

**IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

DOMHCV 2015/163

**In the matter of an Application by Bernard Sanderson to apply for Judicial Review of the decision of
The President of the Dominica State College**

BETWEEN:-

BERNARD SANDERSON

Claimant

and

DOMINICA STATE COLLEGE

Defendant

Appearance:

Mr. William Riviere for the applicant/claimant

2015: July, 13

RULING:

- [1] **STEPHENSON, J.:** Mr. Bernard Sanderson (the applicant) has applied under CPR 56.3 for leave to file judicial review against The Dominica State College (the college) to quash a decision of the President of the college that he has reached the mandatory retirement age and should take necessary steps to discuss his tenure and continued employment at the college as communicated to him by letters dated January 16, May 19, June 25, and July 6, of 2015 and for a stay of the president's decision pending the hearing of such action.
- [2] The application for leave is supported by an affidavit sworn by the applicant who exhibited correspondence between the president of the college, the applicant, counsel to the college and the

applicant's solicitor Mr. William Riviere including an opinion provided to the appellant from his solicitor and an opinion provided to the college by their legal counsel.

[3] The applicant's complaint is:

- (i) That the college misdirected itself in law by deciding that the mandatory retirement age for members of its academic staff including the applicant is governed by the Dominica State College Act, No. 4 of 2002;
- (ii) That as the mandatory retirement age of academic staff at the college section 30 prevails over section 27(3) of the said Act;
- (iii) That the college misdirected itself in law by deciding that the mandatory retirement age for its academic staff is 60 years and not 65 years;
- (iv) That the college acted outside its powers under the law by deciding that the applicant has reached the mandatory age of retirement from its employment;
- (v) That the college acted outside its powers when it directed the applicant to take the necessary steps to discuss his tenure and continued employment at the said college.
- (vi) That the applicant believes that the respondent by its president unless restrained by the court will proceed to terminate or otherwise adversely affect the applicant in his employment.

[4] The factual background briefly is that the applicant is sixty years and eight months old and is employed by the college as a lecturer in computer science. He was seconded to the college from the Clifton Dupigny Community College in September 2002. In August 2004, he exercised his option to continue in permanent employment of the college.

[5] On 16th January 2015, the applicant received a letter from the president of the college informing him that according to the college's records he had reached the age of retirement and should meet with a government official to discuss his retirement process and his tenure at the college. This was followed by further correspondence between the applicant and the college and the applicant's solicitor. The matter was not resolved.

- [6] The applicant also stated in his affidavit that he was fearful that as a result of a strong disagreement between him and the president of the college some two years ago when he acted in his capacity as Shop Steward of the Dominica Public Service Union bargaining unit at the college by its president will terminate his tenure at the college or otherwise adversely affect his employment.
- [7] The applicant also stated in his application that there was no other recourse available to him.

Consideration of the application

- [8] Judicial review is available in cases where a decision making body exceeds its powers, commits an error in law, commits a breach in natural justice, reaches a decision which no reasonable tribunal could have reached or abuses its powers. See **Preston v Inland Revenue Commissioners**.¹
- [9] The grant of leave to an applicant to institute judicial review proceedings is discretionary. In determining whether to grant leave I am to consider whether the applicant has made out a proper case.
- [10] The permission stage is to weed out cases that are unarguable. The applicant must show that there is an arguable ground for a claim for judicial review having realistic prospects of success and is not subject to statutory bar or delay or that there is an alternative remedy available to the applicant: **Re: Satnaraine Sharma v Brown-Antoine and others**² and **Mitchell v Georges and another**³ and **Re: Inland Revenue Commissioners –v- National Federation of Self Employed and Small Business Limited**⁴ .
- [11] In exercising its discretion the court exercises a supervisory role. Judicial review is not an appeal procedure. The court cannot compel the college in the case at bar to exercise its power in a particular way nor can it compel it to make a decision which it believes to be the correct one. The court is not concerned with whether a decision is right or wrong on its merits:

¹ [1985] 2 All ER 327

² 69 WIR 379

³ 72 WIR 161

⁴ [2006] UKPC 57

- [12] In considering the complaint made in this application for leave to apply for judicial review, I am mindful of the fact that I am called upon not to review the merits of the president's decision or actions but rather to consider whether the applicant has made out a prima facie case. The primary facts that are relevant to my consideration are therefore whether the applicant's tenure is under threat. It is in my view a question of statutory interpretation.
- [13] I recognise that at this stage of the proceedings I am not required to perform an in-depth analysis of the applicant/claimant's case. Having perused the claim, I am satisfied that the applicant has provided this court with an arguable ground for judicial review with a realistic prospect of success which is not subject to a discretionary bar or with an alternative remedy.
- [14] Accordingly I will grant leave to file for judicial review in this matter and order as follows:
- (i) The applicant must file a claim for judicial review within 14 days hereof together with an affidavit in support;
 - (ii) The Respondent must file an affidavit in reply within 10 days of the service of the claim and affidavits.
 - (iii) First hearing of the matter shall take place on the 17th September 2015.
 - (iv) Pursuant to part 56.4 interim injunction is granted against the respondent restraining the Board of Governors of the College from terminating the applicants employment or in any other way adversely affecting the applicant in his employment by the college until further or other order of this court.

M E Birnie Stephenson
High Court Judge