

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE
CIVIL SUIT NO. 196 OF 1995
BETWEEN:

ANGUS DENNIE

Plaintiff

V.

**THE CHAIRMAN AND
MEMBERS OF THE PUBLIC
SERVICE COMMISSION
KENNETH R. V. JOHN
FRANK WILLIAMS
MIKEY DEFREITAS
GEORGE PHILLIPS**

Defendants

Appearances:

Miss Nicole Sylvester for the Plaintiff
Miss Dawn Lewis, Crown Counsel for the defendants

1999: November 29

2000: April 4, 10, 11

DELIVERED: 2000: June 19

JUDGMENT

[1] **ADAMS, J:** By a letter dated May 21st 1986 the Plaintiff was appointed to the post of Fisheries Extension Assistant, Fisheries Division, Ministry of Trade Industry and Agriculture on 1 year's probation with effect from the 1st March 1986.

[2] By letter dated 2nd September 1994 he was retired by the Public Service Commission in the public interest.

[3] This action has been brought because the Plaintiff insists that the purported retirement of him by the Public Service Commission is penal, unlawful, illegal and of no effect.

[4] As a consequence of all this the Plaintiff has sued the Public Service Commission and its members, and claims the following remedies.

[5] “(a) A declaration that the proceedings of the Public Service Commission were vitiated by breaches of natural justice.

 (b) A declaration that the purported retirement of the Plaintiff in the public interest is unlawful, ineffective and void.

 © An order reinstating the Plaintiff to his job and to pay the Plaintiff his monthly salary of \$1451.00 and emoluments now due as of August 1993 and continuing until re-instatement.

 (d) A declaration that the letter dated 2nd September 1994 purporting to retire the Plaintiff in the public interest is an assertion that the Plaintiff is still a public officer in the service of the Government of St. Vincent and the Grenadines and that the suspension of the payment of the Plaintiffs salary from August 1993 was wrongful, unlawful and a nullity.

(e) Further, a declaration that the retiring of the Plaintiff as a public officer in the public interest is punitive and/or penal and/or disciplinary and was not invoked in accordance with any law and or civil service regulations and is a nullity.

(f) Damages

(g) Further and alternatively the Plaintiff be returned to office.

(h) Such further orders or declarations as the Court deems fit.

(i) Costs

(j) Further or other relief".

[6] It goes without saying, that employed as he was with the Government of St. Vincent and the Grenadines, the removal from office of the Plaintiff by whatever means required the compliance with the law dealing with such matters. In this case Counsel have so submitted and I accept that the retirement from the post of the Plaintiff was to be governed by a procedure laid down by the legislative authority of this State of St. Vincent and the Grenadines; I must now identify what legislation there is dealing with this issue.

[7] It was accepted by Counsel on both sides and by the Court that the primary consequence of the letter of appointment of the Plaintiff dated 21st May 1986, was that he became what is known as a "public officer" and in that capacity became subject to the body

known as the Public Service Commission, set up by Section 77 of the Constitution. By Section 78 of the Constitution of St. Vincent and the Grenadines it is provided that the power “to appoint persons to hold or act in offices in the Public Service (including the power to confirm appointments) and subject to the provisions of Section 87 of the Constitution the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.”

- [8] The retirement in the public interest of a public officer is provided for in Regulation 37 of Public Service Commission Regulations and reads as follows:

37. Retirement in the public interest

“(1) Where it is represented to the Commission, or the Commission considers it desirable in the public interest, that an officer ought to be retired in the public interest -

- (a) if the officer has held such pensionable office for less than ten years and his record of service indicates his inability to discharge his duties efficiently; or
- (b) if the officer has held such pensionable office for ten years and over and his retirement is contemplated on the ground of his inability to discharge his duties efficiently,

the officer shall be informed of the grounds on which his retirement is contemplated and he shall be given an opportunity of being heard by the Commission.

- (2) The Commission shall, in respect of any officer to whom subregulation (1) (b) applies, obtain a report on the work of the officer from his head of department, and it may also obtain a report from any other head of department under whom the officer has served during the previous five years.
- (3) If, after having regard to –
 - (a) the conditions of the public service;
 - (b) the usefulness of the officer in the public service;
 - and
 - (c) all the circumstances of his case,the Commission, after hearing the officer, is satisfied that it is desirable in the public interest to do so, it shall require the officer to retire.”

[9] There is no dispute that the Plaintiff in this case was a public officer falling within regulation 37 1 (a) cited above – i.e an officer holding “pensionable office for less than ten years” and whose retirement in the public interest could be brought about if his record of service indicated. “his inability to discharge his duties efficiently”.

[10] It is important to observe that regulation 37 requires that the Officer “be informed of the grounds on which his retirement is contemplated” and further that he “be given an opportunity of being heard by the Commission”. Sub-regulation (3) of Regulation 37 then draws attention to matters which the Commission must consider before it could properly conclude that “it is desirable in the public interest” to retire the officer.

- [11] It is important to note that Regulation 37 involves what are notoriously known as “the rules of natural justice” which in so far as they are applicable to this case would require the Officer to know the grounds on which his retirement is being contemplated, and provide him with an opportunity of being heard by the Commission in relation to that matter. These rules make up what has been described as the “courts code of fair procedure” and failure to observe them in the decision making process of bodies such as the Public Service Commission may lead to the nullification of their decisions.
- [12] It is the Plaintiff’s contention in this case that there was an infringement of the rules of natural justice, the particulars of which infringement are as set out in his statement of claim, and reproduced earlier in this Judgment.
- [13] This is the point at which I had better advert to the allegation being made by the Plaintiff, related as it is to the grounds on which the Commission was seeking to retire him in the public interest.
- [14] In substance he accuses the Commission of taking into account grounds other than those stipulated by the defendants in their “retirement” letter to him of May 20, 1994 and also of having sent a written notice to him requiring his presence at a meeting with the Medical Board, that was inadequate.
- [15] The grounds are to be found in the letter of 20th May which reads as follows:

“Dear Mr. Dennie,

Pursuant to Regulation 37 of the Public Service Commission Regulations, Booklet 4, Chapter 2 of the Revised Laws 1990 your retirement in the public interest is contemplated on the following grounds:

- I You have been absent from office on sick leave from 16th April, 1999 to present date.

- li You were absent from work without leave from the period 8th July, 1993 to 20th August, 1993, a total of 44 calendar days.

- lii No medical certificate has been submitted for the period 8th July, 1993 to 20th August, 1993, a total of 44 calendar days.

- lv A memo dated 8th November, 1993 was sent to you informing you of the appointed date for your appearance before the Medical Board to assess your fitness to continue in the Government Service. (Chapter vi, Section 6.28 of the Civil Service Orders).

- V When you attended at the said Board on the 12th November, 1993 you informed them that you were advised by your lawyers not to participate in the activities of the Board. Accordingly, the Medical Board was unable to make any recommendations.

Your case has been referred to the Public Service Commission which will afford you an opportunity to be heard in your defence. You are therefore invited to an

interview at Service Commissions Department on 14th
June, 1994 and at 2:30 pm.

Yours sincerely,

H.P. Griffith (Mrs)
Chief Personnel Officer

- [16] The question must now be asked; was there some unfairness residing in the process by which the Public Commission arrived at its determination that the Plaintiff be retired in the public interest?
- [17] The acknowledgement of the need for adherence to the rules of natural justice seems to be deeply imbedded in the jurisprudence which our courts have inherited from England. What this case is concerned with is the removal of the Plaintiff from office and the application of the rules of natural justice thereto. Those rules were as early as 1615 being applied in **Bagg's case 1615 11 Co. Rep 93 (b)** where the question was whether a man could be deprived of his status of a burgess of Plymouth without being heard. In **R. V. Gaskin 1799 8 Term Report 209**, it was the issue of the dismissal of a parish clerk that invoked consideration of the rules, and led to the description by Lord Kenyon CJ of the principle **audi alteram partem** as one of the first principles of justice. In the case of **R.V. Smith** 1844 5 PB 614 Lord Denman held that even the personal knowledge of the offence was no substitute for hearing the officer;

his explanation might disprove criminal motives or intent and bring forward other facts in the mitigation and in any event delaying to hear him would prevent yielding too hastily to first impressions. The need for adherence to the rules of natural justice found expression in a case where the citizen's house was ordered to be pulled down see **Hopkins v. Smethwick 1890 24 QBD at pp 714 and 715**. In **Osgood and Nelson 1872 L.R. 5HL 36** objection was taken to the way in which the corporation of the City of London had removed the Clerk to the Sherriffs Court and Hatherley L.C said.

“I apprehend my Lords that as has been stated by the learned Baron who has delivered in the name of the judges their unanimous opinion, the court of Queens Bench has always considered that it has been open to that court, as in this case it appears to have considered, to consult any court or tribunal or body of men who may have a power of this description, a power of removing from office, if it should be found such persons have disregarded any of the essentials of justice in the course of their enquiry before making that removal or if it should be found that in the place of reasonable cause those persons have acted obviously upon mere individual caprice”. Finally **De Vertuil v. Knaggs 1918 A.C 557** was a case in which the Governor of Trinidad was entitled to remove immigrants from an estate “on sufficient ground shown to his satisfaction.” In the course of his judgment Lord Parmoor had this to say.

“the acting Governor was not called upon to give a decision on an appeal between parties and it is not suggested that he holds the position of a judge or that the appellant is entitled to insist on the forms used in ordinary judicial procedure” but he had

“a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.”

[18] It is against the background of the principles expressed in cases such as those cited above that counsel for the Plaintiff seeks redress from this Court, contending as she did in her written submissions that the Commission went beyond the boundary of its jurisdiction in the following respects. Firstly, she submitted that “the letter of 2nd September 1994 which purportedly retired the Plaintiff in the public interest clearly indicated that the Public Service Commission treated the contemplated grounds as questions” and that being the case the Public Service Commission were not entitled to go outside of those five grounds and when the Public Service Commission purported to put other grounds or questions to the Plaintiff (as is admitted by paragraph (2) of the said letter of 2nd September) they were acting outside the scope of their authority and without jurisdiction and the Plaintiff was under no obligation to answer any other grounds than those specified in the letter of 20th May 1994. Whatever possible merit this submission of counsel may have would in my view depend to some extent on the factual findings of this court.

[19] In that regard evidence emerges from the Plaintiff himself, from the letter of 2nd September 1994 seeking his retirement, from Shirley Francis who was present at the meeting of the Commission when the decision to retire the Plaintiff was taken, and from Dr. Kenneth John an Attorney-at-Law sitting as Chairman of the Commission.

[20] The Plaintiff himself alleged that he was asked at the meeting with the Commission about his relationship with his boss Mr. Kerwyn Morris, and about his failure to attend the meeting with the Medical Board. He later went on to say he was asked further questions relating to the five grounds specified in the letter of 2nd May; he also testified that apart from the five grounds, they asked him “about other matters”. He did not say what those matters were but subsequently swore that the Commission asked him “questions that were not relevant” and also that “some of the questions did not deal with any of the grounds of my threatened retirement.” He told the Commission that the questions outside of the five grounds amounted to a breach of his constitutional rights. Support for the Plaintiffs assertion that the Commission may have asked questions other than those raised by the letter of 2nd May was provided by Shirley Francis called as a witness for the defendants, when she swore that the minutes of the 14th June suggest that questions other than those mentioned in the letter of 2nd May 1994 were put to the Plaintiff. She went on to say “Mr. Dennie did not answer any of the questions in relation to AD5” i.e. the letter setting out the grounds. As to whether he did or not there seems to be some conflict between himself and other witnesses.

[21] While I must acknowledge the principle that a tribunal's decision as the cases show, would in some cases be considered void because of the taking into account of matters extraneous to a proper adjudication upon the matter before it, I am of the view that this is not such a case. There is indeed very little evidence as to the questions actually asked. But, I accepted without hesitation the evidence of Dr. Kenneth John, an Attorney-at-Law who as I have said presided as Chairman over the meeting of the Commission

and swore that “The Plaintiff was asked a few questions which arose out of the main five questions.” I can see nothing wrong with that; everyone knows that the asking of the questions described as main may lead to relevant incidental questions, and incidental questions to the Plaintiff seem to suggest some answering on his part of preceeding questions.

[22] What is more is the fact that the letter retiring the plaintiff and dated 2nd September 1994 indicates that the Commission remained within the confines of the grounds when it referred to the fact that its decision to retire him had been based on “your response to the points I-v in my letter of 20th May 1994.”

[23] In my view bearing in mind that the Commission is required by Regulation 37 before making a decision, to take into account

- (a)The conditions of the public service
- (b)The usefulness of the officer in the public service and
- © All the circumstances of his case

the argument of Counsel for the Plaintiff that the Commission went beyond its jurisdiction must fail.

[24] The other argument put forward by Counsel for the Plaintiff relates to a notice sent to her client requiring that he should attend a meeting of the Medical Board. That letter was written by the Permanent Secretary in the Ministry of Agriculture dated 8th November 1993, and required the attendance of the Plaintiff at 2.00p.m the next day, ie 9th November, 1993 at the Kingstown General Hospital. He was at that time to have an interview with Dr. Debnath. The letter also required that he appear “before a formal medical board on Friday 12th November 1993 at 10:30 a.m. at the

Medical Director's office". As it turned out another letter dated the very 8th November changed the place of attendance for the meeting with Dr. Debnath from "Kingstown General Hospital" to the "Admission Office General Hospital". The Plaintiff did not attend the meeting with Dr. Debnath – though he did attend the one with the Medical Board.

- [25] The complaint by the plaintiff's Counsel is that the notification given by the Permanent Secretary in the letter of the 8th was not enough. It seems in my view to have no foundation. In the first place this servant of the State was being retired in the public interest and not on medical grounds. And in relation to his required attendance on the 9th and on the 12th the question naturally comes to mind; what length of notice does a man need for the purpose of being interviewed by doctors regarding his illness. For what purpose does he need time? What case was there to prepare? This allegation by the Plaintiff must be dismissed as being without merit.
- [26] It is the view of the court that when the circumstances of the case are carefully scrutinized, it would be seen that the Plaintiff brought disaster upon his own head, and that in the process of deciding what action they should take, the Public Service Commission proceeded in accordance with the rules of natural justice to retire him in the public interest.
- [27] His admitted absence from work from the 8th July, 1993 to 20th August, 1993 (which I found from the facts to be inexcusable) without providing any medical certificate was an act of outrageous defiance, perhaps by itself justifying the course ultimately taken by the Commission.

[28] In the end therefore, the action brought by the Plaintiff must fail, and the orders and declarations sought by him must be refused.

There shall be no order as to costs.

Odel Adams
High Court Judge