

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE**

CLAIM NO. GDAHCV 2010/0423

BETWEEN:

HERMILYN ARMSTRONG
(also known as Hermilyn Armstrong-Cox, also known as Hermilyn Lord)

Claimant

and

**1. THE ATTORNEY-GENERAL OF GRENADA
2. THE MINISTER OF FINANCE OF GRENADA**

Defendants

Appearances:

Dr. F. Alexis, Q.C for Claimant

Mrs. Kina Marrast-Victor for Defendants

2012: October 15

JUDGMENT

- [1] **PRICE FINDLAY, J.:** The claimant, Hermilyn Armstrong was born on the 18th July, 1949 and on the 17th day of May, 1983 she was appointed to and confirmed in an office in the public service of Grenada.
- [2] Her post was a Key Punch Operator in the Ministry of Planning, Finance and Trade. She was informed of her appointment by way of letter dated 23rd December, 1983 from the Chief Personnel Officer.
- [3] As a result of this appointment she became subject to the Public Service Commission regulations. At the time of her appointment, she was thirty-three years of age, and in accordance with s.111 (1) of the Grenada Constitution she

became a public officer. It is not disputed that her period in the service of the Government of Grenada began on the 17th May, 1983.

- [4] This service continued for a period of twenty-six years, three months and fourteen days up to the 28th August, 2009, when she was retired as a public officer having attained the prescribed age of retirement.
- [5] When she began her term of service with the Government of Grenada, pension benefits for public officers were regulated by the Pensions Act, Cap 214 1958 Revised Laws of Grenada.
- [6] Under the provisions of that Act, a public officer, on meeting certain conditions became eligible for pension benefits, pension and gratuity. She deponed that it was as a result of these provisions that she chose to become a public officer.
- [7] The post to which she was appointed was a pensionable one and any service in that office was to be taken into account was to be taken into account as pensionable service.
- [8] The period of service needed in order to qualify for a pension under the Pension Act Cap 214 of 1958 as she served more than twenty-six years as a public officer without more. But the matter does not end here.
- [9] That her service was continuous is not in dispute. She was retired at age sixty, and she claims that she is entitled to be granted a pension at the annual rate of one sixth hundredth of her pensionable involvements for each complete month of her pensionable service.
- [10] By pensionable involvements, she contends that she means salary, personal allowance and housing allowance in accordance with s.2 (1) of Cap. 214 of 1958.
- [11] The highest pensionable involvements drawn by her during the course of her service was \$2,305.00 per month. She therefore contends that she is entitled to pension benefits and gratuity based on that figure.

[12] She contends that she is entitled to the protection provided by s.92 of the Constitution more particularly s.92 (2) (b) which reads as follows:

“S.92

(1) The law to be applied with respect to any pensions benefits that were granted to any person before this section comes into operation shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pension benefits (not being benefits to which subsection (1) of this section applies) shall

(a) In so far as those benefits are wholly in respect of a period of service as a judge or public officer that commenced before the date upon which this section comes into operation, be the law that was in force on the date which this section comes into operation; and

(b) In so far as those benefits are wholly or partly in respect of a period of service as a judge or public officer that commenced after this section comes into operation, be the law in force on the date on which that period of service commenced,

Or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall for the purpose of this section, be deemed to be more favourable to him than the other law or laws.

- (4) All pensions benefits shall (except to the extent that they are charged upon and duly paid out of some other fund) be a charge on the Consolidated Fund.
- (5) In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as judges or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.
- (6) In this section references to service as a judge are references to service as a judge of the Court of Appeal, a judge of the High Court or a judge of the Supreme Court established by the Windward Islands and Leeward Islands (Courts) Order in Council 1959, and references to service as a public officer include service in an office established under section 12 of the Courts Order.
- (7) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which such benefits that have been granted may be withheld, reduced in amount or suspended, and the law regulating the amount of any such benefits.”

[13] While the claimant was still in the service of the Government, the National Insurance Scheme Act, Act No. 14 of 1983 was passed. This Act was to provide for a scheme of national insurance for among other things, age benefits in respect of persons employed both in the private and public sector.

[14] This Act came into force on 4th April, 1983. Also passed was the Pensions (Disqualification) Act 1983, Act. No. 24 of 1983, which provides as follows:

S.3 “Any person who is appointed to a post in the service of the Government of Grenada on or after the appointed day (4th April 1983) shall not be entitled to any pension, gratuity or other allowance under any of the Scheduled enactments.”

- [15] The scheduled enactments included the Pension Act, Act 214 of 1958.
- [16] Upon the revision of the Laws of Grenada in 1990, the Pensions Act was included as Cap. 233 and s.18 (4) of the Act restated the disqualification provision. Those disqualification provisions according to the 1990 Act state that they have effect from the 4th April 1983.
- [17] She contends that these disqualification provisions are being applied to her and it is these provisions which the Government pray in aid and to deny her the pension and gratuity rights that she claims to be entitled to.
- [18] She states that the disqualification provisions are inconsistent with s.92(2) of the Constitution and further that they have not been passed in the manner needed for them to prevail against the provisions of s.92 (2) (b).
- [19] She requests that pursuant to s.101 (1) of the Constitution, that the declarations she seeks be granted.
- [20] The defendants in their response submitted that the law applicable in this matter in relation to this claimant is the Pensions Disqualification Law 24 of 1983.
- [21] They further state that the claimant here has no right or enactment to any gratuity or pension benefits under the Pensions Act Cap 214 of 1958.
- [22] They assert that they have not failed to pay the claimant a pension or gratuity but that the claimant has no right to such payments as the applicable law is not Cap. 214 of 1958 but the Pensions Disqualification Law of 1983 and Cap. 233 (The Pension Act) of the 1990 Revised Laws of Grenada.

- [23] They assert that the Pensions Disqualification provisions are not inconsistent with s.92(2) (b) of the Constitution, and these provisions apply to the claimant as they took effect from the 4th April 1983 and the claimant's service commenced on 17th May, 1983, a time after the provision were in effect.
- [24] The defendant's further assert that the Pensions Disqualification Act 1983 being retrospective on application is the law under which the claimant's pension benefits would fall, as the date of the coming into operation of those provisions was April 1983 and her term of service began in May 1983.
- [25] That the Pension Disqualification Act 1983 came into force on the appointed day of 4th April 1983 is not disputed. That when the Laws of Grenada were revised in 1990, the Pension Act Cap. 214 of 1958 was included as Cap. 233 of the 1990 Revised Laws is also not in dispute. Section 184 of Cap. 233 of the 1990 Revised Laws, regime states the provisions of the Pensions Disqualification Act of 1983.
- [26] It is noted that the Pension Disqualification Provision did not provide any pension or retirement benefits at all. On the same date that the Pension Disqualification Law came into force another Act the National Insurance Act 1983 also came into force.
- [27] This Act was passed to establish a national insurance scheme based on contribution from both employer and employee to pay various benefits including sickness, invalidity, maternity age and other benefits.
- [28] Any law which seeks to provide pensions or retirement benefits for public officers in substitution for the pension benefits under Cap 214 of 1958 must comply with certain Constitutional provisions. Section 92(2) (b) been set out earlier in this judgment is one such section.
- [29] It stipulates that the law, "Shall be the law in force on the date that period of service commenced, or any law in force at a later date that is not less favourable to that person." Section 92(2) entitled the claimant at the time she commenced

her service as a public officer to a pension under the Pension Act. Cap 214 of 1958.

- [30] Section 92(2) (b) entitled her to pension benefits if any change was to be made to those benefits, they were to be 'not less favourable' to her than what she was entitled to under Cap. 214.
- [31] The NIS Act which came into effect 4th April, 1983 gives the claimant age benefits which are substantially less than those to which she would have been entitled to under Cap 214 of 1958.
- [32] It is not disputed that under Cap 214 of 1958, the claimant would have received the sum \$1,134.43 per month and a gratuity lump sum of \$56,724.59. Under the NIS she would receive the weekly sum of \$220.10 and no gratuity at all.
- [33] The makers of the NIS laws were aware that adjustments would have to be made to the provisions of the Act to have its benefits brought in line to be not less favourable than those granted under Cap 214 of 1958.
- [34] Section 46 of the NIS Act provides for the creation of regulations treating public officers as insured persons. Section 46 states:

“This law shall apply to persons employed by the Government or State ... in like manner as if such Government or statutory body were a private person with such modifications as may be made therein by regulations for the purpose of adapting the provisions of the law to the case of such person.”

Section 47 (1) goes on to state:

“The Minister shall in relation to any public service pension scheme (hereinafter in this Part called “the scheme”) have power to make such provision for the modification or ... of the scheme or repeal of any enactment relating to the scheme.”

(2) The powers of the Minister under this section shall be exercisable by means of an Order

[35] There have been no regulations made under s.46 to modify the NIS Act so as to adapt it to meet the case of persons employed by the Government. The Minister has made no order under s.47 to modify or wind up the Public Service Pension Scheme or to repeal the Pensions Act relative to that scheme.

[36] Byron, CJ (Ag), in the Grenada case of **McQueen v PSC** in 1998 ECCR 198, stated:

“We were not pointed to the exercise of any powers under s.47 the conclusion is that the public service pension scheme contained in Cap. 233 (the Pension Act) was not modified wound up or repealed under the power of the National Insurance Act.”

[37] Instead there was enacted the Pensions Disqualification Law 1983, People's Law 124/83. The operative section of this Act was s.3 which prescribed:

“Any person who is appointed to a post in the service of the Government of Grenada on or after the appointed day shall not be entitled to any pension gratuity or other allowance under any of the scheduled enactments.”

[38] The Learned Chief Justice noted that the scheduled enactments did not include the Constitution. I agree with Byron CJ (Ag) when he opined that the legislative intention behind Peoples Law No. 24 of 1983 was to create new terms of employment for public servants employed after the appointed day by removing them from the pension scheme under Cap. 233 of the 1990 Revised Laws.

[39] As he observed the, the legislative intention has not been fully executed, as no orders have been made to create a new pension regime for public servants under the NIS Act or anywhere else.

[40] The Pension Disqualification provisions provide no pension or retiring benefits to public officers not even benefits which can be said to be less favourable than those under the Pension Act 214 of 1958. Nothing has been put in place to afford public officers the benefits of a pension scheme to replace those contained in Cap 214 of 1958.

[41] The result is therefore that there is a vacuum and without any replacement scheme, this places this public officer in a position less favourable than that which obtained, when she became a member of the Public Service; and the provisions of the NIS fall far short of the benefits she would have received under Cap 214 of 1958, the law in force when she entered the Public Service.

[42] Section 92(2) (b) is an entrenched provision of the Constitution and as such with the Constitution being the Supreme Law of the land any attempt to amend the laws for the protection of pension rights has to be done in conformity with the Constitution. Section 39(5) sets out the procedure to be followed: -

“(5) A Bill to alter this section, Schedule 1 to this Constitution or any of the provisions of this Constitution specified in Part I of that Schedule or any of the provisions of the Courts Order specified in Part II of that Schedule or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967 shall not be submitted to the Governor-General for his assent unless: -

- a. “ There has been an interval of not less than ninety days between the introduction of the Bill in the House of Representatives and the beginning of the proceedings in the House on the second reading of the Bill in that House;
- b. After it has been passed by both Houses of Parliament or, in the case of a Bill to which section 48 of this Constitution applies, after its rejection by the Senate for the second time; and
- c. The Bill has been approved on a referendum, held in accordance with such provision as may be made in that behalf by Parliament, by not less than two-thirds of all the votes validly cast on that referendum.”

- [43] What the People's Law 24/83 sought to do is clearly inconsistent with the provisions of 92(2) (b) which seeks to protect the pension rights of public officers. I find in its terms that People's Law 24/83 and s.18 (4) of Cap 233 of the 1990 Revised Laws are inconsistent with the stated need to protect pension rights under the Constitution.
- [44] This is an entrenched provision and it is clear that a statutory provision cannot remove a benefit conferred by an entrenched provision of the Constitution "such a benefit can only be removed by altering or amending the Constitution itself." Per Byron, Chief Justice.
- [45] The entrenchment requirements of s.39 (5) of the Constitution were not met and therefore the Pension Disqualification provisions cannot and do not alter the provisions of s.92 (2) (b) of the Constitution.
- [46] The protection afforded the claimant by way of Cap. 214 of 1958 stands. I agree with Byron, Chief Justice (Ag) that "the only legislation which could validly be employed under the Constitution to determine the claimant entitlement to a pension and gratuity at the time of her retirement from the public service is Cap 214 of 1958.
- [47] The claimant in this matter clearly has a relevant interest under s.101 (5) of the Constitution and as a result the Court finds that she is entitled to the reliefs sought with cost to be assessed if not agreed.
- [48] Therefore the Court grants:
- a) A declaration pursuant to section 101 of the Constitution of Grenada that section 92 (2) (b) of the Constitution is being contravened by section 18 (4) of the Pensions Act, Cap. 233, 1990 Revised Laws of Grenada, in relation to the claimant, Hermilyn Armstrong (also known as Hermilyn Armstrong-Cox also known as Hermalyne Lord) (hereinafter referred to as Hermilyn Armstrong).

- b) A declaration pursuant to section 101 of the Constitution of Grenada that, in relation to the claimant Hermilyn Armstrong, section 18(4) of the Pensions Act, Cap 233, 1990 Revised Laws of Grenada, is inconsistent with section 92 (2) (b) of the Constitution and, not having been passed in accordance with section 39 (5) of the Constitution is, to the extent of such inconsistency, void, by virtue of section 106 of the Constitution.
- c) A declaration pursuant to section 101 of the Constitution of Grenada that section 92 (2) (b) of the Constitution is being contravened by the action of the Government of Grenada in refusing the claimant Hermilyn Armstrong the pensions benefits, pensions and gratuity, for which she is eligible under the Pensions Act, Cap 214, 1958 Revised Laws of Grenada, which was the law in force when her period of service as a public officer in the public service of Grenada commenced on 17th May 1983; she having been retired as a public officer in the public service of Grenada on 28th August 2009 on the ground of age.
- d) A declaration pursuant to section 101 of the Constitution of Grenada that, in accordance with section 92(2) (b) of the Constitution, the claimant, Hermilyn Armstrong, is eligible for pensions benefits, pension and gratuity, under the Pensions Act, cap 214, 1958 Revised Laws of Grenada, which was the law in force when her period of service as a public officer in the public service of Grenada commenced on 17 May 1983; she having been retired as a public officer in the public service of Grenada on 28 August 2009 on the ground of age.
- e) The claimant is entitled to the sum of \$56,724.59 representing her gratuity with interest at the rate of 6% per annum from the effective of her retirement to the date of payment.
- f) An order that, by way of relief pursuant to section 101 of the Constitution of Grenada, in addition to the pensions benefits, pension and gratuity, for which the claimant Hermilyn Armstrong is eligible under the Pensions Act,

Cap. 214, 1958 Revised Laws of Grenada, she be paid compensation by the Government of Grenada as the Court may deem just, for Government's refusal to pay her such pension and gratuity in contravention of section 92(2) (b) of the Constitution.

- g) The claimant is also entitled to her pension at the rate of \$1,134.43 per month. If she has received any NIS benefits those sums are to be deducted from the monies she is entitled to under the Pension Act.
- h) An order that, by way of relief pursuant to section 101 of the Constitution of Grenada, the Government of Grenada do pay to the claimant Hermilyn Armstrong her arrears of pensions benefits, pension and gratuity, which should have been to her pursuant to the Pensions Act, Cap 214, 1958 Revised Laws of Grenada, in relation to her retirement as a public officer in the public service of Grenada on 28 August 2009 on the ground of age.
- i) Interest will be payable on the arrears at the rate of 6% per annum from the effective date of her retirement to the date of payment of the arrears.

[49] The Court thanks Counsel for their insightful submissions

Margaret A. Price Findlay
High Court Judge