

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO.: ANUHCv2011/0623

BETWEEN

DELON CHARLES

Claimant

AND

THE COMMISSIONER OF POLICE

Defendant

Appearances:

Mr. Lawrence Daniels for the Claimant
Ms. Luann De Costa for the Defendant

2012: November 5
November 22

RULING

[1] **Remy J.:** The Claimant Delon Charles is a Police Officer in the Royal Police Force of Antigua and Barbuda. The Respondent is the Commissioner of Police and is responsible for the superintendence of the Police Force in Antigua and Barbuda.

[2] The background facts of the case are as follows:-

- (a) By letter dated 6th July 2011, the Defendant, the Commissioner of Police, pursuant to Section 37 of the Police Act Chapter 330, suspended the Claimant from duty effective from 8th July 2011, until the final determination of the official report that was made against him for failure to maintain his child. By the said letter, the Claimant was advised

that he would be paid one half of his monthly salary, pending final determination of the matter.

(b) No criminal charges were laid against the Claimant. By way of application, and accompanying Affidavit in Support, the Claimant filed for Judicial Review on 30th September 2011, seeking leave to file for judicial review. The relief sought was as follows:-

- (i) An Order of Certiorari to move into this Honourable Court and quash a decision made by the Respondent (the Commissioner of Police) by way of letter dated the 6th July, 2011 suspending the Applicant from duty when he had no authority to do so.
- (ii) A Declaration that the Respondent has acted outside and beyond the scope of his authority by unlawfully suspending the Applicant from duty, when he had no authority to do so.
- (iii) A Declaration that the suspension letter issued to the Applicant on 6th April, 2011 was unlawful and contrary to the procedure established by Section 37 of the Police Act Chapter 330 in that no disciplinary charge was ever issued or served upon the Applicant, which is a prerequisite prior to the suspension letter being issued, the suspension is therefore null, void and of no effect which is an unreasonable, irregular and/or improper exercise of power.
- (iv) A Declaration that the Applicant is entitled to damages for the unlawful suspension imposed on him by the Respondent thereby preventing the Applicant from being recommended for promotional opportunities or courses.
- (v) A Declaration that the Respondent unlawfully suspended the Applicant from duty in accordance with Section 37 of the Police Act Chapter 330 when no disciplinary charges were ever made against the Applicant. Section 37 of the Police Act only

gives the Respondent powers in respect of pay or conditions of pay for police officers suspended from duty.

[3] Leave to file for Judicial Review was granted to the Claimant on the 28th October 2011. On that date, the Court also gave directions in accordance with Part 56.4 of CPR.

[4] By Fixed Date Claim filed on the 8th November 2011 and with the leave of the Court granted as aforesaid, the Claimant claimed against the Defendant the following remedies:-

1. A Declaration that the Defendant has acted outside and beyond the scope of his authority by unlawfully suspending the Claimant from duty without a charge when he had no authority to do so.
2. A Declaration that the suspension letter issued to the Claimant on the 6th July, 2011 is contrary to the procedure established by Section 37 of the Police Act Chapter 330 and is therefore null, void and of no effect.
3. A Declaration that the Claimant is entitled to damages for the unlawful suspension issued to him by the Defendant thereby preventing the Claimant from being selected for promotional opportunities or courses.
4. A Declaration that the Claimant is entitled to the sum of \$6,346.00 which represents the half pay unlawfully withheld from July, 2011 to October, 2011 and continuing at a monthly sum of \$1,586.50.

[5] The Claimant also claimed court fees and bailiff fees; he also claimed Attorney costs, prescribed costs and interest.

THE LAW

[6] Section 37 of the Police Act Chapter 330 states:-

"37 (1) An Inspector, subordinate police officer or Constable against whom any complaint or information for an offence punishable on summary conviction or on indictment is laid or against whom a charge is made for breach of any disciplinary regulation made under this Act, may pending, and until the final determination of such complaint, information or charge –

- (a) Be suspended from duty and placed on half pay by the Commissioner
- (b) If admitted to bail and not so suspended, be employed on full-time duty, in which case he shall receive full pay, or if employed on part-time duty he shall receive a rate of pay (not being less than half pay) as the Commissioner of Police thinks fit...."

ISSUES

[7] It is undisputed that no charges were ever preferred against the Claimant prior to the Defendant issuing the suspension letter of 6th July, 2011. In the Statement of Facts, Issues and Law filed on 3rd July 2012, Learned Counsel for the Claimant submits that since the Defendant failed to follow the procedure of Section 37, a procedure which is "a pre-requisite before any suspension letter can be issued", the Defendant acted outside and beyond the scope of his authority.

[8] Learned Counsel for the Defendant in her Statement of Facts, Issues and Law filed on the 11th July 2012, concedes that "no criminal charges were laid against the claimant." She submits however that "the Commissioner of Police pursuant to the Police Disciplinary Regulations has the authority to suspend a constable prior to any charge being laid against him." Further, in paragraph 8 of his Affidavit in Response filed on the 24th April 2012, the Defendant deposes:-

".....It is admitted that no criminal charges were laid against the Claimant but states that the Defendants (sic) authority to suspend a Constable prior to any charge being laid is contained in regulation 16 of the Police (Discipline) Regulations."

[9] Regulation 16 of the Police (Discipline) Regulations states:-

"16. Suspension. (1) Where a report, allegation or complaint is received from which it appears that a member of the Force has committed a disciplinary or criminal offence, the Commission may suspend that member from membership of the Force and from his office, whether or not the matter has then been investigated and in such case he shall be suspended until –

- (a) The Commission decides otherwise;

- (b) It is decided that the member shall not be charged with a disciplinary offence; or
 - (c) The member has been so charged and either all the charges have been dismissed or a punishment has been imposed;
- Whichever first occurs.

- (2) A member of the Force suspended under this regulation shall, in respect of the period of suspension, be paid a suspension allowance at the rate prescribed under Section 37 of the Act."

[10] It is common ground that the suspension of the Claimant was lifted and the Claimant's salary and all other monies were authorized to be restored to the Claimant. In paragraph 16 of the Claimant's Affidavit filed on the 11th April 2012, he deposes as follows:-

"That I received a monthly salary of \$3,173.00 prior to being unlawfully suspended. Since the suspension the Defendant paid me half salary and unlawfully withheld the sum of \$1,586.50 from July, 2011 and continuing for about six (6) months. The said salaries that were withheld were subsequently paid after this matter was filed before the Court and came up for hearing in December, 2011."

[11] According to Blackstone¹ "all public law remedies are discretionary, i.e. even though the claimant has standing to commence judicial review proceedings, the decision or action in question is reviewable and the grounds for review are proved, the court may yet decide not to award the claimant all or part of the remedies requested." The Court may refuse relief for a number of reasons; one such reason is where the Court "believes the likely effect of a remedy will serve no practical purpose, e.g. in cases where the public body has already remedied its position to meet the claimant's demands (R v Gloucestershire County Council, ex parte P [1994] ELR 334)." (Blackstone, page 1192, paragraph 74.53).

[12] In the instant case, the Court is of the view that the remedies, namely Declarations (1), (2) and (4) referred to in paragraph 4 above, are no longer required as the Defendant has already lifted the Claimant's suspension and paid him all the monies which were withheld. It will therefore serve no practical purpose to grant the said declarations.

¹ (Civil Practice 2011, page 1191, paragraph 74.53)

[13] The only remaining issue to be determined by the Court is:-

Whether the Applicant is entitled to damages having been wrongfully placed on suspension which prevented the Applicant from being recommended for promotional opportunities or courses.

[14] The Claimant claims: - "A Declaration that the Claimant is entitled to damages for the unlawful suspension issued to him by the Defendant thereby preventing the Claimant from being selected for promotional opportunities or courses."

[15] In paragraph 12 of his Affidavit filed on the 11th April 2012, the Claimant deposed as follows:-

"That by virtue of me being placed on suspension unlawfully, I was deprived of the opportunity to be selected for training courses and promotion to the next available rank. As a Constable and a servicing (sic) police officer, I have a legitimate expectation to be promoted to the next available rank of Corporal and sent on training courses like any other members of the police force."

[16] In paragraph 13 of the said Affidavit, the Claimant deposed as follows:-

"That the Defendant has published a Force Circular No.3 of 2009 dated the 20th March, 2009 where it was stated "hereinafter acting promotions will not be granted to any member of the force facing disciplinary investigation/tribunal." I was therefore deprived of any opportunity for promotion once I was placed on suspension even though I was not charged with any offence, the mere fact that I was facing disciplinary investigation or tribunal meant that I would not have been considered for any promotion or course due to the fact that I was placed on suspension wrongly...."

[17] In his Affidavit in Response filed on the 28th April 2012, the Defendant deposes at paragraph 9 as follows:-

"The Defendant denies paragraph 12 of the Claimant's affidavit and puts the Claimant to strict proof that he was as a result of his suspension deprived of the opportunity to be sued (sic) for a training centre and/or promotion."

[18] In the Statement of Facts, Issues and Law filed by Learned Counsel for the Defendant Ms. De Costa pursuant to the Order of the Court dated the 13th day of June 2012, the following are submitted:-

"Paragraph 4 - At all material times the Claimant was a police in the rank of Constable. There was at no point in time any correspondence from relevant authorities in the police force advising the Claimant of an entitlement to promotion prior to or subsequent to the filing of the instant claim.

Paragraph 5 - There was at no point in time a denial of promotion to the Claimant either prior to or subsequent to the filing of the claim as a result of the suspension.

Paragraph 6 - The Claimant alleges loss of opportunity of promotion and courses yet he has not provided any scintilla of evidence to satisfy the Court that he was entitled to a promotion or slated to go on courses in his capacity as a constable in the force and would have lost a promotion etc as a result of the suspension."

[19] In the view of the Court, notwithstanding the publication of the "Force Circular" referred to in paragraph 15 above, the Claimant has not established the legitimacy of his expectation on a balance of probabilities. The "Force Circular" refers to acting promotions. The Claimant does not refer to any express representation, promise or conduct on the part of the Defendant which would have induced a legitimate expectation that he (the Claimant) was entitled to be recommended for "promotional opportunities or courses.' A "mere hope" is not sufficient. The Claimant has also failed to provide the Court with any cogent evidence that any such opportunity for promotion presented itself during the period in which he was suspended. Additionally, he has not provided any evidence that prior to his suspension, and during the currency of his twenty two years of service in the Police Force, he was sent on any training courses or that he had received any "acting promotion."

[20] It is the further submission of Learned Counsel for the Defendant that:-

- (a) While it is accepted that the Court may grant damages in judicial review proceedings, ...the grant of damages as a remedy is not mandatory and does not flow as of right in

judicial review proceedings but rather is left up to the discretion of the Judge. It is only awarded by the Court in limited circumstances.

- (b) Damages are only awarded by the Court in limited circumstances.
- (c) There is no meritorious basis for the grant of damages to the Claimant and the Court should exercise its discretion not to grant damages to the Claimant.
- (d) In the circumstances of the case that the Claimant's suspension has been lifted, the Claimant's full salary was restored and all monies withheld from the Claimant was paid to him, the Claimant should discontinue this claim failing which the claim should be dismissed by the Court as taking into account the facts and in the present circumstances there is not before the Court a triable case for Judicial Review.

[21] Part 56.8(1) of the Civil Procedure Rules (CPR) 2000 states:-

"The general rule is that, where permitted by the substantive law, an Applicant may include in an application for an administrative order a Claim for any other relief or remedy that -

- (a) Arises out of; or
 - (b) Is related or connected to;
- The subject matter of an application for an administrative order."

[22] Part 56.8 (2) states:-

"In particular the court may, on a claim for judicial review or for relief Under the Constitution award -

- (a) Damages;
- (b) Restitution; or
- (c) An order for return of property to the claimant; If the –
 - (i) Claimant has included in the claim form a claim for any such Remedy arising out of any matter to which the claim for an Administrative order relates; or
 - (ii) Facts set out in the claimant's affidavit or statement of case justify the granting of such remedy or relief; and
 - (iii) Court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy."

[23] It is worth repeating that remedies for judicial review are discretionary. Damages are not available simply because an application for judicial review is successful (*R v Metropolitan Borough of Knowsley, ex parte Maguire* [1992] COD 499). Further that there is no general right to damages for a breach of public law – per Lord Geoff in *R v Secretary of State for Transport ex p Factortame Ltd (No.2)* [1991] AC 603 a 672 H. According to the learned writers of *Judicial Review; A Practical Guide* (page 214), one of the circumstances in which damages may be claimed is “where the remedy of damages would have been available if the claim had been brought as a private law action (for example negligence or false imprisonment)”.

[24] The learned writers further state:-

“Turning first to judicial review claims which also sound in private law, it is clear that, in order for damages to be claimed, it needs to be established that the facts of the claim show some recognized form of private law action that gives rise to damages....”

[25] In the case of *Bovell v COP* (Suit No. 1622 of 1993, H Ct. Barbados), cited by Learned Counsel for the Defendant, Waterman J awarded the Applicant the full salary “which he would have received if he had not been suspended”. In that case, the award of damages was limited to “provable financial loss.” In the instant case, the Claimant’s full salary has been restored to him. He has not provided cogent evidence of any other financial loss which he has suffered as a result of his suspension. In fact, the Claimant has not alleged that he has suffered any financial loss as a result of his suspension other than the suspension of his salary. His claim is for “damages for the unlawful suspension issued to him by the Defendant thereby preventing the Claimant from being selected for promotional opportunities or courses.”

[26] In all the circumstances of the instant case, the Court is of the view that there is no basis for exercising its discretion in favour of awarding to the Claimant damages as claimed.

My Order is as follows:-

- (a) The Claimant's claim for judicial review is dismissed.
- (b) That the Defendant pay to the Claimant costs in the sum of \$1,500.00.



JENNIFER A. REMY
Resident High Court Judge
Antigua & Barbuda