

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA & BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2013/136

In the Matter of an Application for Judicial Review

And

**In the Matter of several decisions of the Police Service Commission failing to grant the Applicant
his retirement despite the Applicant's Application being supported both by the Commissioner of
Police and the Applicant's superior officer**

And

In the Matter of Constitutional Right to pension and gratuity.

BETWEEN:

ZENUS WILLIAMS

Claimant

And

POLICE SERVICE COMMISSION

Defendant

Appearance:

Mr. Lawrence Daniel for the Claimant

The Attorney General, Mr. Justin Simon Q.C for the Defendant

2014: December 1

DECISION

[1] **HENRY, J.:** By Fixed Date Claim Form filed 19th March 2013, the claimant seeks the following relief:

- (1) " An order of Certiorari to move into this court and quash the decision made by the defendant not to approve the claimant's voluntary rights to retirement from the police force;
- (2) A declaration that the defendant acted outside and beyond the scope of their authority in deciding not to approve the claimant's retirement under section 16 (3)(c) of the Police Act Cap 330 of the Laws of Antigua and Barbuda and therefore the decision of the Police Service Commission communicated through the Commissioner of Police was unlawful, void and of no effect.
- (3) A declaration that the defendant has unreasonably failed and/or refused to grant the claimant his voluntary retirement in keeping with the provisions of Section 16 (2) and 16 (3)(c) of the Police Act Chapter 330 of the Laws of Antigua and Barbuda.
- (4) A Declaration that the minute dated 10th January, 2013 denying the Claimant his legal and voluntary rights to retirement is arbitrary, oppressive and manifestly unfair, null and void and of no legal effect.
- (5) An order or Declaration that the Claimant has a legitimate expectation that he is entitled to voluntary retirement from the police force in keeping with his provisions of Section 16 (2), (3) (c).
- (6) A declaration that the Claimant is entitled to a pension and gratuity having served over twenty (20) years in the police force in keeping with section 68 (2) (b) of the Police Act Chapter 330 of the Laws of Antigua and Barbuda and the decision of the Defendant not to approve the Claimant's retirement is unlawful and unjustifiable.
- (7) An Order that the Claimant's retirement from the Royal Police Force of Antigua and Barbuda is to take effect one (1) month from the date of his Application or from the date he gave notice of his retirement to the Defendant.
- (8) A Declaration that the Defendant has discriminated against the Claimant contrary to Section 14 (2) & (3) of the Constitution of Antigua and Barbuda by not allowing the Claimant to retire from the police force while other officers who trained with him were granted retirement.
- (9) An Order that the Claimant is entitled to a leave passage Grant upon his retirement.
- (10) A Declaration that the Claimant is not required by law to give reason for his voluntary retirement from the Royal Police Force of Antigua and Barbuda.
- (11) Damages including vindictory and/or aggravated damages and/or compensation to be paid by the Defendant in respect of the contravention of the claimant's fundamental rights.
- (12) Bailiff and court fees \$250.00
- (13) Prescribed costs

(14)Interest pursuant to Statute “

- [2] The claimant is a police officer in the Royal Police Force of Antigua and Barbuda. He enlisted as a Constable on 15th February, 1990 and was attached to the Fire Brigade in St. Johns. He was promoted to the rank of Corporal in March, 2007 and has remained at that rank. He states in his affidavit in support of his claim that on 2nd December 2011, he submitted an application for retirement. The application was addressed to the Police Service Commission (PSC) via the Commissioner of Police (the Commissioner). Having had no response, his Attorney wrote to the Commissioner on his behalf on 16th August 2012, enquiring as to the status of the claimant's application. By minute dated 21st September 2012, from the Permanent Secretary, Ministry of National Security and Labour, he was requested to submit a letter “requesting” early retirement, since it was pointed out that his letter of 2nd December 2011, had simply stated that he was retiring from the force on a given date. The claimant complied with the directive by letter dated 13th November 2012. The letter states that he is “seeking permission to retire from the police force. . .” By Minute dated 10th January 2013, signed by the Chairman of the PSC, he was informed that the PSC had not approved his retirement. The Minute is quite short and reads as follows: “Please be advised that the Police Service Commission having interviewed No. 124 Corporal Zenus Williams is not satisfied with his reasons for retiring and has not approved his retirement.”
- [3] According to the claimant, he is aware that a number of persons have retired from the police force having served 20 years. He expressed the view that the decision not to grant him permission to retire is unfair and an unreasonable exercise of discretion by the PSC. Both the Commissioner of Police and the Assistant Commissioner have signaled to the PSC that they have no objection to his retirement. He alleges that he is being openly discriminated against when other members of the force were granted early retirement. He is also of the view that he has a legitimate expectation that there would be no hindrance to his retirement having served 20 years.
- [4] The Chairman of the PSC submitted an affidavit in response. He admits receipt of the claimant's application dated 13th November 2012. He states that this letter was the first notice the PSC had of the claimant's intention to apply for early retirement. He further admits receipt of the application for early retirement on 24th December 2012. The PSC, he acknowledges, met with the claimant and gave him an opportunity to satisfy the PSC that he had good grounds for seeking early voluntary retirement. The chairman states that the reasons advanced by the claimant were: (1) that he has had enough of the Police Force; he is tired of being a police officer; (2) his desire to return to his home country and (3) his lack of promotion.
- [5] According to the Chairman, due consideration was given to the claimant's application and to the reasons given for seeking early retirement and the PSC declined to grant approval because the reasons put forward were not satisfactory or justifiable reasons for the grant. The Police Act, he states, does not confer on the claimant an automatic right to early retirement; that it is within the sole discretion of the PSC upon objective consideration of the reasons submitted, to grant or deny

an officer's application. Further, the Chairman denies the claimant's allegations of discrimination and asserts that the claimant has failed to submit any evidence to show that other police applicants have been granted early retirement under exact or similar circumstances as the claimant's.

Submissions

- [6] The claimant bases his claim on section 16 of the Police Act (the Act). He submits that voluntary retirement finds itself in the same category with resignation, compulsory retirement and retirement on account of injuries. If an officer gives 30 days notice of intention to resign and the PSC fails to respond and the notice period expires, then the notice takes effect. The officer has exercised his personal statutory right to resign. The same principles, he insists, apply on the issue of voluntary retirement, because they are part of the same chain of events. They all lead to the same event – departure from the police force.
- [7] The defendant submits that the claimant has an erroneous interpretation of section 16 of Cap 330. Counsel submits that the word withdrawal in section 16 (1) and (2) means resignation. In section 16 (1) an officer cannot resign unless he gets permission if he is on probation. Section 16 (2) refers to an officer who is confirmed. He needs no permission to leave. He gives 1 calendar month notice then at the end of it he leaves.
- [8] Section 16 (3) however, addresses the manner in which a police officer may leave the force. He notes that the section does not say withdraw from the force. An officer may leave the force by the means listed in 16 (3) (a) through (i) which includes dismissal, compulsory retirement and voluntary retirement. Voluntary retirement is governed by section 68 (2). One is permitted to retire either on attaining age 50 years or after serving 20 years. The use of the word "permitted" means there is scope for refusal. He submits that the discretion must be reasonably exercised.
- [9] At the conclusion of the submissions, the claimant withdrew his claim based on discrimination.
- [10] The issues for the court are:
 - 1. Whether the PSC had the authority to deal with the issue of voluntary retirement;
 - 2. If so, whether the refusal to grant permission was unreasonable, arbitrary or manifestly unfair.
 - 3. Whether the claimant had a legitimate expectation that he would be permitted to retire upon the completion of 20 years service.

PSC'S Authority to Deal with Retirement under the Law

- [11] The claimant has raised the issue whether, under the Constitution, PSC has been given authority to deal with the issue of retirement of officers below the rank of Sergeant. He is of the view that such power rest in the Commissioner of Police and not with the PSC. He refers the court to section 105 of the Constitution.

Section 105 (5) of the Constitution provides:

105. "(5) The power to appoint persons to hold or act in offices in the Police Force below the rank of Sergeant (including the power to confirm appointments) and, subject to the provisions of section 107 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such person from office shall vest in the Commissioner of Police."

[12] The power to decide issues affecting retirement is not mentioned in section 105 (5) of the Constitution. Counsel seeks to place this matter under the power to remove a person from office mentioned in that section. However, the claimant is not being "removed" from office by the Police Force. He is voluntarily seeking to retire. The court is of the view that the permission required pursuant to section 68 (2), like the permission required by section 16 (1) are statutorily authorized to be obtained from the PSC and is not in conflict with section 105 (5) of the Constitution.

[13] Sections 16, 47 and 68 of the Police Act Cap 330 (the Act) are relevant. Those sections provide:

" **16.** (1) No subordinate police officer or constable shall during the period of his probation or any extension thereof be at liberty to withdraw himself from the Force unless he obtains the permission of the Commission to do so.

(2) No police officer whose appointment to the force has been confirmed, shall be at liberty to withdraw himself from the force until the expiration of at least one calendar month from the time when he gives notice in writing of his intention to do so to the Commission.

(3) Subject to the foregoing provisions of this section the modes by which a police Officer may leave the force are as follows-

- (a) on dismissal or removal in consequence of disciplinary proceedings;
- (b) on compulsory retirement;
- (c) on voluntary retirement;
- (d) on retirement on account of injuries received or diseases contracted in discharge of duty;
- (e) on retirement following upon the findings of a Medical Board;
- (f) on resignation;
- (g) on expiry or other termination of an appointment for a specified period;
- (h) on the abolition of office;

(i) on attaining the prescribed age of retirement.

47. (1) Subject to the provisions of subsections (2) and (3), no pension shall be granted to any inspector, subordinate police officer or constable who has not attained the age of fifty years unless the commission is satisfied by the findings of a Medical Board that such Inspector, subordinate police officer or constable is incapacitated by some infirmity of mind or body for further service in the force and that such infirmity is likely to be permanent.

(2) Every Inspector, subordinate police officer and constable who is required or permitted to retire from the Force after he has served in the force for twenty years shall be eligible for pension, gratuity or other allowance under this part.

(3) Where the services of an Inspector, subordinate police officer or constable in the Force are terminated as provided in subsection (2) of section 67, and a pension gratuity or other allowance cannot otherwise be granted to him under the provisions of this part, the Government-General may, if he thinks fit, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which such Inspector, subordinate police officer or constable would be eligible if he had retired from the Force on the Findings of a Medical Board as provided in subsection (1)

68. (1) Every Inspector, subordinate police officer and constable shall retire from the force on attaining the age of fifty five years.

(2) Every Inspector subordinate police officer or constable may be required or permitted to retire from the force-

(a) on attaining the age of fifty years; or

(b) after he has served in the force for twenty years. "

It is common ground that the claimant is a Corporal and has served over 20 years in the Police Force. Having enlisted on 15th February, 1990, on the 12th December 2012, the date of claimant's application for early voluntary retirement, he would have served 22 years. Both parties therefore accept that the claimant was eligible to submit the application for voluntary retirement.

[14] The court cannot agree with the claimant that under section 16 resignation and retirement are in the same category because they lead to the same destination – departure from the Force. When it comes to retirement, section 16 must be read in conjunction with sections 47 and 68. The court rejects the claimant's submission that upon the expiration of 1 month after submission of his application, having not had a response from the PSC, permission to retire can be inferred. While

voluntary retirement is one of the methods by which an officer leaves the force listed in section 16 (3), where the officer having served twenty years wishes to retire before the prescribed age set out in section 68 (1), section 68 (2) makes it clear that permission must be obtained.

- [15] The claimant has referred the court to two cases: **Marshall v Linard**¹ and **Cooper v Wilson**². These cases however deal with resignations. In none of the cases did the court have under consideration a statutory provision similar to section 68 (2) of the Police Act. The cases are therefore not applicable. The court therefore cannot agree that an application for voluntary retirement, based on 20 years of service, is an automatic process on the giving of one month's notice under section 16 (2). It is only upon obtaining the requisite permission required by section 68 (2), that the officer becomes eligible for pension, gratuity or other allowance under section 47 (2).

Was the refusal of permission Irrational or Unreasonable

- [16] While the court accepts that Section 68 (2) gives discretion to grant or refuse permission, the entity exercising the discretion must direct itself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider.³ The crucial factor that the court is concerned with is whether sensible decision-makers, properly directed in law and properly applying their minds to the matter, could have regarded the conclusion under review as a permissible one.⁴
- [17] The Chairman of the PSC in his affidavit in response states that the PSC met with the claimant and gave him an opportunity to satisfy the PSC that he had good grounds for seeking early voluntary retirement. According to the Chairman, the claimant advanced three reasons: (1) That he has had enough of the police force and is tired of being an officer; (2) his desire to return to his home country; and (3) that he had not been promoted.
- [18] One of the declarations sought by the claimant is a declaration that the claimant is not required by law to give reasons for his voluntary retirement.
- [19] Although the Police Act does not expressly require an applicant to give reasons for requesting permission under section 68 (2), the reasons provided by the applicant give the decision-makers the basis upon which to exercise their statutory discretion. Otherwise, the decision may be subject to attack as arbitrary.
- [20] According to the Chairman, due consideration was given to the claimant's application and to the reasons given and the PSC declined to grant approval because the reasons put forward by the claimant were not satisfactory or justifiable reasons for the grant of the retirement.

¹ (1965) 9 W.I.R. 293

² [1937] 2 All ER 726

³ Associated Provincial Picture House Ltd v Wednesbury Corporation [1948] 1KB 223

⁴ Judicial Review by Michael Supperstone Q.C., James Goudie Q.C. and Paul Walker, 4th edition.

- [21] Counsel for the PSC acknowledges that while the PSC has discretion, it must be exercised reasonably. He submits that PSC has to look at all the circumstances, including the fact that certain financial benefits follow on retirement, which matters must be taken account of. Also the impact on the force if the permission is granted also must be considered.
- [22] The court notes however, that neither of these two considerations was mentioned by the chairman. Further, the Commissioner of Police who would be in a position to know of the impact of the retirement on the force, had no objection to the claimant's retirement. In fact the PSC has given no reasons for its decision. The Minute dated 10th January 2013, simply states that The PSC is not satisfied and therefore has not approved his retirement.
- [23] While under common law there is no duty to give reasons, the giving of reasons is "one of the fundamentals of good administration"⁵. The failure to give reasons for a decision that is subsequently challenged on judicial review may give rise to an inference by the court that the Authority had no good reasons for the decision. Lord Keith in **R v Trade Secretary ex parte Lonrho plc**⁶ stated: "... if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision maker who has given no reasons cannot complain if the court draws the inference that he has no rational reason for his decision." Furthermore, the courts have held that a failure to give reasons amounts to arbitrariness⁷. In **R v Secretary of State for the Home Department ex parte Al Fayed**⁸ the UK Court of Appeal ruled that the Home Secretary had a duty to indicate to the applicant the area(s) of concern on which he was basing his refusal to grant naturalization in order that the applicant may have an opportunity to allay the Home Secretary's concern.
- [24] In the matter before the court, neither in the Minute of 10th January 2013 nor in the affidavit before the court did the PSC set out any reasons. The absence of reasons on the part of the PSC leads the court to infer that the PSC had no rational reason for the refusal, which in the court's view makes the decision arbitrary and unfair and consequently null and void.

Legitimate Expectation

- [25] A legitimate expectation may arise either from an express promise given on behalf of a public authority, or from the existence of a regular practice which the claimant can reasonably expect to continue.⁹
- [26] There is no evidence by the claimant that an express promise was made to him that he could leave the Police Force after 20 years service without permission being granted. There is also no evidence of persons leaving the police force after twenty years service without permission first

⁵ Per Lord Denning MR in *Breen v AEU* (1971) 2 QB 175

⁶ (1989) 2 All ER 609

⁷ See *Padfield v Minister of Agriculture, Fisheries and Food* (1968) AC 997

⁸ (1997) 1 All ER 228

⁹ Per Lord Fraser of Tullybelton in *CCSU v Minister of Civil Service* [1985] AC 374 at 401

being obtained. In light of the absence of the evidence and the clear statutory provision contained in section 68 (2) of the Police Act, that permission is necessary, the claimant's claim based on legitimate expectation fails.

Conclusion

[27] The court makes the following findings:

1. That the claimant is not entitled to voluntary retirement automatically. He has the right to apply to the PSC in accordance with section 68 (2) of the Police Act upon completion of 20 years service or on reaching age 55. The PSC's permission is required in order for him to proceed to retirement.
2. The PSC has authority by virtue of the provisions of the Police Act to grant permission in this regard.
3. The claimant's claim that he has a legitimate expectation that there would be no hindrance to his voluntary retirement upon the giving of one month's notice fails.
4. However, the Court concludes that the decision of the PSC not to grant the requested permission was arbitrary and unfair in the circumstances.

[28] The court therefore makes the following Declaration and Order:

1. A declaration that the decision made by the PSC not to approve the claimant's application for voluntary retirement was arbitrary and unfair and therefore void and of no effect.
2. An order that the claimant's retirement is to take effect 60 days from the date of this decision.
3. The other declarations and orders sought are denied

[29] Cost to the claimant in the sum of \$1000.00.



CLARE HENRY
High Court Judge
Antigua & Barbuda