

- PLAINTIFF

- DEFENDANT

the Plaintiff.
 Director General, Ms Dawn
 n, for the Defendant.

October 18, 1999

DECISION

Mitchell J.

This is a ruling on a preliminary issue in an action by a retired High Court Judge of the Eastern Caribbean Supreme Court for a determination of her pension rights under the laws of St Vincent and the Grenadines.

On 21st December 1998 Baptiste J had ordered that the following questions or issues be tried as preliminary issues:

- (1) whether the Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order 1995 SI No 2 of 1975 is applicable to the Plaintiff, a retiring High Court Judge who conditionally opted under section 4 of the Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act Cap 198 to be paid her gratuity and pension thereby entitling her to full pension;
- (2) alternatively, whether an option or a conditional option of a retiring High Court Judge of the Eastern Caribbean Supreme Court under section 4 of the Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act, Cap 198 is to be construed in isolation from section 12 of [the above Statutory Instrument.]

At a hearing in open court on 18 October 1999 argument on these preliminary issues was heard. Both counsel submitted extensive submissions in writing and copies of the authorities on which they relied. This greatly assisted the Court in speedy determination of the matter, and the Court is grateful to both Counsel for their careful preparation of their argument in support of their client's cases.

Since the determination of these preliminary issues may have the effect of bringing to an end the outstanding differences between the parties, it will be as well to set out the uncontraverted or agreed facts. Justice Monica Joseph (hereinafter "the Plaintiff") was appointed a Judge of the Eastern Caribbean Supreme Court on 1st February 1982, as is admitted by the Defendant. On 20th December 1985 she was directed by the then Chief Justice pursuant to section 13 (1) of the West Indies Associated States Supreme Court Order 1967 to be in the service of the State of St Vincent and the Grenadines (hereinafter "the Defendant"). She served in the capacity of High Court Judge in most of the States of the OECS as well as in the OECS Court of Appeal. She retired as a High Court Judge on 10th January 1996. By that time she had served as a High Court Judge for 13 years and 11 months, 10 years and 1 month of which at the very least had been in the service of St Vincent and the Grenadines. Both prior to and subsequent to the date of her retirement, she wrote to various officers of the Defendant enquiring about her pension. Various differences of opinion arose between the Plaintiff and the Defendant as to her pension rights, culminating in the issuing out of the St Vincent High Court Registry on 15 April 1998 of a Writ in this action.

The problem, the heart of the preliminary issue, is explained in the correspondence between the parties. There was, at least initially, some uncertainty in the correspondence as to the law relating to the pension of a High Court Judge in St Vincent and the Grenadines. The Plaintiff repeatedly asked for the law to be identified and clarified for her. Her appeals both to her Chief Justice as Head of Department in the Judicial Service and also to various legal, financial, and administrative officers in the civil service of St Vincent went unanswered. It is, however, not necessary to go into or to reproduce the correspondence, as it is not strictly relevant to the determination of the preliminary issues before the Court at this stage. The only real matter before the Court at this stage is the ruling on the point of law identified in the preliminary issues as it relates to the agreed facts. It becomes necessary to set out the relevant provisions of the pensions law of St Vincent as it relates to a Judge.

THE LAW

1. The Pensions Act, Cap 204

This Act is found at Vol 5 of the 1991 Revised Edition of the Laws of Saint Vincent and the Grenadines. It came into effect on 3rd August 1948 and has been repeatedly amended since then. Some of its relevant provisions are as follows:

By section 2(1) a pensionable office is defined as:

an office which, by virtue of provision for the time being in force in an order made by the Governor-General published in the Gazette, is declared to be a pensionable office ...

By section 3(1):

Pensions, gratuities and other allowances may be granted by the Governor General, in accordance with the Pension Regulations, to officers who have been in the service of Saint Vincent and the Grenadines.

By section 4:

Subject to the provisions of the Act and of these Regulations, every officer holding a pensionable office under the Government, who has been in the service of the Government in a civil capacity for ten years, may be granted on retirement a pension at the annual rate of one six-hundredth of his pensionable emoluments for each complete month of his pensionable service.

By section 5:

No officer shall have an absolute right to compensation for past services or to pension, gratuity or other allowance ...

By section 6:

No pension, gratuity or other allowance shall be granted under this Act to any officer except on his retirement from the public service in one of the following cases: (a) on or after attaining the age of sixty or, in special cases, with the approval of the Governor-General, fifty five: ...

By section 9(1):

Except in cases provided for by subsection (2), a pension granted to an officer under the Act shall not exceed two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his service in Saint Vincent and the Grenadines.

2. The Pensions Regulations, Cap 204

These Regulations are contained in Booklet 1 found printed after Cap 204 in Vol 5 of the 1991 Revised Edition of the Laws. The Regulations came into effect on the same date as the principal Act and they have also been repeatedly amended. Some of the more relevant regulations are as follows:

By regulation 4:

Subject to the provisions of the Act and of these Regulations, every officer holding a pensionable office under the Government, and who has been in the service of the Government in a civil capacity for ten years or more, may be granted on retirement a pension ...

By regulation 9:

(1) Except in cases provided for by subsection (2), a pension granted to an officer under this Act shall not exceed two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his service in Saint Vincent and the Grenadines ...

By regulation 18(1):

For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of not less than three years' pensionable service before his retirement – (a) in the case of an officer who has held the same office for a period of three years immediately preceding the date of his retirement, the full annual pensionable emoluments enjoyed by him at that date in respect of that office shall be taken; ...

By regulation 26:

(1) Any officer to whom a pension is granted under the Act may, at his option exercisable as in this regulation provided, be paid in lieu of such pension a pension at the rate of three-fourths of such pension together with a gratuity equal to twelve and a half times the amount of the reduction so made in the pension: Provided that ...

(3) The option referred to in subregulation 1 shall be exercisable not later than the day immediately preceding the date of such officer's retirement: Provided that the Governor-General may, if it appears to him in all the circumstances equitable so to do, allow him to exercise the option at any time between the date of his retirement and the date of award of pension under the Act.

(4) If an Officer has exercised the option, his decision shall be irrevocable after the date of his retirement...

The Pensions Act and the Regulations made under it provide that a person to whom a pension is granted under the Act is entitled to a pension at the rate of two thirds of his pensionable emoluments. At his option, under Regulation 26, such a person may be paid instead a pension of three fourths together with a gratuity of twelve and a half times the amount of the reduction in the pension. So that, to take an imaginary case as an example, an officer receiving \$12,000.00 per annum in emoluments and granted a pension under the Pensions Act would receive a pension of \$8,000.00 per year. He instead may opt for a reduced pension of \$6,000.00 per year with a gratuity of \$25,000.00. There are preconditions to the exercise of this option, in that it must be exercised before the date of retirement unless the Governor-General allows him to exercise it later; and once validly made the option is irrevocable. A

pension under the Pensions Act can be claimed after 10 years service. It is of historical interest to note that by the Second Schedule to the Regulations it is provided that the number of years to be added to the service of a Judge serving at the time the Act came into effect in 1948 for the purpose of computing pension of that judge was 10 years. So that, a Judge who had only very recently been appointed became automatically qualified for a full pension upon the passing of this Act. A Judge appointed after 1948 would have to serve the requisite period of 10 years to be entitled to a full pension.

3. The West Indies Associated States Supreme Court Order 1967, SI 1967 No 223 (the "Courts Order")

The Courts Order was an Order in Council made under the West Indies Act, 1967. It provided, inter alia, for the Court that replaced the old Windward and Leeward Islands Supreme Court. Some of its more relevant provisions are set out here:

By section 8(1) :

*Subject to the following provisions of this section, a [High Court] Judge shall hold office until he attains the age of sixty two years:
Provided ...*

By section 11(1)(b):

The salary and allowances (other than allowances which are not taken into account in the computation of pension) of a Judge shall not be reduced and the terms and conditions of office applicable to a Judge upon his appointment shall not be made less favourable to him during the currency of that appointment.

By section 13(1)

"[F]or the purposes of any laws, regulations and other instruments relating to the grant of pensions, gratuities and other like benefits, the judges ... shall be in the service of such State as the Chief Justice may, in each case, from time to time direct; and any such direction given by the Chief Justice shall take effect as from such date as may be specified by the Chief Justice and shall have effect as an appointment to a pensionable office in that service.

I understand the meaning and effect of these provisions to be as follows. The mandatory retirement age for a judge was confirmed at sixty two, though he could retire earlier. The Chief Justice was to direct as to which State a judge was to be appointed to be in pensionable service. The Chief Justice was to state the date from which the service was to begin. A judge's pension was to be governed by the law of the particular state to which the judge was assigned by the Chief Justice. One State would be the paymaster for a Judge's pension. Section 11(1)(b) asserted, inter alia, an entitlement not to have the full pension entitlement reduced. By implication, a Judge continued to be required to serve for a period of 10 years before he could become entitled to a full pension under the Pensions Act.

4. The Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order 1975, SI. 1975 No 2 (the "Conditions of Service Order")

The Conditions of Service Order was made on 17 October 1975 by the Judicial and Legal Services Commission with the concurrence of the Prime Ministers of all the States as provided for under section 11(1) of the Courts Order. Its only relevant provision is as follows:

Section 12 provided:

In computing the pension of a Judge who on retirement from the service holds one of the offices mentioned in the First Schedule to this Order the additions in the said Schedule mentioned shall be made to his period of service: Provided that ...

First Schedule

Chief Justice – Ten years

Justice of Appeal – Seven years

[High Court] Judge – Five years

The effect of this provision was to add 5 years to the service of a High Court Judge on his retirement from the service. These years were to be added to the years of service of a judge for the purposes of calculation of pension rights

under the pensions legislation of the State to which a particular judge had been assigned. It would appear that the result of this provision and from 1975, was that a Judge would only have to serve for a period of 5 years to become entitled to a full pension under the Pensions Act.

5. Eastern Caribbean Supreme Court (Rate of Pensions of Judges) Act, Cap 198

This is an Act of the Legislature of St Vincent and the Grenadines and is found at Vol 5 of the 1991 Revised Edition of the Laws. It came into effect on 1st July, 1989. It has not been subjected to any amendments since its enactment. Some of its more relevant provisions are:

By section 3:

(1) As from the 1st July, 1989 the pension payable to a judge upon his retirement in pensionable circumstances shall be computed in accordance with the provisions of this section.

...

(4) In the case of a [High Court] judge, if he has continuous service as a judge for a period of not less than 15 years, at a rate equivalent to his full annual pensionable emoluments at the date of his retirement. In any other case, he shall receive a pension at a rate equivalent to three-quarters of his full annual pensionable emoluments.

(5) Nothing in this Act shall operate to prevent a judge from opting to have his pension computed under the provisions of the Pension Act in lieu of the provisions of this Act.

By section 4:

A judge, upon retirement, may opt to receive, in lieu of the full pension computed under this Act, a reduced pension at a rate equivalent to three-quarters of the full pension plus a gratuity equal to fifteen times one quarter of the full pension.

By section 7:

A person who retires in circumstances other than under provisions of this Act. shall be entitled to have his pension computed under the provisions of the Pension Act.

The clear provision of section 3 of the Rate of Pension of Judges Act is that a Judge retiring with 15 years continuous service is entitled to a full pension at the rate of his full annual pensionable emoluments; otherwise, he is entitled to a rate of three-quarters of his full annual pensionable emoluments. On the one hand, this Act adversely affects the entitlement of a Judge to a full pension, as it now requires a longer period of service before the full pension becomes due. This conflicts with the Courts Order section 11(1)(b) prohibition on adversely affecting the conditions of service of a Judge. But, it was no doubt competent for the Legislature of a sovereign State to make this provision. There is also no reason to believe that this provision was not made after thorough discussion with the Judiciary at the time. Indeed, the Act appears from its form and content to have been at least based on model legislation intended to be uniform throughout the region served by the Court. On the other hand, the Act improves the previous provision as to the rate of pension payable to a Judge. A Judge qualifying with the necessary 15 years service, and, in the example given above, receiving \$12,000.00 in pensionable emoluments would on retirement be entitled to a pension of \$12,000.00 per annum. This is an improvement from the previous \$8,000.00 payable under the Pensions Act. If he does not qualify by length of service, he is entitled to only \$9,000.00 per annum which is still better than the full pension under the Pensions Act. Alternatively, on retiring with 15 years continuous service, he may opt under section 4 to receive in lieu of full pension a reduced pension of three-quarters of the full pension plus a gratuity of fifteen times the one quarter. In the example we have been using this would produce an annual pension of \$9,000.00 together with a gratuity of \$45,000.00. A Judge may retire in circumstances other than under the provisions of the Rate of Pension of Judges Act, whereupon the provisions of the Pensions Act apply. A Judge who retires in circumstances other than under the provisions of this Act is still by section 7 entitled to have his pension computed under the Pensions Act, which we have calculated above. He would under the Pensions Act receive either an annual pension of \$8,000.00, or, with a Regulation 26 option, an annual pension of \$6,000.00 together with a gratuity of \$25,000.00. Additionally, by section 3(5) a Judge may opt to have his pension computed under the provisions of the Pensions Act. He may opt out of the Rate of Pension of Judges Act. It has not been made clear in what circumstances a Judge would retire in

circumstances not covered by the Rate of Pension of Judges Act. Nor is it at this time clear under what circumstances a Judge would ever find it advantageous to have his pension computed under the Pensions Act. At a superficial glance, the pension payable to a Judge under the Pensions Act would not appear, no matter how short the period of service, to be as full and beneficial as they are under the Rate of Pension of Judges Act.

THE ARGUMENT

Counsel for the Plaintiff submitted that the Plaintiff was appointed a High Court Judge on 1st February 1982. The evidence seems to suggest that the actual date of appointment for pension purposes was for some unexplained reason 20th December 1985. The Defendant in his Defence accepted the date of 1st February 1982. The Court therefore, accepts that date. Nothing turns on this apparent discrepancy, as whether the date of appointment was in 1982 or in 1985 the Plaintiff had in either case served more than 10 years and less than 15 years. Counsel for the Plaintiff provided a detailed analysis of the history of the pensions law of St Vincent as it related to judges, which was very useful in assisting the Court to arrive at a conclusion. Counsel for the Plaintiff also submitted extensively on the rules governing the construction of statutes. He urged that the rules to be applied are (1) that the words and phrases of technical legislation are used in their technical meaning; (2) that phrases and sentences are to be construed according to the rules of grammar, ie, they must be given their literal import; the safer course of dealing with a question of construction is to take the words themselves and arrive at their meaning without in the first instance reference to cases; (3) omissions are not to be inferred in statutes unless it is absolutely necessary to do so; (4) one may ask what was the mischief sought to be cured by the 1989 legislation. Counsel also referred the court to various cases and texts on the interpretation of legislation similar to the pension legislation.

Counsel for the Defendant contended that the Conditions of Service Order of 1975, which it will be recalled added 5 years to a Judge's service when computing his pension, was to be read in conjunction only with the Pensions Act and not with the Rate of Pension of Judges Act. The Defendant's view was that the primary object of the Conditions of Service Order was to deal with salaries and not with pension. At the time of the making of the Conditions of Service Order, the Rate of Pension of Judges Act did not exist, and the Pensions Act was the principal pensions legislation governing the pensions of judges in St Vincent. With the commencement of the 1989 Rate of Pension of Judges Act,

judges appointed to St Vincent now had an option either to have their pension calculated under this Act or under the old 1948 Pensions Act read in conjunction with the Conditions of Service Order, SI. 1975 No 2. The Defendant submitted that the 5 years extension was not applicable to the Plaintiff: she must have actually served for 15 years in the State of St Vincent and the Grenadines if she were to be due a full pension under the Rate of Pension of Judges Act. As she had not served for the full 15 years, she would only be due the reduced pension provided by the Act. Counsel for the Defendant submitted that the 1975 Statutory Instrument had no application to a Judge who claimed a pension under the Rate of Pension of Judges Act. Counsel concluded that the Plaintiff's case was speculative and that she was not entitled to any of the relief sought.

CONCLUSION

The language of the statutes in question before the Court in this case was clear, straightforward, and not difficult to understand. The Court needed no complicated technical aid in construction to be called for to help in the construction of the legislation that was before the Court to be interpreted for the purpose of giving the rulings previously ordered to be made in this case as preliminary issues. Little assistance in the end was required from the textbooks on the law relating to the interpretation of statutes.

The Judicial and Legal Services Commission is the appropriate body to lay down, with all 9 Prime Ministers concurring as required, the terms and conditions of service of a region-wide judiciary covering 9 independent States and British Overseas Territories such as is the Eastern Caribbean Supreme Court. The Judicial and Legal Services Commission duly made the Conditions of Service Order. This Order is the law of St Vincent and the Grenadines, as it is the law of every State in the region served by the Court. No subsequent law of Saint Vincent and the Grenadines has ever either expressly or impliedly amended or qualified the application of this Order. This Order gave the Plaintiff a vested right to have 5 years added to the period of her service for the calculation of pension under the Rate of Pension of Judges Act.

I do not accept the submission of the Solicitor-General as Counsel for the Defendant that the Conditions of Service Order can only be used to add a further 5 years to a Judge's period of service if the Judge opts for a pension under the Pensions Act. There is nothing to justify such a view of the law.

I find rather that at the time when the Legislature of St Vincent and the Grenadines came in 1989 to pass the Rate of Pension of Judges Act, the Legislature must be taken to have been aware that a High Court Judge was entitled on retirement to have 5 years added to his years of service for the purpose of entitling him to a full pension. That better explains why the period of service in the Rate of Pension of Judges Act was set at 15 years and not the more usual one of 10 years found in the Pensions Act. It is more likely that, if the Legislature had intended not to have the Conditions of Service Order apply to Judges appointed to St Vincent and the Grenadines, and becoming entitled to have their pensions calculated under the Rate of Pension of Judges Act, the Legislature would have said so. I have no doubt that if the Legislature had done so, it would have had the Rate of Pension of Judges Act provide for a period of 10 years service for a Judge, as is provided for a civil servant under the Pensions Act. This was already an increase in the period of service required for a Judge, though this adverse effect was offset by the higher rate of pension offered. In consequence, a High Court Judge appointed to St Vincent needs, it is true, 15 years of continuous service to be entitled to the full pension under the Rate of Pension of Judges Act, but he need only actually serve for a minimum period of 10 years and, with the 5 that are automatically added on the day of retirement, he will have the necessary 15 years. In the case of the Plaintiff who was appointed in 1982, she had served 10 years on 1st February 1992. On the day of her retirement on 10th January 1996 the additional 5 years provided for by the Conditions of Service Order were added. On that day she had accumulated in excess of the 15 years necessary for her to be entitled to a full pension under the Rate of Pension of Judges Act. As an aside I would comment that it would be very difficult for St Vincent and the Grenadines or any other State to ever have any Judge agree to be appointed to that State if 15 years actual service in that State were required while all the other 8 States required only 10 years of service.

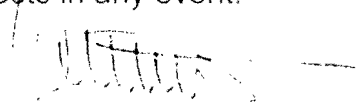
Applying what I have observed above, and in conclusion, on the first preliminary point for determination, the ruling of the Court is as follows:

The Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order, SI. 1975 No. 2 is applicable to the Plaintiff. The Plaintiff served as a High Court Judge for a period in excess of 10 years in the service of the State of Saint Vincent and the Grenadines. The Plaintiff is to be deemed to have been in continuous service as a judge for the purposes of the Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act, Cap 198 for a period of 15 years. The Plaintiff's pension fell to be determined as a full pension under the provisions of section 3(4) of Cap 198. The Plaintiff's option

under section 4 of Cap 198 had the effect of entitling her to a reduced pension together with a gratuity as provided by section 4.

With those rulings on the first preliminary issue before the Court, a ruling on the second alternative issue does not become necessary

Costs to be the Plaintiff's costs in any event.



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Ian Donaldson Mitchell, QC
High Court Judge.