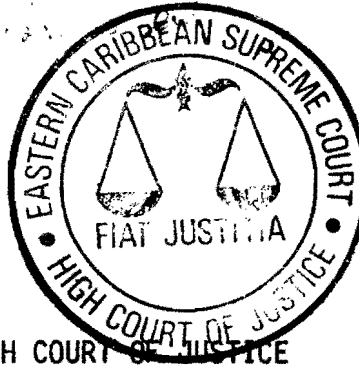
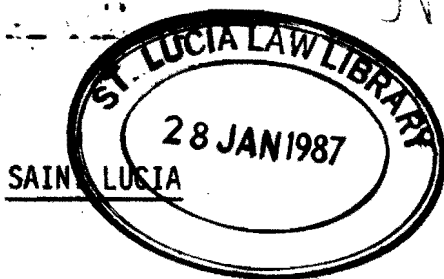




IN THE HIGH COURT OF JUSTICE

(CIVIL)

A.D. 1986

Folder 14

Suit No. 371 of 1985

Between

PETRA GIRARD

SAINT LUCIA TEACHERS' UNION

Plaintiffs

and

THE ATTORNEY GENERAL

Defendant

Suit No. 372 of 1985

Between

FLORENTINA JN. PIERRE

SAINT LUCIA TEACHERS' UNION

Plaintiffs

and

THE ATTORNEY GENERAL

Defendant

Mr M. Michel for Plaintiffs

Miss J. Slack and Mr. E. Walker for Defendant

1986: October 30;
November, 10, 17, 24;
December 17.

JUDGMENT

MATTHEW J.

By writ No. 371 of 1985 with statement of claim attached and filed on October 10, 1985 the Plaintiffs allege that the First Plaintiff who was a teacher on the permanent establishment employed by the Government of Saint Lucia at the Roseau Combined School was wrongfully dismissed on February 15, 1985 from her employment and as a result the First

Plaintiff as well as the Second Plaintiff, of which the First Plaintiff was a member, suffered loss and damage.

The Plaintiffs claim the following relief;

- "1. A declaration that Regulation 23(3) of the Teaching Service Commission Regulations, 1977 is ultra vires the Saint Lucia Constitution Order, 1978.
2. A declaration that Regulation 23(3) of the Teaching Service Commission Regulations, 1977 is ultra vires the Teaching Service Commission Act, 1970.
3. A declaration that the First Plaintiff has been wrongfully dismissed from her employment as a teacher.
4. An order that the First Plaintiff be reinstated.
5. Alternatively, an order that the First Plaintiff be given damages for wrongful dismissal.
6. General damages.
7. Further or other relief.
8. The costs hereof."

By writ 372 of 1985 with statement of claim attached and filed on January 21, 1986 the Plaintiffs allege that the First Plaintiff who was a teacher on the permanent establishment employed by the Government of Saint Lucia at the Vieux-Fort Infant School was wrongfully dismissed on the 25th February, 1985 from her employment and as a result the First Plaintiff as well as the Second Plaintiff, of which the First Plaintiff was a member, suffered loss and damage.

The claims of the Plaintiffs are identical with those in
The claims of the Plaintiffs are identical with those in Suit 371 of 1985.

By an Order of this Court made on the 4th day of June, 1986 the
two actions were consolidated.

MATERIAL FACTS

The Plaintiffs called Petra Girard, Florentina Jn Pierre and
Jean Francois Joseph in support of their cases and the Defendants called
Callum De Myers and Nicholas Frederick in support of theirs.

Petra Girard stated that she was employed by the Government of
Saint Lucia as a teacher on the permanent establishment having entered
the teaching service in 1971 and was at all times a member of the
Saint Lucia Teachers' Union. She stated that she became pregnant
and on February 6, 1985 she applied to the Ministry of Education and
Culture for maternity leave. She stated that by letter dated March 5, 1985
she was granted three months' maternity leave with effect from
February 15, 1985. She received salary for the month of February and
has not been paid salary since. She stated that by a letter dated
May 10, 1985 while she was no longer pregnant she was told she should
not return to work on May 16, 1985 until further notice. Later she
was made aware of a Memorandum that her services were terminated with
effect from February 15, 1985 in accordance with Regulation 23 (3)
of the Teaching Service Commission Regulations. She stated that as a
result she has lost salary and a profession in which she was trained.

Under cross-examination she stated that she had a first pregnancy
in 1977 for which she was suspended. She stated that she informed the
Principal of the school, one Mr. Girard of the second pregnancy because
she had in early January, 1985 seen a Memorandum from the Teachers' Union
that teachers who are on the permanent establishment are entitled to
receive three months' maternity leave with pay. She admitted knowing
of a regulation which stated that on the second pregnancy of an
unmarried female teacher, the services of that teacher would be terminated
but since she read a copy of the Collective Agreement she thought the

She said that although she was not a qualified teacher, having been unsuccessful in two subjects at the Teachers' Training College, she was a trained teacher.

In reply to a question by me she stated that she is presently employed at Marigot Bay as a Receptionist at a salary of \$804.00 per month and that she had been in that job since January 7, 1986. Earlier, in examination-in-chief she stated "My salary at the material time was \$604.00 after tax; that was my salary for February 1985."

Florentina Jn. Pierre stated that she was employed by the Government of Saint Lucia on the permanent establishment having entered the teaching service in January, 1976 and was at all material times a member of the Saint Lucia Teachers' Union. She stated that by letter dated January 21, 1985 she applied to the Ministry of Education and Culture for maternity leave and she received a letter dated February 27, 1985 granting her three months' leave from February 25, 1985. She stated that she received her full salary for the months of February, March and April but has not since been paid salary as a teacher. She said that she received a letter dated May 10, 1985 from the Ministry asking her not to return to work on May 26, 1985 until further notice. She stated that at the time she received the letter she was no longer pregnant. She stated that she became aware of a Memorandum dated June 13, 1985 to the effect that her services had been terminated with effect from February 25, 1985. She stated that she suffered loss of salary and her profession. Her last salary was \$986.00 per month. She said that since she was dismissed she has not been able to get alternative employment.

Under cross-examination she admitted that she had been suspended in 1980 on account of a first pregnancy and that she is an unmarried teacher. She admitted also that she was aware that she would be dismissed for a second pregnancy before she sent the letter to the Ministry. She stated that she is not a qualified teacher because she was referred in Mathematics at the Teachers' Training College.

The last witness called for the Plaintiffs was Jean Francois Joseph , the President of the Saint Lucia Teachers' Union. He stated that he was aware of an Agreement between the Teachers' Union and the Government of Saint Lucia. He stated the Agreement related to the period April 11, 1983 to March 31, 1986 and he tendered a copy in evidence. The Agreement was signed by himself and the General Secretary on behalf of the Union and by Messrs. Parry Husbands and Dwight Venner on behalf of the Government.

He stated that he was aware that the Agreement made provision for the granting of maternity leave for all teachers on the permanent establishment regardless of marital status. He stated that this part of the Agreement had been acted upon and a number of teachers had in fact benefited. He said he was aware of the situation of Petra Girard and Florentina Jn. Pierre and that there was a claim by the Ministry that S.R.O. 41/1979 does not allow for the implementation of the maternity leave clause in respect of unmarried female teachers. He stated that his Union is claiming that S.R.O. 41/1979 be declared ultra vires the Constitution of Saint Lucia and the Teaching Service Commission Act, 1970.

Under cross-examination he said the Agreement was signed on November 27, 1984 after many months of negotiations. He said that he was not aware that at any meeting the Union expressed concern that there was no ratification by Cabinet. He said he was aware that Cabinet had to ratify the Agreement and he understood that all ratifications would be done before the final signing. He said that after the negotiations there was a long interval and all the ratification process could have been done. He said that he was aware that neither the Government Negotiating Team nor the Cabinet can tell the Teaching Service Commission what to do on matters of discipline. He stated that he was also aware that there were meetings between the Government Negotiating Team and the St. Lucia Teachers' Union at which the Teachers' Union queried the discontinuation of the implementation of the clause pertaining to maternity leave. He said he did not know whether the Agreement was put before the Cabinet.

The Defendant called as his first witness Callum De Myers, Administrative Assistant, Negotiation division. He stated he acted as Secretary of the Government Negotiating Team during the negotiations with the Teachers' Union in respect of the Agreement effective from 1983 to 1986. He stated that there were discussions about unmarried teachers and agreement was reached between the Government Negotiating Team and the Union.

He stated that under normal circumstances after agreement is reached the agreement is set out in a draft collective agreement pending Cabinet's ratification. He stated that the whole Agreement was put to Cabinet in June, 1986 and Cabinet did not agree to the whole Agreement. They had reservations. He said there was a meeting between the Government Negotiating Team and the St. Lucia Teachers' Union on June 14, 1985. At the meeting the Union expressed concern that two teachers were dismissed by the Teaching Service Commission because they were pregnant. He said the Union asked the Government Negotiating Team to reinstate the teachers by July 1, 1985 and afterwards both sides could sit down to discuss the whole question of maternity leave. The Government Negotiating Team, he said, told the Union that the Teachers' Service Commission is given the authority by the Constitution as the only body which has the authority to regulate the rules as it sees fit in its own deliberate judgment and they stated further from the beginning whatever was agreed to must not conflict with the regulations which exist.

In answer to me the witness said the Chairman of the Government Team was Mr. Parry Husbands, a lawyer now in private practice and a former Attorney-General and Director of Public Prosecutions of Saint Lucia and the other member was Mr. Dwight Venner the Director of Finance and Acting Permanent Secretary, Personnel, Establishment and Training.

The next witness called by the Defendant, after an adjournment which was obtained because the witness was out of the State, was Dr. Nicholas Frederick, the Permanent Secretary of the Ministry of Education and Culture. He stated that he granted maternity leave to the Plaintiff teachers and that he approved the leave on the basis of a Collective Agreement.

He went on: "I did so because there was a great deal of urgency in the request made by the teachers. The reason for the urgency is that the teachers were due for confinement and the matter could not wait. I was also being reminded of the urgency by the Teachers' Union. I sympathised with the situation of the teachers because they needed an urgent reply to their applications for maternity leave. Under the circumstances I granted the maternity leave but there was no intention whatsoever that these teachers would be reinstated."

He stated it was not normal for him to grant maternity leave. The witness went on: "I recognise that I made a mistake in approving the leave; it was a serious mistake. I admit because I acted beyond my powers I was under the impression when I granted the maternity leave that the provisions of the Collective Agreement had been approved by the Cabinet of Ministers." He said that subsequently he recommended to the Teaching Service Commission the termination of the services of the teachers as required by the law and he made a special plea to the Commission that the two teachers "be permitted on humanitarian grounds to retain the salaries which they had drawn during the maternity leave that I had erroneously given them." He stated that the Teaching Service Commission accepted his recommendations.

CASE FOR THE PLAINTIFFS

In his final address Counsel for the Plaintiffs made three main submissions to support his contention that the two teachers were unlawfully dismissed. He stated:

- (1) Regulation 23(3) of the Teaching Service Commission Regulations, 1977 is ultra vires the Teaching Service Commission Act, 1970;
- (2) Regulation 23(3) of the Teaching Service Commission Regulations, 1977 is ultra vires Section 1 (a); 1 (c) and 13 of the Saint Lucia Constitution of 1978;

- (3) The Collective Agreement between the Government of Saint Lucia and the Saint Lucia Teachers' Union is binding and Article 14.1 of that agreement allows three months' maternity leave with full pay to teachers regardless of marital status.

In relation to the first main submission Counsel contends that the regulations could only have been made under Sections 3(13) or 18 of the Teaching Service Commission Act. He submitted that Section 3(13) could not authorise the Teaching Service Commission to lay a code of conduct for teachers or to affect the substantive rights of teachers and cited *ENDELL THOMAS V ATTORNEY GENERAL* 1982 A.C. 113. He stated that the section involved in that case is almost identical to Section 3(13) of the Teaching Service Commission Act, 1970. He referred to the headnote of the case at P. 114.

He further submitted that the regulations could not be made under Section 18 (1) and cited a passage at pages 258/259 of *THORNTON ON LEGISLATIVE DRAFTING* AND referred to *BLACKWOOD V LONDON CHARTERED BANK OF AUSTRALIA* 1874 22 W.R. 419. found at 44 English and Empire Digest Page 2211. He stated that Section 92 of the Constitution included the power contained at Section 3(13) but not that in Section 18.

In respect of his second main submission above, Counsel submitted that the fundamental rights in issue are :-

- (a) the right to equality before the law under Section 1 (a) of the Constitution;
- (b) the right to protection for his family life under Section 1 (c);
- (c) protection from discrimination under Section 13.

Earlier, Counsel for the Attorney-General had submitted that two declarations sought in the prayer- that the regulation was ultra vires the Act and the Constitution should be struck out for the Plaintiffs had not pleaded the particular Section of the Act or the Constitution impugned. Counsel for the Plaintiffs replied that there was no necessity for particularisation of the section of the Constitution and there was no necessity for pleadings on the rights concerned for this case was not a constitutional motion. He contended that if the Attorney-General needed particulars he should have applied for such.

In respect of his contention that Section 13 of the Constitution was infringed as being discriminatory on the ground of sex, Counsel referred to the fact that the overwhelming majority of children in Saint Lucia are born out of wedlock - some 86 per cent he put it. He submitted that the regulations impose restrictions not imposed under other sections of the public and they are not in the public interest. He stated that it is regulation 23 which can adversely affect the public interest for it gives rise to abortion; forced marriages; and destruction of mothers and children.

He further submitted that Regulation 23(3) strikes against a person being able to choose the status in which he wants to have children and it is fanciful to state that teachers rights are not affected for they can resign. He cited, in that context TRINIDAD ISLAND WIDE CANE FARMERS ASSOCIATION V SEERAM 27 W.I.R. 329. He submitted that the regulation cannot be reasonably justifiable in a democratic society. Finally contended that the teachers were dismissed at a time when they were not pregnant.

In respect of his third main submission Counsel submitted that the Agreement is binding and Article 14.1 was operative and the Ministry acted in accordance with that Article when it granted leave to the teachers. He submitted that Cabinet had given their assent to the agreement. To hold otherwise, he said is tantamount to saying that the former Director of Public Prosecutions and Attorney-General and the Director of Finance purported to act without authority.

He submitted that Article 14.1 became a condition of service and the Teaching Service commission had no authority to deal with this as a matter of discipline.

CASE FOR THE DEFENDANT

In her reply to the first main submission by the Plaintiffs Counsel for the Defendant submitted that the Teaching Service Commission Regulations 1977 were properly made under Section 3(13) of the Teaching Service Commission Act, 1970 for the carrying out of the functions of the Commission specified in Section 4 of the Act, one of such functions being to take disciplinary action. She was there using the submission put by the Attorney-General in THOMAS V ATTORNEY GENERAL at Page 119 paragraph D. Counsel sought to distinguish Thomas' case and submitted that in this case the Commission had made regulations and set out conditions dealing with discipline and Regulation 23(3) was one. Counsel further submitted that the same provisions in the Act are repeated in Sections 92 and 93 of the Constitution. She then submitted that the Act and the Regulations were existing law by virtue of paragraph 2 of Schedule 2 to the Saint Lucia Constitution Order, 1978. It was also Counsel's contention that the declaration sought in paragraph 2 of the prayer to the statement of claim should be struck off for Counsel for Plaintiffs had not stated what section of the Act was in question.

In reply to the Plaintiffs' second main submission that the Regulation 23(3) is ultra vires the Constitution Counsel stressed the fact that the Plaintiffs did not plead the sections of the Constitution which were being challenged, and the prayer should be struck off in accordance with O. 18 R. 19 of the Rules of the Supreme Court. In support of this contention Counsel cited the local case NICHOLAS DOLAR V ATTORNEY GENERAL ST. LUCIA 85B of 1985 at Page 8, Paragraphs 2 and 3 as well as AMEERALLY V ATTORNEY GENERAL GUYANA (1978) 25 W.I.R. Page 272; Pages 308 - 309. Counsel further submitted that the fundamental rights issue should have been brought under Section 16 of the Constitution and under this provision there is a discretion and the Court may decline to act if there are other means of redress.

Counsel made reference to Section 96 of the Constitution and Section 6 of the Constitution and Section 5 of the Teaching Service Commission Act and cited the Ameerrally case at Page 311, paragraph D.

On the merits Counsel submitted that the Regulations impugned was in the public interest and cited in support a statement from DU PARCQ J. in R V SUSSEX CONFIRMING AUTHORITY 1937 4 AER 105 at Page 112 letter H. Counsel also cited R V GONSALVES 1962 37 WWR 257 found at Pages 171 - 172 of "WORDS AND PHRASES LEGALLY DEFINED" to explain the term "equality before the law." Counsel submitted that the teachers knew of the regulations before they joined the teaching service and before they had family lives. She further submitted that the laws were in existence when the Constitution came into force.

Counsel further submitted that the remedies were personal under Section 16 of the Constitution but in this case the Plaintiffs are the teachers and the Saint Lucia Teachers' Union.

In reply to the third main submission Counsel stated that Counsel for the Plaintiffs had stated during the proceeding that this case was a contractual matter and not a constitutional matter. She submitted that even if Cabinet agreed to the Collective Agreement only the Teaching Service Commission can deal with discipline. She submitted that Cabinet policy could not change the law and cited TEEMAL V GUYANA SUGAR CORPORATION LTD W.I.L.J. May, 1983, Page 168. Reference was also made to Halsbury's Laws of England, Fourth Edition, Vol. 8, Paragraph 1138 pertaining to the functions of Cabinet and to Volume 15, Paragraph 543 pertaining to Collective Agreements. Counsel submitted further that the Agreement was never ratified by Cabinet.

CONCLUSIONS

I will first of all deal with the submission that Regulation 23(3) is ultra vires the 1970 Act. Counsel for Plaintiffs relied in part on the case of THOMAS V ATTORNEY GENERAL OF TRINIDAD AND TOBAGO in making this submission.

He stated that Section 3(13) of the Teaching Service Commission Act was similar to the Section involved in *Thomas v Attorney General Trinidad and Tobago* and the Privy Council held that the provision gave no authority for the Public Service Commission to lay down a code of conduct for police officers and so he submitted that Section 3(13) did not give the Teaching Service Commission authority to lay down a code of conduct for teachers. It is pertinent to observe that in the *Endell Thomas* case one of the three questions with which the Court was concerned, and the only one with which we may be concerned here, is whether the power to create disciplinary offences for which the Appellant was triable resided in the Governor-General under the Police Service Act, 1965 or whether the three offences with which the Appellant was charged were validly and properly created by the Police Service Commission Regulations, 1966. I will observe in passing that in this case there is no dispute between Parties as to rival regulation making power. The Privy Council held the power lay in the Police Service Commission but held that the particular regulations under which the Appellant was charged contained what purported to be a detailed code of conduct for police officers. The Court held that the functions of the Police Service Commission fell into two classes and did **not** give the Commission the power to lay down terms of service for police officers and the particular regulations were held to be *ultra vires*. So the words "lay a code of conduct" are not words of art to be used wherever a Section similar to Section 3(13) is in issue. Section 3(13) of the Teaching Service Commission Act is as follows:-

"(13) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Minister, may confer powers or impose duties on any teacher, or any authority of the Government of Saint Lucia for the purpose of the exercise of its functions."

In this case the regulation that is impugned has nothing to do with laying down a code of conduct for teachers. Regulation 23 (3) is purely disciplinary. Counsel for the Defendant has submitted that Regulation 23 (3) is clearly made under the authority of Section 3 (13) of the Act.

Despite what I have said to the effect that the case of Endell Thomas is distinguishable I cannot agree with the contention of Counsel for the Defendant that Regulation 23(3) is one that could be validly made under Section 3(13) and I hold that the regulation making power under this provision was the power of the Commission to regulate its own procedure and with the consent of the Minister, the power to delegate some of its functions to persons such as the Permanent Secretary and such others. I would have no hesitation in ruling that Regulation 23 (3) is ultra vires Section 3 (13) of the Teaching Commission Act, 1970.

Counsel for the Plaintiffs then looked at Section 18 of the Act and submitted that the regulations and in particular Regulation 23 (3) could not have been made under that section. Section 18(1) is as follows:-

"18(1) Without prejudice to the generality of any other power to make regulations, the Commission with the consent of the Minister may from time to time make regulations necessary or desirable to give effect to the provisions of this Act and without limiting the general power it is hereby declared that regulations may be made for all or any of the following purposes:-

- (a) the organisation of the work of the Commission;
- (b) relating to the machinery of recruitment, appointment and transfer of staff of assisted schools and other teaching institutions;
- (c) the conduct of interviews of staff of assisted schools and other teaching institutions or candidates for the teaching service of the Commission;
- (d) the forms in connection with applications to the Commission, reports and communications from the Commission."

Counsel for the Defendant submitted that the prayer pertaining to this submission should be struck out for Plaintiffs did not cite the section of the Act which was relevant. I find this a strange submission by the Defendant.

The regulations were made by a machinery of the State in the first place and it was for the regulations to say under what authority they were made. This is the standard practice of all good draftmen to state at the beginning of subordinate legislation the Section of the parent Act under which they are made. This is a serious drafting defect in the Teaching Service Commission Regulations of 1977 and the Defendant cannot use this as a ground for criticising the Plaintiffs' pleadings. The regulations, however, are not defective in substance for this failure is not such as was in issue in Attorney General St. Kitts v Herbert (1973) 22 WIR 527 where the Regulations were held to be defective for not showing on the face of the instrument that Cabinet had approved them. Nevertheless poor draftsmanship is exhibited and this is why Counsel for the Plaintiffs had to "fish" as to the relevant section under which the regulations could have been made.

The drafting of subordinate legislation in St. Lucia have shown this tendency from time to time and the Teaching Service Commission Regulations is defective in this respect. However, there are many regulations or other subsidiary legislation where the enabling provision is placed at the end of the instrument. The Teaching Service Commission Regulations is not one of these. In this matter Thornton on Legislative Drafting at Page 336 states as follows:-

"C Headings.

The introductory headings and the enacting provision of subordinate legislation must not present a cluttered appearance. There is a need to be simple and to avoid unnecessary material. The purpose of the introductory headings is to present at a glance as clearly as possible information useful to the reader. It is suggested that the headings should specify the following:-

- (1) the number allotted to the instrument;
- (2) the identity of the principal legislation under which the instrument is made; and
- (3) the short title by which the instrument is cited."

Counsel for the Plaintiffs relied on a passage in Thorton and the case BLACKWOOD v L.C.B. of Australia 1874 L.R. 5 P.C. 92 to show that the regulations could not be made under Section 18. The reference to the case was found at Paragraphs 2211 of Volume 44, 1965 Edition of English and Empire digest and is as follows:-

"2211 When valid - Where a statute gave power to make regulations 'for carrying it into full effect, so as to provide for all proceedings, matters and things arising under and consistent with the provisions thereof, and not herein expressly provided for' - Held: regulations admitted to be reasonable, and convenient and not inconsistent with the Act, but which affected not only matters of form, but also matters of substance, were not ultra vires - BLACKWOOD v LONDON CHARTERED BANK OF AUSTRALIA (1874) L.R. 5 P.C. 92."

At page 260 of Thornton's Legislative Drafting one reads

"The result is to show that such a power does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends."

These citations are no authority for the submission contended for by Counsel for the Plaintiffs.

Section 4 of the Teaching Service Commission Act clearly gives the Commission power "to transfer and take disciplinary action" against teachers. The purpose of the Act as seen from the long title is "to make provision for the establishment of a Teaching Service Commission" and Section 18 gives a general power to make regulations "necessary or desirable to give effect to the provisions of the Act." In my judgment the authority for making regulations pertaining to discipline fall squarely within the regulation making power of Section 18.

I do not think it has been contended that the Act itself is ultra vires the Constitution and if it were I would hold this not to be the case. Sections 92 and 93 of the Constitution are clearly consistent with the provisions of the earlier Act and if there were any differences the Act would have to be construed with "such modifications, adaptations, qualifications and exceptions" as would be necessary to bring them into conformity with the Constitution" in accordance with paragraph 2 of Schedule 2 to the Saint Lucia Constitution Order, 1978.

This submission fails.

I next turn to the submission by Counsel for the Plaintiffs that Regulation 23(3) is ultra vires the Saint Lucia Constitution. Counsel submitted that the fundamental rights in issue are :-

- (a) the right to equality before the law found in Section 1 (a);
- (b) the right to protection for one's family found in Section 1 (c); and
- (c) the right to protection from discrimination on the ground of sex, found in Section 13.

Counsel for the Defendant strongly objected to the Plaintiffs addressing on these rights since the particular section of the Constitution impugned were not pleaded. Counsel asked that the relevant paragraph of the prayer should be struck out. Counsel for the Plaintiffs on the other hand submitted that this was not a constitutional motion. Counsel for the Defendant did not specify under what limb of Order 18 Rule 19 (1) she was asking that the pleadings be struck out. I need only observe that in the U. K. White Book 1979 at paragraph 18/19/3A it has been said that the Court will not permit a Plaintiff to be "driven from the judgment seat" except where the cause of action is obviously bad. Counsel for the Defendant relied on the case *NICHOLAS DOLOR v ATTORNEY GENERAL* and a passage in *AMERALLY v ATTORNEY GENERAL* repeating a passage from *BASU*. Counsel for the Plaintiffs states that the passages referred to cases where constitutional motions were brought.

I think Counsel for the Plaintiffs is right in a limited sense.

In NICHOLAS DOLOR'S case the Applicant was alleging on motion that his sentence of death was unconstitutional because it impugned his right under Section 5 to protection from inhuman treatment and the Court held that he must produce facts on which to base his bare allegation of a breach of Section 5. With this I wholeheartedly agree. But in this case the Plaintiffs are contending another reason why their dismissals are unlawful because it impugned their fundamental rights. The essential facts in this case are not disputed. They are that two unmarried female teachers on the permanent establishment who were pregnant for a second time were dismissed by the Teaching Service Commission. So there cannot be a lack of pleading by the Plaintiffs of material evidence. I said a while ago that Counsel for Plaintiffs was right in a limited sense because I still hold that although the case here is distinguishable from that of NICHOLAS DOLOR the Defendant would still have a right to know the particular section or sections of the Constitution impugned and this has nothing to do with whether the case is a constitutional motion or not. It is a requirement of pleading so that the other side should know what case it is he has to meet. Since the Plaintiffs were alleging that their constitutional rights were impugned I permitted the Counsel for the Plaintiffs to address on the stipulated section of the Constitution which were allegedly infringed and adjourned the case for one week to permit the Defendant to reply to the new matters raised in accordance with Order 35 Rule 6(7).

As stated above Counsel for the Plaintiffs has contended that there are fundamental rights in Section 1(a) and Section 1(c) which call for protection by this Court. I do not agree. Section 1 is a declaratory Section, a forerunner of things to come which are worthy of protection. This is clear from a reading of Section 16(1) of the Constitution which reads :-

"16(1) If any person alleges that any of the provisions of sections 2 to 15 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress."

There is no redress for any so-called rights under Section 1 of the Constitution. I get support for this view at page 295 of Ameerallys' case where Chancellor Haynes said:

"For all these reasons, we have reached the opinion that Article 3 does not make any pre-existing right of any kind whatever, a fundamental or guaranteed one. Consequently, in any event the case for the appellants so far as it rests on Article 3 cannot be supported."

Article 3 was provision similar to section 1 of the St. Lucia Constitution. The Article is as follows:-

"3 Whereas every person in Guyana is entitled to the fundamental rights and freedoms of the individual that is to say, the right, whatever his race, place of origin, political, opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -

- (a) life, liberty, security of the person and the protection of the law,
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation;

the following provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

Section 1 of the Constitution of Saint Lucia is as follows:

- "1 Whereas every person in Saint Lucia is entitled to the **fundamental** rights and freedoms, that is to say, the right whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -
- (a) life, liberty, security of the person, equality before the law and the protection of the law;
 - (b) freedom of conscience, of expression and of assembly and association; and
 - (c) protection for his family life, his personal privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest."

This leaves us with only one fundamental right worthy of protection under Section 13 of the Constitution. Counsel for the Plaintiffs in his submission referred to Regulation 23 (4) and 23 (5) which he states could be applicable to male teachers in support of his contention that

"(4) An unmarried expectant teacher shall notify the Permanent Secretary through the Principal or Headteacher or Manager of the fact that she is pregnant and the Permanent Secretary shall in turn notify the Teaching Service Commission.

(5) If it appears to the Principal or Headteacher that an unmarried teacher is pregnant and she has failed to notify the Commission of that fact then it shall be the duty of the Principal or Headteacher to inform the Ministry of Education accordingly. The Ministry shall thereupon cause the expectant teacher to report to a medical practitioner who shall report his findings to the Ministry. The Ministry shall make a report to the Commission only if the medical practitioner reports the affirmative."

The logic of this reference to sub-regulations (4) and (5) escapes me. It seems to me that they are both complementary to sub-regulation (3) of Regulation 23. I might as well dispose of another submission by Counsel for the Plaintiffs that the teachers were dismissed while no longer pregnant. In my view this is immaterial.

Counsel for the Plaintiffs submitted that Regulation 23(3) cannot be saved by Section 13(4) of the Constitution as being in the public interest in view of the 86 per cent illegitimacy in Saint Lucia. Counsel for the Defendant responded to this by referring to a passage in R v SUSSEX at Page 112 where D.V. PARCQ J. stated:

"It is fallacious to say that a condition is not in the public interest, if it is the case that a great many of those persons who constitute the public are not directly affected by it; and it is equally fallacious to say that a condition cannot be in the public interest if a great many members of the public neither know nor care anything about it."

Counsel also contended that the Court had a discretion to decline to act under Section 16 and submitted that the Plaintiffs had not exhausted other remedies.

Counsel stated that Regulation 23 (3) was an existing law and Parliament in its wisdom was the correct body to lay down what was desirable in the public interest.

I should like to make a few observations on the submissions by Counsel for the Defendant. As she quite rightly pointed out the Court may decline to exercise its powers under Section 16 in certain circumstances. In Ameerally at Page 311 quotation from the Privy Council states:-

"It is true that instead of, or even as well as, pursuing the ordinary course of appealing directly to an appellate court, a party to legal proceedings who alleges that a fundamental rule of natural justice has been infringed in the course of the determination of his case, could in theory seek collateral relief in an application to the High Court under s. 6 (1)" [i.e., our art. 19 (1)] "with a further right of appeal to the Court of Appeal under s. 6 (4). The High Court, however, has ample powers, both inherent and under s. 6 (2), to prevent its process being misused in this way: for example, it would stay proceedings under s. 6 (1) until an appeal against the judgment or order complained of had been disposed of."

This is quite apposite in certain situations but the other remedies which Counsel say have not been ~~exhausted~~ in this case refer to possible applications to administrative tribunals under Section 5 of the Teaching Service Commission Act and Section 96 of the Constitution. The circumstances in this case are different to what the Privy Council had in mind and I would hesitate to use a discretion which forbade a litigant to come to the courts in matters pertaining to the construction and interpretation of legislation and compel him to go to an administrative tribunal.

I also do not think that the fact that Regulation 23 is an existing law would by itself make it intra vires the Constitution. The provision on existing laws in Schedule 2 to the Constitution Order relates to construction of existing laws to bring them into conformity with the Constitution. The existing laws under the Constitution of Saint Lucia do not have the same effect that they had in the Trinidadian case of BECKLES V DELLAMORE (1965) 9 W.I.R. 299.

As regards the contention that under Article 40 of the Constitution Parliament has the power to make laws for the peace, order and good Government of Saint Lucia, I would observe that the Constitution places a limitation on that power in respect of laws affecting fundamental rights. In BASU's commentary on the Indian Constitution at Page 59 he states : "The determination by the legislature of what constitutes a reasonable restriction is not final or conclusive; it is subject to supervision of courts." In any case the regulations we are concerned with are regulations not made by Parliament but by the Teaching Service Commission.

BASU at Page 559 gives some guidance as to burden of proof when infringement of a fundamental right is alleged. He states:

" Though the general presumption in favour of the constitutionality of the law arises when a restriction imposed by the law is impugned under Art. 19, if the Petitioner succeeds in showing that the impugned law prima facie violates any of the rights coming under any of the sub-clauses of cl. (1) of that Article, the onus then shifts upon the Respondent to show that the legislation comes within the permissible limits imposed by any of the clauses (2) to (6) as may be applicable to the case, and also to place materials before the Court in support of that contention. If the Respondent does nothing in that respect, it is not for the Petitioner to prove negatively that it is not covered by any of the permissive clauses.

If, however, the Respondent shows that the impugned law is covered by one of the permissible grounds of restriction, e.g., interests of the general public, public order or the like, then the onus to show that the restriction is unreasonable would shift back to the Petitioner. This is, of course, subject to the modification that if the restriction appears to be *prima facie* unreasonable, substantive evidence to establish its unreasonableness would not be required."

In *Ameerally* at Page 308 a citation from *BASU* is referred to. It states "The burden is not discharged by making allegations which are merely the general conclusions of law or fact."

A number of West Indian cases have highlighted this presumption of constitutionality.

In *FAUSTIN V ATTORNEY GENERAL TRINIDAD* (1978) 30 W.I.R. Page 360 *KELSICK J. A.* stated:

"Nullification of enactments and confusion of public business are not lightly to be introduced. Unless, therefore, it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution, it must be allowed to stand as the true expression of the national will."

In *HINDS V QUEEN* 1976 1 AER P.C. 353, 358 - 359 Lord Diplock stated:

"In considering the constitutionality of the provisions of s 13 (1) of the 1974 Act, a court should start with the presumption that the circumstances existing in Jamaica are such that hearings in camera are reasonably required in the interest of 'public safety, public order or the protection of the private lives of persons concerned in the proceedings'. The presumption is rebuttable. Parliament cannot evade a constitutional restriction by a colourable device (*Ladore v Bennett*).

But in order to rebut the presumption, their Lordships would have to be satisfied that no reasonable member of Parliament who understood correctly the meaning of the relevant provisions of the Constitution could have supposed that hearings in camera were reasonably required for the protection of any of the interests referred to, in other words, that Parliament in so declaring was either acting in bad faith or had misinterpreted the provisions of s 20 (4) of the Constitution under which it purported to act.

No evidence has been adduced by the appellants in the instant case to rebut the resumption as respects the interests of public safety and public order."

In *St. LUCE V ATTORNEY GENERAL* (1975) 22 W.I.R. 536, 540 - 541 Davis C. J. stated:

"While I would accept that in the formulation adopted the law impugned must, prima facie, be shown to be reasonably required, I think that the court must also bear in mind the presumption in favour of constitutionality and that normally the burden must lie on those challenging the legislation."

I have heard nothing from the Plaintiffs to shift the presumption of constitutionality. I hold therefore that Regulation 23 (3) if it prima facie infringes Section 13 of the Constitution is a law which can be considered as being reasonably justifiably in a democratic society and is intra vires by virtue of either or all of the sub-sections (4), (5) and (6) of Section 13 of the Constitution. This submission likewise fails.

In respect of his third main submission Counsel for the Plaintiffs state that there was an enforceable agreement between the Saint Lucia Teachers' Union and the Government of Saint Lucia and Article 14.1 is clear on the question of maternity leave.

Article 14.1 of the Agreement is as follows:-

"The Employer agrees that three (3) months Maternity leave with full pay shall be granted to all employees on the Permanent Establishment regardless of marital status."

Counsel for the Defendant has contended that the Agreement is not in force for it was never ratified by Cabinet. The first question I ask is whether it is necessary for agreements to be ratified before they come into force. My answer is in the negative. The Agreement was not made subject to ratification by Government and the Union entered into the Agreement believing that they were contracting with the representatives of the Government. I find as a fact that the Government Negotiating Team comprising Messrs Parry Husbands and Dwight Venner had full authority to bind the Government under the terms of the Agreement. I agree with Counsel for the Plaintiffs that to hold otherwise would be tantamount to saying that they acted without authority and there is no evidence to warrant such a finding. The Agreement was signed on 27/11/84 for a period 1st April, 1983 to 31st March, 1986 and in my judgment was fully binding when the two teachers concerned were dismissed on May 10, 1985 and whatever the Government Negotiating Team may feel or say after the Agreement was in force cannot nullify the clear words of the Agreement. The text of the Agreement is left in no doubt. The Parties must have contemplated that the maternity leave was being dealt with on behalf of both married and unmarried female teachers. This is the only explanation for the last four words of the clause in Article 14.1 of the Agreement, "regardless of marital status."

The Permanent Secretary in the Ministry of Education and Culture clearly acted on the Agreement as though it was effective. He states so in evidence. It is true he said he later realised he made an error and he acted with some urgency seeing that the teachers were in advanced states of pregnancy. The period between the letters of application and his reply are roughly one month in either case. I cannot say that this indicates acting in haste. I do not follow the statement by the Permanent Secretary that he approved the leave but there was no intention that they would be reinstated.

Counsel for the Defendant has submitted that even if the Agreement was effective the Cabinet could not deal with discipline which is a function of the Teaching Service Commission. She cited TEEMAL V GUYSUCO in that respect. In that case VEIRA J. said that a policy adopted by the Cabinet of Ministers is not in itself law and for such a policy to be binding it must be put into statutory form. I agree and this is right for the simple reason that persons who may be concerned with the particular matter ought to be aware of what is permissible and what is not. This case does not pertain to some unknown policy of Government which is attempted to be forced upon any person or category of persons. It deals with a binding contract entered into between two parties and in my judgment agreements must be observed - PACTA SUNT SERVANDA.

The collective Agreement gave a right or a term of condition which cannot be complained of as a ground for disciplinary action. In THOMAS V ATTORNEY GENERAL TRINIDAD at Page 128 letter C, the Privy Council after speaking of the two classes of functions of the Police Service Commission stated: "It has no power to lay down terms of service for police officers; this is for the legislature and, in respect of any matters not dealt with by legislation, it is for the executive to deal with in its contract of employment with the individual police officer." I hold that the effect of the Collective Agreement was to lay down as one of the terms of conditions of teachers the granting of maternity leave and circumstances giving rise to the grant and enjoyment of maternity leave cannot be ground for disciplinary action.

I further hold that if there is a conflict of powers between two arms of the state machinery the teachers must not suffer as a result.

I accordingly accept this last submission of Counsel for Plaintiffs and make the following orders and declarations:

1. The declaration requested that Regulation 23 (3) of the Teaching Service Commission Regulations, 1977 is ultra vires the Saint Lucia Constitution, is refused.
2. The declaration requested that Regulation 23 (3) of the Teaching Service Commission Regulations, 1977 is ultra vires the Teaching Service Commission Act, 1970 is refused.
3. The declaration that the Plaintiffs Petra Girard and Florentina Jn. Pierre have been wrongfully dismissed from their employment as teachers contrary to Article 14.1 of the Collective Agreement granted.
4. I order that the Plaintiffs Petra Girard and Florentina Jn. Pierre be reinstated as teachers on the permanent establishment with full entitlement to all salaries from the date of dismissal to the date of reinstatement or in the alternative that they be paid damages as assessed below.
5. I order that the Defendant pay the costs of these proceedings be as agreed or otherwise taxed.

ASSESSMENT OF DAMAGES

Petra Girard entered the teaching service in 1971 and she was dismissed with effect from February 15, 1985 at which time she earned a salary of \$604.00 per month. From March 1, 1985 until January 7, 1986 she was unable to get employment. Thereafter she received in her new job as a receptionist a salary of \$804.00 per month. This means she did not receive any earnings for 10 months as a result of the dismissal. I award her a sum of \$6,040.00 for that period.

Although she gets a higher pay in her new job she has lost the satisfaction of being employed in a profession for which she was trained and although she gave no evidence in this respect I suspect she lost the chance of earning a pension. For this loss I award a sum of \$10,000 making a total damages of \$16,040.00.

Florentina Jn. Pierre entered the teaching service in January, 1976 and was dismissed on February 25, 1985. She received pay for the months of February, March and April and to the date of trial she had not been able to obtain employment. This means she had not obtained earnings for 19 months up to the time of trial. I accept her evidence that she had tried on many occasions to obtain employment and she has been unsuccessful. On the same principles enunciated above, I multiply \$986.00 by 19 and add a sum of \$15,000 for general damages making a total of \$33,734.00.



A.N.J. MATTHEW
PUISNE JUDGE

December 17, 1986