualified for permanent appointment to the Force shall be so appointed however if the inspector, subordinate officer or constable does not intend to be permanently appointed he or she shall give 6 months notice to the Commissioner of Police of his or her intention not to be permanently appointed.
- (2) If at any time during the period of probation a constable shall be found to be wanting in character or intelligence or otherwise unfitted to be a police officer his or her services may be terminated by the Commissioner of Police.
- (3) An inspector, subordinate officer or constable may withdraw himself or herself from the force at any time by giving 3 months notice in writing of his or her intention so to do. However, the Commissioner of Police may dispense with this

condition in any case if he or she sees fit.” (underlining supplied)

- [18] I interpret section 17 to be saying that on appointment to the police force a constable shall be on probation for a period of two years after which that constable may be given permanent appointment.
- [19] The pertinent question is therefore when, as a matter of law, were the claimants first appointed to the police force? Ms. Faisal contends that they became constables on their enlistment on 10 February 2003. She relies, firstly, on a Government of Saint Lucia (“GOSL”) salary slip for one of the claimants, which bears that particular claimant’s name under the words “Employee name”. It shows the “basic salary” of \$1,173.54 and the applicable tax deductions. It is not in dispute that each of the claimants was similarly paid. There can therefore be no doubt that the claimants were employees of the GOSL. Secondly, Ms. Faisal points to the identification card issued to each claimant bearing the words “Employment Date: 10th February 2003.” Thirdly, she points to the fact that during the training period they were issued with uniforms and were performing police duties.
- [20] Mr. Cenac, on the other hand, accepts that the claimants were in the employ of the GOSL upon enlistment but asserts that they could only become constables upon their appointment under the **Police Act**. He relies on the Memorandum of Appointment Oath set out at paragraph 5 above.
- [21] All of the indicia relied upon by Ms. Faisal to support her assertion that the claimants were constables upon enlistment, really only establish that they were indeed employed by the GOSL at the moment of enlistment. The memorandum of appointment is unambiguous and insurmountable evidence that they were appointed constables on 27 August 2003. There is simply no getting around that. It is, in effect, an instrument of appointment as constable. It would be a startling proposition that enlisted persons in fact became constables on the day they enlist

without any training whatsoever. I therefore conclude that the claimants became constables on 27 August 2003 when each of them signed a memorandum of appointment.

- [22] This finding is dispositive of the claim since the claimants became constables on 27 August 2003, which was after the section 19(3) amendment of the **Pensions Act** and the introduction of section 13(2) of the NIC Regulations. Consequently, the law in force at time of their appointment would have been section 19(3) of the **Police Act** and section 13(2) of the NIC Regulations and, as such, the section 97 protection afforded by the Constitution would not be available to the claimants.

- [23] In the event that I am wrong on this point, I go on to consider the second issue.

Are the claimants eligible for a pension?

- [24] The **Pensions Act** provides as follows:

“2. Interpretation

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings assigned to them, that is to say—

...

non-pensionable office” means an office which is not a pensionable office;

...

“pensionable office” means—

- (a) in respect of public service under the Government of Saint Lucia, an office which, by virtue of provisions in force in an order made by the Governor General and published in the Gazette, is declared to be a pensionable office; and any such order may be amended, added to, or revoked by an order so made and published; but where by virtue of any such amendment or revocation any office ceases to be a pensionable office, then so long as any person holding that office at the time of the amendment or revocation continues therein, the office shall as respects that person, continue to be a pensionable office;
- (b) in relation to other public service, an office which is a pensionable office under the law or regulations in force in respect of such service.”

- [25] The first, crucial point to observe is that not every office within the public service of the GOSL is a pensionable office. Only offices declared to be pensionable in an

Order made by the Governor General and published in the Gazette are pensionable offices.

- [26] By Statutory Instrument 57/2003 published in the Gazette of 7 July 2003 the Governor General made the **Pensionable Offices Order**, which stated that the commencement date was 6 January 2003. Section 4 of that Order states:

“For the removal of doubt and subject to section 3, any office not specified under the schedules to this Order is not a pensionable office.”

- [27] It is not in dispute that police officers or constables are not included in the schedule to the Order.

- [28] Ms. Faisal pointed out that section 14 of the **Interpretation Act**⁷ states that every enactment shall be published in the Gazette and unless the enactment otherwise provides shall take effect and come into operation on the date of such publication. She submitted that since the **Pensionable Office Order** was only published in 7 July 2003 issue of the Gazette, that was when that order took effect.

- [29] I accept Mr. Cenac’s submission that the date an enactment takes effect is the date of publication in the Gazette, unless the enactment otherwise provides and therefore since the order expresses the commencement date to be 6 January 2003, then that is the date the order took effect. In any event, since I have already concluded that the claimants were appointed as constables on 27 August 2003, even if the order took effect on 7 July 2003, it still pre-dated the claimants’ appointment.

- [30] Ms. Faisal contended that, even if constables are not listed among the pensionable offices in the **Pensionable Offices Order**, section 6 of the **Pensions Act** confers a pension benefit upon the claimants as police officers.

- [31] Sections 5 and 6 provide as follows:

⁷ Cap.1.06 Laws of Saint Lucia.

“5. Pensions not of right

- (1) An officer shall not have an absolute right to compensation for past services or to pension, gratuity or other allowance; nor shall anything in this Act affect the right of the Crown to dismiss any officer at any time and without compensation.
- (2) Subject to the provisions of section 98 of the Constitution where it is established to the satisfaction of the Governor General that an officer commits negligence, irregularity or misconduct, the pension, gratuity or other allowance may be reduced, suspended or altogether withheld.

6. Circumstances in which pension may be granted

- (1) Pension, gratuity or other allowance shall not be granted under this Act to any officer except on his or her retirement from the public service in one of the following cases—
 - (a) if he or she retires from public service under the Government of Saint Lucia—
 - i. on or before he or she attains the age of 55 years, or in special cases, with the approval of the Governor General, acting after consultation with the appropriate service commission, 50 years,
 - ii. on the abolition of his or her office,
 - iii. on compulsory retirement for the purpose of facilitation improvement in the organisation of the department to which he or she belongs, by which greater efficiency or economy may be affected,
 - iv. on medical evidence to the satisfaction of the Governor General, acting after consultation with the appropriate service commission that he or she is incapable by reason of any infirmity of mind or body of discharging the duties or his or her office and that such infirmity is likely to be permanent,
 - v. in the case of termination of employment in the public interest as provided in this Act;
 - (b) if, having been transferred to other public service—
 - i. he or she retires after he or she attains the age at which he or she is permitted by the law or regulations of the public service in which he or she is last employed to retire on pension or gratuity or, if no age is prescribed by the said law or regulations, he or she retires after he or she attains the age of 50 years, or
 - ii. he or she retires in any other circumstances in which he or she is permitted by the said law or regulations to retire on pension or gratuity. (*Amended by Act 19 of 2003*)
- (2) (*Repealed by Act 19 of 2003*)

- (3) An officer not otherwise qualified for a pension gratuity or other allowance under this Act, other than a pension under regulation 23(4) of the Pensions Regulations contained in Schedule 1 to this Act or otherwise may, on his or her retirement or resignation from public service under the Government of Saint Lucia after he or she has served in such public service for not less than 5 years, be granted a gratuity in accordance with the provisions of regulation 26 of the Pensions Regulations contained in Schedule 1 to this Act.
- (4) At any time after any subordinate officer who has either attained the age of 50 years or has served in the Force for 20 years then such subordinate officer may retire from the Force, or may be called upon to retire therefrom by the Governor General.
- (5) The provisions of subsection (4) shall apply to—
 - a. any subordinate officer first appointed to the Force on or after 1 January 1971; and
 - b. any subordinate officer first appointed to the Force before that date who elects that the provisions of subsection (4) shall apply to him or her.”
- (6) At any time after a member of the Fire Service of or below the rank of station officer attains the age of 50 years or has served in the Fire Service for a period of 20 years then such station officer or other member as aforesaid may retire from the Fire Service or may be called upon to retire therefrom by the Governor General.
- (7) Despite anything in this Act with respect to the payment of pension, where a public officer who is entitled to a pension under this Act resigns from public service after at least 10 years of service but before he or she qualifies for a pension, the Minister of Finance shall cause an amount equal to 10% of his or her gross earnings arising from such public service to be paid to the National Insurance Fund on the public officer's behalf.
- (8) The amount paid on behalf of a public officer into the National Insurance Fund under subsection (7) shall be deemed to be a contribution towards the pension of the person on behalf of whom it was paid and shall be paid to the person at the age of 60 years.
- (9) The Director of National Insurance may cause to be done all such things as may be necessary to give effect to subsections (7) and (8).
- (10) Despite anything in this Act with respect to the payment of a pension, a public officer who is 45 years or more but less than 50 years, who has served in the public service for an aggregate period of at least 20 years and who wishes to retire from the public service is entitled to receive a pension and gratuity equivalent to 30% less than what he or she would have been eligible for if he or she had qualified for a pension and gratuity at the age of 55 years.
- (11) *(Repealed by Act 35 of 2003).*

- (12) *(Repealed by Act 35 of 2003).*
- (13) Despite anything in this Act with respect to the payment of a pension, a public officer who has served in the public service for a period of at least 10 years and who within 3 years immediately after his or her public service becomes a member of Parliament and serves for a period of not less than 6 consecutive years, is upon reaching the age of 50 years eligible for a reduced pension and gratuity and shall have his or her period of service in Parliament added to his or her years of service as a public officer when computing his or her reduced pension or gratuity.
- (14) A person who has received a benefit under subsections (7) and (8) or (10) shall not receive any benefit under subsection (13).

[32] Section 6 (1) states that a pension, gratuity or other allowance shall not be granted to any officer except on his retirement in one of the following cases. Two sets of circumstances are then itemized as (a) ((i) through (v) and (b)(i) and (ii).

[33] The claimants based their eligibility for a pension, not on any of the listed circumstances in section 6(1) but on 6(4). Ms. Faisal urged the Court to read all of the subsections under section 6 as constituting circumstances in which pension, gratuity or other allowance may be granted.

[34] While most of the other subsections appear to deal with circumstances in which a gratuity or other allowance (as opposed to a pension) may be granted, certain subsections such as (8) and (9) are more in the nature of administrative provisions.

[35] Section 6(4), (5) and (6) seem oddly placed. Section 6(4) states that a subordinate [police] officer who has attained the age of 50 or has served in the force for 20 years may retire from the force or may be called upon to retire by the Governor General. There is no mention of a pension in that subsection. Section 6(6) is to similar effect in relation to persons in the Fire Service.

[36] Ms. Faisal submitted that section 6(4) is the subsection under which police officers have historically been granted pensions. Giving section 6(4) the most generous

interpretation, it remains, at best, ambiguous. It makes absolutely no mention of a pension. Every other subsection of section 6, which grants a pension, gratuity or other allowance, plainly says so in the subsection. This is clear from perusing section 6(3), (7), (10) and (13). I am unable to see how section 6(4) confers a pension benefit on the claimants.

[37] If I am wrong in concluding that section 6(4) cannot be construed as a circumstance in which a pension may be granted, that is not an end of the matter. The office of a constable, police officer or other named officer of the police force would have to be listed in the **Pensionable Offices Order** made by the Governor General. I cannot simply ignore that clear and unambiguous requirement of the **Pensions Act** enacted by parliament. Put another way, even if section 6(4) could be interpreted as a circumstance in which a pension could be granted, the claimants' claim is ultimately defeated by the absence of police officers in **Pensionable Offices Order**.

[38] In these circumstances, it is unnecessary to consider any issue of the constitutionality or retrospective application of section 19(3) of the **Pensions Act** or the NIC regulations.

Disposition

[39] I therefore make the following orders:

- (1) The claim is dismissed in its entirety.
- (2) No order as to costs.

Godfrey P Smith Sc
High Court Judge

By the Court

Registrar