IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF THE CO-OPERATIVE REPUBLIC OF GUYANA

CCJ Appeal No CV 10 of 2007
GY Civil Appeal No 97 of 2004

BETWEEN

MOHAMMED YASSEEN **APPELLANT**

AND

THE ATTORNEY GENERAL OF GUYANA **RESPONDENT**

Before The Right Honourable **Mr Justice de la Bastide, President**
and The Honourables **Mr Justice Saunders**
Madame Justice Bernard

On Written Submissions

Ms Mandisa Breedy for the Appellant

Ms Prithima Tiwari Kissoon for the Respondent

JUDGMENT
of
The President and Justices Saunders and Bernard

Delivered by
The Honourable Mr Justice Adrian Saunders
on the 26th day of March 2008

JUDGMENT

[1] After the filing of the notice of appeal in this matter we were concerned as to whether our jurisdiction had properly been invoked and the appellant was indeed entitled to an appeal as of right pursuant to section 6(d) of the Caribbean Court of Justice Act as alleged by him. Accordingly, we requested the parties to furnish us with written submissions addressing this issue. We have examined these submissions and have concluded in all the circumstances that the appellant has no such appeal as of right, that in any event the appeal was wholly lacking in merit and that therefore it should be struck out. These are our reasons for so concluding.

[2] Mr. Mohammed Yasseen joined the Guyana Police Force on 15th August, 1973 and rose to the rank of Station Sergeant. On the 28th March, 1990 he was informed in writing by the Commissioner of Police that in the public interest, in accordance with section 35(1) of the Police Act Chapter 16:01, he was being discharged from the Force with effect from the following day. He appealed his dismissal to the Police Service Commission but his appeal was disallowed.

[3] It was never disputed that he was given no opportunity to be heard either by the Commissioner before receiving his letter of termination or by the Commission before his appeal was dismissed by that body. He instituted proceedings in the High Court claiming damages for wrongful dismissal and a declaration that his removal from the Force was unconstitutional and of no effect.

[4] At the trial, an unsuccessful application was made to amend the statement of claim to include a claim that Mr. Yasseen be paid compensation and benefits appropriate to someone who had been compulsorily retired from the Force. Roy J. found nonetheless that the failure on the part of the Commissioner to observe the rules of natural justice rendered Mr. Yasseen's dismissal from the Force wrongful. The judge thought it fit to award damages for wrongful dismissal but stated that those damages should be moderated on account of the admission by

Mr. Yasseen that he had not, since his dismissal, applied for any other job but had been content to assist his parents with their rice cultivation on the Essequibo coast. In the result, the Judge awarded 24 months salary for wrongful dismissal with interest thereon and costs. No order was made for payment of pension.

[5] Mr. Yasseen appealed to the Court of Appeal. He was dissatisfied with the refusal of the trial judge to allow the amendment that had been sought. He contended that since his dismissal was not only wrongful, but null and void**,** he was still in effect a member of the Force and as such entitled to *all* his salary and allowances up to the age of retirement in addition to the pension he would have received had he retired at that age. He complained that the trial judge wrongly awarded compensation "on a principle of the law of Tort (sic), to wit mitigation, which is not applicable to a deprivation of a fundamental right".

[6] The Court of Appeal (Claudette Singh, Kissoon and Chang, J.J.A.) upheld the judgment of the trial court and in particular, held that Roy J. was right to have taken into account the failure of the appellant to mitigate his loss. In the opinion of the Court of Appeal the statement of claim "could not have transformed a private law action for unlawful dismissal to a constitutional matter as what was alleged was not an infringement of any fundamental right but a breach of natural justice". The court however found that Mr. Yasseen was entitled to pension for the period of his 17 years of service in the Force and so allowed the appeal to the extent of so ordering.

[7] The appellant then launched an appeal to this Court. His original notice of appeal reflected that his appeal was brought as of right pursuant to section 6(b) of the Caribbean Court of Justice Act, No 16 of 2004 but it was later clarified that the appeal has actually been brought pursuant to section 6(d) of the Act. The relevant section states:

6. An appeal shall lie to the Court from decisions of the Court of Appeal as of right -

(a) …

(b) in proceedings for the dissolution or nullification of marriage

(c) …

(d) in any proceedings that are concerned with the exercise of the jurisdiction conferred upon the High Court relating to redress for the contravention of the provisions of the Constitution for the protection of fundamental rights.

[8] The appellant in his amended notice of appeal listed four grounds of appeal as follows:

(a) The refusal of the Court of Appeal and the High Court to amend the Statement of Claim to facilitate the proper prayer for benefits is wrong in law;

(b) The appellant having been removed from the Police Service in the public interest is entitled to be paid his full benefits;

(c) The finding that there exists a relationship of master and servant between the Commissioner of Police and the Appellant is wrong in law, and

(d) The learned judge did not state the principle on which he based his award of damages.

[9] The essential question for decision at this stage is whether in all the circumstances the appellant has an appeal as of right within the meaning of section 6(d) of the Caribbean Court of Justice Act. It was to this issue that we asked the parties to direct their written submissions.

[10] The submissions of counsel for the appellant were not very helpful. They concentrated on establishing that there was no procedural bar to the appellant advancing in these proceedings a claim to redress for the infringement of a

fundamental right. They did not address the issue whether in the instant case, Mr. Yasseen was entitled to appeal as of right to this Court.

[11] Counsel for the respondent in his submissions referred us to a number of authorities, including *Khemrajh Harrikissoon v Attorney General*[1] and *Jaroo v Attorney General*[2], to make the point that a mere reference to a claim for constitutional relief or assertion of a fundamental right, does not suffice to entitle a court to exercise its constitutional jurisdiction. Counsel contended that the appellant had no appeal as of right and that, assuming but not admitting that the appellant had a meritorious case, he should have sought special leave to appeal to the Caribbean Court of Justice. In any event, counsel submitted, special leave would have had to be refused because the appellant did not have an arguable case.

[12] In examining the pleadings in this case, we must express our agreement with the observations of Roy J. who noted that:

> "… nowhere in the Indorsement of claim or Statement of Claim is there a specific reference to any Article of the Constitution and in particular Articles 142(1) and 153 alleging violation of any of the Plaintiff's fundamental rights nor were there sufficient facts pleaded to ground a prima facie breach of those guaranteed rights… The infringement of a legal right is not necessarily that of a fundamental right…"

[13] The fact is that the claim in this case was not presented as a breach of a fundamental right. Nor can it be seriously suggested that the appellant had a fundamental right to salary and pension as if he had continued in his post until his attainment of the relevant retirement age. The basic contention here was that his termination was wrongful because of the Police Commissioner's disregard of the principles of natural justice. The right to institute the action on that ground existed

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[1] (1979) 31 W.I.R. 348
[2] (2002) 59 W.I.R. 519

independently of the Constitution and did not depend on, and was not concerned with, establishing the contravention of any provision of the Constitution for the protection of fundamental rights. The courts below proceeded on that footing.

[14] Even if the appellant were to allege - and we must not necessarily be taken as supporting either of these propositions - that his right to be heard constituted a fundamental right protected by the Constitution or that his job was property the enjoyment of which was protected by the Constitution, there is no principle of constitutional law which would have required the Court, in assessing compensation due to him for breach of either or both of those assumed rights, to treat his employment as notionally continuing until his retirement age and to ignore his capacity to take up alternative employment and earn an income from it. Put another way, there is no basis in principle or in decided cases for treating the policy which the courts have traditionally followed of not ordering specific performance of contracts of service as inapplicable to a contract of service which has been terminated in breach of a fundamental right protected by the Constitution.

[15] In the circumstances there is nothing in this case that turns on it being treated as a claim under any of the relevant constitutional provisions. The claim of the appellant for 'full benefits' i.e. for salary to retirement age and pension accordingly, would have no better chance of success if it could be founded on breach of a fundamental right protected by the Constitution. It follows that these proceedings cannot be said to be concerned in any meaningful way with the exercise of the jurisdiction of the High Court relating to redress for the contravention of the provisions of the Constitution for the protection of fundamental rights and therefore, do not fall within the ambit of section 6(d) of the Caribbean Court of Justice Act.

[16] We also agree with counsel for the respondent that the appeal would have been dismissed by us even if leave had properly been granted. Roy J. awarded

compensation equivalent to 24 months' salary for wrongful dismissal and this was affirmed by the Court of Appeal which increased Mr. Yasseen's compensatory package by awarding him a pension based on his 17 years service in the Force. In the absence of any technical rule requiring the Court to regard the employment of the appellant as being in existence until he attained the retirement age, there is no possible basis on which we could have treated the compensation he has actually been awarded as unfair or inadequate. This appeal must therefore be struck out.

[17] The striking out of the appeal is the result of the determination of a preliminary issue raised by the Court of its own motion, and not as a result of an application made by the respondent. In fact, we have before us nothing to suggest that the respondent opposed the grant of leave to appeal. In the circumstances, we make no order as to costs.

/s/ M.A. de la Bastide

Mr Justice Michael A de la Bastide (President)

/s/ A. Saunders

Mr Justice Adrian Saunders

/s/ D. Bernard

Madam Justice Désirée Bernard