REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Sub-Registry San Fernando

Claim No. CV2018-03230

EX-PARTE APPLICATION BY MARIA MAHARAJ FOR LEAVE TO APPLY FOR JUDICIAL REVIEW PURSUANT TO PART 56 RULE 3 OF THE CIVIL PROCEEDINGS RULES 1998: APPLICATION FILED PURSUANT TO PART 56.3 CIVIL PROCEEDINGS RULES 1998, AS AMENDED

BETWEEN

MARIA MAHARAJ

Applicant/Intended Claimant

AND

SAN FERNANDO CITY CORPORATION

First Respondent/Intended Defendant

AND

STATUTORY AUTHORITIES SERVICE COMMISSION

Second Respondent/Intended Defendant

Before The Honorable Mr. Justice David C Harris

Appearances:

Mr. Anand Ramlogan S.C. leads Ms. Alana Rambaran

instructed by Mr. Alvin Shiva Pariagsingh **for the** Applicant/Intended Claimant

Mr. Rajiv Persad instructed by Mr. Ravi M. Mungalsingh

for the First Respondent/Intended Defendant

Ms. Michelle Benjamin **for the** Second Respondent/Intended Defendant

DECISION

INTRODUCTION

1. This is an application for leave for Judicial Review. Leave is granted.

2. The Applicant was appointed as a Police Constable by the Statutory Authorities Service Commission (the "Commission") in the San Fernando City Corporation (the "Corporation") on November 1st 2001. She was promoted as a Corporal with effect from 12th July 2018 and at the time of filing this application was a Sergeant of Police with effect from 19th July 2018.

3. On or about 9th September 2012, the Applicant was on duty on or about 4:00 p.m. at High Street, San Fernando. Whilst assisting in the detainment of a civilian, she was holding open a car door to place the prisoner in the vehicle, the prisoner pushed the other male officer who was detaining him. This caused the Applicant to jerk backwards in which she damaged her back and spine as a result. The Applicant proceeded on sick leave with effect from 10th September 2012. After several medical assessments and treatments which were communicated to the Corporation over time, she was recommended to continue on sick leave from 2014 to March 28th 2016.

4. By letter dated March 23rd, 2016, the Chief Executive Officer at the Statutory Authorities Service Commission indicated that a Medical Board Report dated 17th February 2016 was received from the Ministry of Health. The Chief Executive Officer further informed the Applicant that based on the Medical Board's assessment of her injuries, she was fit to resume duties and recommended that she returned to work with immediate effect as a Police Constable at the San Fernando City Corporation. Certain remedial measures were recommended by the Medical Board to include the provision of an Ergonomic chair.

5. She suffered a 'relapse' of the injury and around March 2017, the Applicant re-visited her Doctors at the Orthopaedic Clinic at San Fernando General Hospital who recommended that she proceeded on further leave from work from 16th March 2017 due to this relapse.

6. The applicant submitted the relevant sick leave certificates to the San Fernando City Corporation for the said period. The Applicant expected that she would again, be sent before the Medical Board to be assessed.

7. The Applicant was paid her full salary for the period March 2017 to May 2017, as the First Respondent considered that the period of her absence as "***injury leave***" with full pay.

8. The Applicant continued to submit her sick leave certificates from June 2017 to August 2017, however, the San Fernando City Corporation deemed this period as "***sick Leave***" (as opposed to 'injury leave') with half pay, without being placed before the Medical Board for re-assessment since the date of her relapse to determine her fitness for duty and the classification of her leave of absence.

9. The Applicant continued to submit her sick leave certificates for the period August 2017 to November 2017. She received a Memorandum dated 27th September 2017 on November 1st 2017, which notified her that approvals were not obtained for her to be paid her full salary for the period 30th September 2017 to 17th October 2017 and that the First Respondent considered this period as "***extended sick leave***" without pay. No reason was articulated in the Memorandum for the refusal of the necessary approvals for her to be paid her full salary for the period 30th September 2017 to 17th October 2017.

10. The Applicant made several visits to the San Fernando City Corporation's Human Resources Department to enquire as to the reasons for the refusal to pay her full salary for the period September 2017 to October 2017 and why the period of absence was considered ***"extended sick leave"*** without pay instead of ***"injury leave"*** with pay, without first being placed before the Medical Board for assessment. The Applicant has deposed that she was informed that the Corporation staff would "look into" her matter.

11. The Applicant filed this application some 13 months after the cause of action arose and is out of the 3 months limitation period fixed by the Act. The Applicant, at the onset, applies for the grant of an extension of time to file the said application and contends that she has met the threshold requirements for the grant of the extension. The Applicant contends that leave is never refused

simply on the basis of the first question of whether there is established a ‘relevant delay’, without proceeding to the second and critical question of whether there is a good reason to extend time.

THE CASE FOR THE APPLICANT

12. The Applicant’s substantive case stems from what she alleges as the unfair and illegal treatment by the Respondents. Her claim for Judicial Review challenges what she represents as the unreasonable delay and/or continuing failure and/or refusal by the Respondents to facilitate her assessment before the Medical Board and the failure and/or refusal to classify her absence from duty for the period June 29th 2017 to June 30th 2018 as ‘injury leave’ with pay.

13. Before the Court is an application by the Claimant for leave to file judicial review proceedings against the Intended Respondents. Among the declarations being sought by the Claimant are[1]:

(i) A **declaration that** the **First** and/or Second Respondent/Intended Defendants **are in breach of their statutory duty to convene a Medical Board for the purpose of having the Applicant or Intended Claimant examined** with a view to ascertaining whether or not the officer should be retired on grounds of ill health and to assist it in determining how it should fairly and correctly classify her injury leave or absence from duty;

(ii) A **declaration** that the **First** and/or Second Respondent/Intended Defendants **are guilty of unreasonable delay in performing their statutory duty pursuant to Regulations 59-60 of the Statutory Authority Service Commission Regulations (SASCR) Circular No. 2 of 1996 dated October 7th 1996 to convene a Medical Board** for the purpose of having the Applicant/ Intended Claimant examined to determine her fitness for further service and/or to determine whether the Applicant/Intended Claimant’s absence from duty for the period June 29th 2017 to present should be classified as ‘injury leave’ with pay;

(iii) An order of **mandamus to compel the First and Second Respondent/Intended Defendant** to convene a Medical Board pursuant to Regulations 59-60 of the Statutory Authority Service Commission Regulations (**SASCR**) and/ or its administrative duty pursuant to Personnel Department Circular No 2 of 1996 dated October 7th 1996 for the purpose of having the Applicant/Intended Claimant examined to determine her fitness for further

[1] See Application for Leave

service and/or to determine whether the Applicant/Intended Claimant's absence from duty for the period June 29th 2017 to present should be classified as 'injury leave' with pay;

(iv) A **declaration that** the Applicant/Intended Claimant's **legitimate expectation that she would be assessed before the Medical Board and her absence from duty for the period June 29th 2017 to present** would be classified as injury leave with pay has been breached;

(v) A **declaration** that the Applicant/Intended Claimant **has been treated unfairly contrary to the principles of natural justice** pursuant to ***Section 20 of the JRA***;

THE CASE FOR THE RESPONDENTS[2]

14. The Respondent contends that before the Court embarks upon the question of whether leave should be granted, that having regard to the fact that this Application for leave is being made some 13 months since the Applicant's injury *purportedly* resurfaced in March to May 2017; and on the Applicant's case, when she was entitled to be referred to the Medical Board, the Court is required to first consider/determine whether it will extend the 3 month limitation prescribed by the Act, to the date of the Application. The Respondent contends that the Applicant has not met the threshold to justify the extension sought.

15. On the substantive application and relief sought to have the Applicant assessed by the Medical Board, the Respondent contends it is misconceived in that:- **(i)** The Statutory Duty that the Applicant relies upon did not arise in the circumstances of this case as the Applicant had already been examined by the Medical Board in 2016 and had been deemed fit to work and there was no new injury that had taken place that warranted the matter going before the Medical Board a second time(emphasis added); **(ii)** The Applicant had not complied with the CPO guidelines of preparing a written account of the injury in the course of work to require the referral to the Medical Board. Nor is there any supportive evidence from the Applicant or her Attorneys that she was requesting the First Respondent/Intended Defendant to go before the Medical Board **(iii)** The Court cannot make the declarations set out in the para 2 (a) to (c) of the Application for leave, since they, as contended by the respondent, are **purely academic** at this stage as it is clear from the evidence of the CEO of the First Respondent/Intended Defendant that he received a request

[2] See the Respondent's written submissions filed in this matter and considered by the court.

to reclassify the sick leave to injury leave at the end of November 2017, moved quickly, and by January 2018 (long before this claim was filed) had written to have the Applicant referred to the Medical Board.

16. The Respondent contends that it is not the First Respondent/Intended Defendant's fault that the Applicant did not qualify for the relief being sought in this matter. The Respondent submits that on the facts before the Court, the Court simply cannot make the declarations sought at para 2(a) to (c) of the application for leave.

17. The Respondent contends, peculiarly, that outside of a Section 15 Application, which they contend is plainly doomed to failure for the reasons they have argued, any other complaint under the Judicial Review Act requires an extension of time to be granted. The Respondent resists the granting of such an extension and rely further upon the arguments raised in their submissions.

18. In relation to the contention that the Applicant had a legitimate expectation to be again assessed before a Medical Board and further, to have her absence classified as *injury leave*; or, that she, in the round, suffered a breach of natural justice in relation to her matter; the Respondent says both contentions are unarguable and have no likelihood of success. The Respondent contends that they do not meet the threshold test ("threshold") for leave to be granted. The First Respondent/Intended Defendant contends that it had written two letters to the Ministry of Health and CPO in early 2018 which had been responded to by the relevant parties and which essentially informed the First Respondent/Intended Defendant that the Applicant was not entitled to go before the Medical Board a second time in relation to the same injury[3].

19. Finally, the Respondent contends that leave should not be granted as there is an alternative remedy potentially open to the Applicant of challenging the decision made by the CPO and Ministry of Health to not allow the Applicant to access the Medical Board.

20. Such a decision, says the Respondent, only became known to the Applicant in these proceedings in October 2018 and as such this alternative route appears to be more feasible than seeking

[3] See I.S 10 – 15 for relevant communications

declarations against the First Respondent/Intended Defendant for a failure to refer the matter; for *delay* in referring the matter; and a mandamus to compel the First Respondent/Intended Defendant to refer the matter for a decision, when it had already done so since January 2018.

ISSUES

21. **(i)** Whether the Applicant has delayed in bringing her application;

    (ii) Whether there is sufficient basis to extend time;

    (iii) Whether the Applicant is entitled to the core relief claimed at paragraphs 2(a) to (e) of the application for leave;

    (iv) Whether the Applicant has an arguable ground for Judicial Review with a realistic prospect of success.

    (v) Whether the Applicant has an alternative remedy available to her.

THE CORE LAW[4]

22. **The proper test for leave to seek judicial review** was laid down in ***Sharma –v- Antoine and Ors***. PC Appeal No. 75 of 2006. The test was formulated in the following terms :

    "*The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: R v Legal Aid Board, Ex p Hughes (1992) 5 Admin LR 623, 628; Fordham, Judicial Review Handbook, 4th Ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application."*

    Paragraph 14:

    "… the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious

[4] This is a substantial reproduction of the written submissions of the Attorney's filed in this matter on behalf of the respective parties.

allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."

23. The Court of Appeal in ***McNicholls -v- Fidelity Finance and Anor*** Civ App No. 127 of 2007 stated that the *Sharma formulation* was merely a restatement of settled principles and did not substantially alter the nature of the test to be applied in the grant of leave.

24. Further, and particularly relevant in this matter and to this court, the Court simply will not engage in a full-scale dress rehearsal of the case that is to be decided. ***Clive Lewis, Judicial Remedies in Public Law*** 4th Edition (2009) at paragraph 9-046 notes the following:

    "*The claimant must demonstrate that there is an arguable case that a ground for seeking judicial review exists. The Court of Appeal has indicated that permission should be granted where a point exists which merits investigation on a full hearing with both parties represented and with all the relevant evidence and arguments on the law.*"

25. **The law on delay** and the threshold for extending time for the filing of an application for Judicial Review is indeed as observed by Counsel for the Applicant: i.e. in a *state of flux*, or simply steadfastly and reasonably predictably evolving, as some aspects of the law do over time. In this matter in relation to the relevant issue, the Court has relied substantially (but not entirely) upon the learning in the Privy Council case of ***Devant Maharaj v National Energy Corporation*** [2019] UKPC 5, Privy Council Appeal No. 0085 of 2017.

26. The Privy Council in this case, importantly emphasised that in the end "*the statutory test is not one of good reason for delay but the broader test of good reason for extending time*". This allows the Court to take into account, several considerations including the reason for the delay, the importance of the issues, the prospect of success, the presence or absence of prejudice or detriment to good administration, and the public interest - all of which appear to the Court that it is entitled to consider under s.11(3) of the Act and in the context of the requirements of fairness generally.

27. Counsel for the Applicant has distilled the judgment and disaggregated if you will, the import and reasons for a Court's consideration at para 83 of the Reply Submissions as follows: *Length of time; Reason for delay; Prospect of success; Importance of the issues involved; Overriding need to ensure justice is done; Absence of hardship, prejudice and detriment; The conduct of the Respondents*. I accept that these are amongst the considerations that the Court may enter into in determining whether the Applicant has met the threshold for the grant of an extension of time for filing her application for leave.

28. **What is the meaning of *fairness (and natural justice)*** in the context of Judicial Review? In *Ceron Richards v The Public Service Commission and The Attorney General of Trinidad and Tobago*[5], Rahim J summarized the principles of natural justice in paragraphs 70-71 as:

> *"The rules of natural justice require that the decision maker approaches the decision making process with 'fairness'. What is fair in relation to a particular case may differ. As pointed out by Lord Steyn in Lloyd v McMahon [1987] AC 625, the rules of natural justice are not engraved on tablets of stone. The duty of fairness ought not to be restricted by artificial barriers or confined by inflexible categories. The duty admits of the following according to the authors of the Principles of Judicial Review by De Smith, Woolf and Jowell:*
>
> *a) Whenever a public function is being performed there is an inference in the absence of an express requirement to the contrary, that the function is required to be performed fairly. Mahon v New Zealand Ltd (1984) A.C. 808. b) The inference will be more compelling in the case of any decision which may adversely affect a person's rights or interests or when a person has a legitimate expectation of being fairly treated. c) The requirement of a fair hearing will not apply to all situations of perceived or actual detriment. There are clearly some situations where the interest affected will be too insignificant, or too speculative or too remote to qualify for a fair hearing. This will depend on the circumstances. 71. In delivering the decision in Feroza Ramjohn v Patrick Manning [2011] UKPC 20, Their Lordships made it abundantly clear that what is fair in any given circumstance is entirely dependent of the facts of the particular case*."

[5] CV2016-04291. See also *Erebus Royal Commission; Air New Zealand Ltd. v. Mahon* (No. 2) [1981] 1 NZLR 618 the New Zealand Court of Appeal at pp 651 (ln.35) thereof, per Woodhouse P.

29. At paragraph 39 of the same case it further notes:

> *"As is trite law, the requirements of fairness in any given case depend crucially upon the particular circumstances – see, for example, R v Secretary of State for the Home Department Ex p Doody [1994] 1 AC 531, 560. Almost always, however, if a decision is to be taken against someone on the basis of an allegation such as that made here, fairness will demand that they be given an opportunity to meet it.*"

30. A very pertinent reminder of the role of the Judge in the litigation process here, is to be found in no less than **De Smith's Judicial Review** 7th Edition: "*What fairness requires and what is involved in order to achieve fairness is for the decision of the Courts as a matter of law. The issue is not one for the discretion of the decision-maker*."

31. It is, I think, also apposite to cite the paragraph set out in the Applicant's reply submissions that what fairness requires is, *as Lord Mustill* famously said*, "an intuitive judgment".* Put in proper context*,* it is of course not entirely so, but intuition plays no small part.

32. **In relation to the relevance of the availability of an alternative remedy to that sought in a Judicial Review application**: As a general rule Judicial Review is a discretionary remedy. This means that just because an Applicant establishes that a public body has erred in law, he is not automatically entitled to the remedy he seeks in Public law, or indeed, any remedy at all.

33. Indeed, the Court sitting in its function as an Administrative Court has considerable leeway when assessing whether or not relief should be given to the Applicant. Lord Justice Hobhouse in ***Credit Suisse v Allerdale Borough Council*** [1997] QB 306 at 355D instructively said this:

> *"The discretion of the court in deciding whether to grant any remedy is a wide one. It can take into account many considerations, including the needs of good administration, delay, the effect on third parties, the utility of granting the relevant remedy. The discretion can be exercised so as partially to uphold and partially quash the relevant administrative decision or act*

34. The existence of an alternative remedy is not slavishly applied to oust the Applicant from the judgment seat. In the Trinidad and Tobago High Court case of *Suresh Patel v The Commissioner of Police* CV 2011-00818 in which Justice F. Seepersad quoted the case of *Leech v Deputy Governor of Parkhurst Prison*[6] at paragraph 19, puts the statutorily supported principle in relation to the effect of an alternative remedy on an application for leave as it is in reality often times applied: "*It has never been previously, so far as I am aware, been suggested that the mere existence of an alternative remedy, of itself and by itself, ousts the jurisdiction of the Court, though it may be a powerful factor when it comes to the question of whether the discretion to review should be exercised*".

35. Further still, in *R v Huntingdon District Council, Ex Parte Cowan and Another* [1984] 1 ALL ER 58 the Court states: "*Where there is an alternative remedy available but judicial review is sought, then in my judgment the court should always ask itself whether the remedy that is sought in the court, or the alternative remedy which is available to the applicant by way of appeal, is the most effective and convenient, in other words, which of them will prove to be the most effective and convenient in all the circumstances, not merely for the applicant, but in the public interest. In exercising discretion whether or not to grant relief, that is a major factor to be taken into account.*"

DISPOSITION ON THE EVIDENCE/LAW[7]

36. The onus is on the Applicant to persuade the Court to extend time and then to grant leave. I think it convenient, at the risk of overlapping arguments to utilize the common captions used by the parties in their submissions in disposing of the issues in this matter.

i. The reasons for the delay.

37. In essence the Applicant/Intended Claimant pleads that she responded right away by engaging extensively with the authorities with a view to reclassifying her injury and in doing so allowed for sufficient time for the authority to be able to act to take the decisions required. She contends that she issued a pre-action protocol letter after which ensued further and involved interaction between her and the Respondent and other functionaries. The full particulars of the Applicant's

[6] [1988] AC 533 at 581

[7] This is taken substantially from the preferred filed written submissions of Senior Counsel for the Applicant.

engagement with the Respondent and State functionaries are set out in the Application, Affidavits in support and the submissions. The Respondent has not fundamentally challenged these narrow facts, but merely posits a different interpretation and/or relevance of them.

38. More particularly, the Applicant contends that she was unsuccessful in obtaining free legal services (Legal Aid and Advisory Services) she being refused on the basis that she was currently gainfully employed albeit without being paid a salary. In the end she was unable to afford the fees proposed to her.

39. This Court accepts the reasons put forward by the Applicant as more fully elaborated in the Application and submissions, in all the peculiar circumstances of this case, as meeting the threshold requirement of this component for the grant of leave.

ii. The reasons to extend time

40. The starting point here is the acknowledgement that the application was not filed within the prescribed time. What then? Is there a good reason to extend time, notwithstanding the failure to file within the prescribed time?

41. The Applicant has set out meticulous comprehensive arguments in support of this point. I refer the Respondents to the submissions and Reply submissions on this point. In essence the Applicant is saying that there is a good reason for extending time (as opposed to *reason for the delay*).

42. On the case law, delay cannot be considered in a vacuum. It has to be weighed in the balance alongside the merits of the proposed claim and the issue of prejudice. Here, the merits of the case are sufficient and no issue of prejudice has been raised by the Respondents. Indeed, if the Applicant's evidence is accepted, then it is the Applicant that is likely to be the party suffering the prejudice.

43. The Applicant has contended that the Court must have regard to certain factors in determining the question of a good reason for the granting of the extension of time. This Court agrees. These considerations again, include: *Length of time; Reason for delay; Prospect of success; Importance of the issues involved; Overriding need to ensure justice is done; Absence of hardship, prejudice*

and detriment; the conduct of the Respondents. The Applicant/Intended Claimant has, as noted above, dealt with each of these in its submissions, seriatim. It is wholly unnecessary to repeat the intricacies of the thread of the argument here. Suffice it to say, the Applicant's argument is persuasive. This Court accepts that the basis for the extension of time is well warranted for the reasons argued by the Applicant in her application and submissions thereto and hereby grants the extension.

44. Further still, this Court accepts that the Respondents placed no evidence or sufficient evidence of substantial hardship, prejudice and detriment whether during these proceedings or at the Pre-action Stage for the Court to consider, that warrants the Court's discretion to refuse to extend time.

iii. Conduct of the Intended Defendant

45. The Applicant contends that while there is in fact no time limit placed upon the First Respondent to make arrangements to facilitate the Applicant's assessment before the Medical Board, the Respondents failed to do so where they ought to have acted. The applicant alleges the Respondents' *inaction is plainly unreasonable*. There are unresolved factual issues here between the parties as to what were the objective circumstances. Indeed, there is contention also about the application of the law on this issue. In any event this issue is best left for the full hearing buttressed by further factual input from the parties.

46. There is a reasonable prospect of success on this issue.

iv. Merits of the application

47. The Applicant again contends that there was unreasonable delay by the Respondents in: Investigating the Applicant's grievance; Facilitating the Applicant's assessment before the Medical Board in order to make a decision regarding her fitness for work, classification of leave for the period June 2017 to June 30th 2018 and her entitlement to her salary; Rectifying the Applicant's grievance in the form of both declaratory and compensatory relief; and that the Respondents' actions were clearly unlawful.

48. Again, the threshold has been met. The Court is persuaded by the Applicant's arguments and reference to the prima facie factual circumstances to hold that there is a reasonable prospect of success in this matter.

v. Continuing breach by the Intended Defendants

49. The Applicant contends that there is unreasonable delay and/or failure and/or refusal by the Respondents to facilitate the Applicant's assessment before the Medical Board to classify her leave of absence from June 29th 2017 to June 30th 2018 and that this amounts to a continuing breach.

50. This is a fundamental mooring for the case for the Applicant/Intended Claimant. In the circumstances as set out in the Application and the Law as contended, the Applicant has a reasonable prospect of establishing this issue and the consequent prospect of success.

vi. Interest of good administration

51. I agree with the Applicant's contention that the grant of leave would not be detrimental to good administration having regard to: the history of this matter and the fact that the foundation of the Applicant's claim is for *the unreasonable delay and/or continuous failure and/or refusal by the Respondents to facilitate the Applicant's assessment before the Medical Board to classify her leave of absence from June 29th 2017 to June 30th 2018* which is an ongoing unresolved issue since June 2017; that any refusal by the Respondents to facilitate the Applicant's assessment before the Medical Board to classify her leave of absence from June 29th 2017 to June 30th 2018 would potentially lead to prejudice to the Applicant; and the fact that if (and only if) the Applicant were to be successful in this substantive matter, then the Applicant would have already suffered a significant injustice and prejudice by the Respondents and deprived of her right to natural justice and not the other way around.

vii. Promptness by the Applicant/Intended Claimant

52. The Applicant did not necessarily act unreasonably in attempting by correspondence through her Attorneys-at-law to the San Fernando City Corporation and the Statutory Authorities Service Commission, to notify these entities of the unreasonable delay and/or refusal and/or failure to make arrangements to have the Applicant placed before the Medical Board and to classify her

period of absence from duty between June 29th 2017 to June 30th 2018 as injury leave with pay before proceeding to Court. This is so now, whether or not the Applicant's assertion of certain rights contended in the Application are, in the end, meritorious or not.

viii. Good explanation for the delay

53. Counsel for the Applicant submits that whilst the Applicant has attempted to engage the services of the Legal Aid and Advisory Authority in 2017 she was unsuccessful in obtaining free legal services on the basis that she is currently gainfully employed albeit without being paid a salary. She was therefore financially constrained in that regard as she has several financial obligations and was unable to source the required finances to commence this matter until the actual filing of this application. She had depleted whatever savings she had accumulated in pursuance of these proceedings against the Respondents and could not afford the legal fees which were being quoted to her. The Applicant was subsequently able to borrow funds from her relatives and friends to pay for the advice and representation of Legal Counsel in this matter.

54. It was further submitted, that the Applicant also intended to give the Respondents ample opportunity to rectify her complaints and to make arrangements to have her placed before the Medical Board and to classify the period of absence from duty between June 29th 2017 and June 30th 2018 as injury leave with pay before pursuing legal action. The circumstances of the interaction toward resolution of the difference between the parties is peculiar to this matter.

55. This court is persuaded by the Applicant's arguments on this issue as meeting the threshold.

ix. No substantial hardship to the parties

56. Senior Counsel for the Applicant submitted, that on a balance between good reason to extend time and the absence of hardship, prejudice and detriment, leave should be granted to the Applicant to file for Judicial Review. Further, in the absence of any hardship, prejudice or detriment to the Respondents or any third party in the present matter – and none were contended – not only ought time therefore be extended, but further, leave be granted for the Applicant to apply for Judicial Review. This court does not accept the Respondent's contention on this issue as rising to render the claimant's threshold insurmountable. Again, this is a leave application and the Applicant need only meet the threshold for the grant of leave.

57. In the Court's view, the interests of good administration are in favour of the grant of leave notwithstanding the 'delay'.

x. The Applicant/Intended Claimant complied with the Pre Action Protocol Directions.

58. The Applicant contends that she acted reasonably, and in keeping with the spirit of the Pre-Action Protocol Practice Direction, by engaging in genuine and meaningful correspondence and discussion with the Respondents, in an attempt to avoid costly litigation *that she could ill-afford*. The Applicant was engaged in Pre-Action Protocol correspondence with the Respondents and the Solicitor General of Trinidad and Tobago upon, as she contends, her realising that no arrangements were being made by the First Respondent to have her placed before the Medical Board again and to classify the period of absence from duty between June 29th 2017 to June 30th 2018 as injury leave with pay. She contends that she was hopeful that the matter would be resolved amicably without cause for litigation. A comprehensive and useful table setting out the correspondence, efforts and time lines in this regard was provided in the submissions.

59. The Applicant contends that she has submitted all the required documentation to the San Fernando City Corporation on time but contends that the Respondent delayed in rendering its decision in classifying her leave as contended in the Application. The Applicant therefore sought to file this claim for Judicial Review.

60. Senior Counsel submits that even if the Court is of the view that there is delay in bringing these proceedings, the delay was not unreasonable or undue as the Applicant acted promptly, persistently and as also reflected in the Pre Action protocol letter; sought immediate intervention when she became aware of the failure and/or refusal and/or unreasonable delay by the Respondents in making arrangements to facilitate her assessment before the Medical Board to render a decision on the classification of her leave of absence to 'injury leave' with pay for the period 29th June 2017 to June 30th 2018. There is no sufficient evidence before the Court to suggest that the Applicant did not comply or substantially comply with pre action protocols in this matter.

xi Can the Applicant show that she has a good and arguable case?

61. Not only is there good reason for the delay in the instant matter, but there is good reason to extend the time to file for Judicial Review. Having regard to the several factors listed above, even if the Court considers that there has been undue delay in filing this application, Section 11 of the Judicial Review Act and Rule 56.5(3) of the CPR confirms that the Court has inherent jurisdiction/discretion to extend the time to do so. The grant of leave and/or the grant of the relief claimed by the Applicant would not result in any substantial hardship or prejudice to the Respondents and would not be detrimental to good administration of justice. Delay alone, in the context of this case, in the absence of any prejudice or detriment, is not sufficient to prevent her from being granted leave to apply for Judicial Review. There are good grounds as set out above, for the Court to exercise its discretion to extend time for the Applicant to file her claim for Judicial Review as the statute. The rules ought not to be applied in a technical manner so as to deprive this Applicant of the prospect of relief.

62. There is, in the instance case, an arguable case for Judicial Review with a realistic prospect of success. Further, this Court agrees with the Applicant that the issues raised in this claim are of great general and public importance regarding the classification of leave whereby an officer has suffered a relapse of an initial injury whilst performing his/her duty. The Applicant is not a mere busy-body and the application cannot be described as "wholly unmeritorious" or "patently unarguable". The Court shall not refuse the Applicant permission to apply for Judicial Review as the balance of justice lies in favour of the grant of leave.

xii Whether the Applicant has an alternative remedy available to her

63. The Applicant contends that there is no alternative remedy to obtaining declaratory relief that the Respondents have breached Regulation 59 and 60 of the Statutory Authorities Service Commission Regulations and the administrative duty pursuant to the Personnel Department Circular No. 2 of 1996; There is no alternative remedy to obtaining declaratory relief that the Applicant's legitimate expectation that she would be assessed before the Medical Board and her leave from duty for the period June 29th 2017 to June 30th 2018 would be classified as 'injury leave' with pay; There is no alternative remedy that can compel the Respondents to perform their legal and administrative duty except this claim for judicial review; and that even if there was an

alternative remedy, it is not a bar to the grant of leave for Judicial Review as the Court can, in exceptional cases grant relief.

64. Apart from the fact that the existence of an alternative remedy does not necessarily preclude a claim for Judicial Review, such proceedings are therefore apt in these circumstances since the Applicant is challenging the conduct of the Respondents in failing and/or refusing to facilitate her assessment before the Medical Board and the failure and/or refusal to classify her absence from duty for the period June 29th 2017 to June 30th 2018 as 'injury leave' with pay. Such a challenge by the Applicant/Intended Claimant is moored upon the grounds set out in **Section 5(3) of the Judicial Review Act Chapter 7:08**.

65. There does not lay, as contended by the Respondent, a preferred alternative remedy available to the Applicant. This Court accepts as correct, that even if an alternative remedy exists, this present action is the more effective and suitable legal challenge and it ought to be facilitated in the public interest. Declaratory relief is an effective and suitable legal remedy and it ought to be facilitated in the public interest. Were the Applicant to be successful in the substantive matter, the order of mandamus sought would serve a practical purpose and have a practical effect.

CONCLUSION

66. The short conclusions to the determinative questions set out above under the caption "ISSUES" are as follows:

(i) Whether the Applicant has delayed in bringing her application? – Yes, she did delay.

(ii) Whether there is sufficient basis to extend time? – Yes, there is a sufficient basis for extending time.

(iii) Whether the Applicant is also entitled to the core relief claimed at paragraphs 2(a) to (e) of the application for leave? – Yes, the Applicant is entitled to claim the said relief.

(iv) Whether the Applicant has an arguable ground for Judicial Review with a realistic prospect of success? – Yes, the Applicant does have a realistic prospect of success.

(v) Whether the Applicant has an alternative remedy available to her? – Yes. However, the Applicant although theoretically having an alternative remedy available, it is not a preferred *alternative* in the circumstances.

67. For the reasons provided above, **IT IS HEREBY ORDERED THAT:**

I. Judgment for the Applicant;

II. The time for the filing of this application for leave to apply for judicial review be and is hereby extended to bring it within time;

III. Leave be and is hereby granted to the Applicant to apply for Judicial Review for the following relief:

a. A declaration that the First and/or Second Respondent/Intended Defendants are in breach of their statutory duty to convene a Medical Board for the purpose of having the Applicant **examined with a view to ascertaining whether or not the officer should be retired on grounds of ill health and to assist it in determining how it should fairly and correctly classify her injury leave or absence from duty;**

b. A declaration that the First and/or Second Respondent/Intended Defendants are guilty of unreasonable delay in performing their statutory duty pursuant to Regulations 59-60 of the Statutory Authority Service Commission Regulations and/or its administrative duty pursuant to Personnel Department Circular No. 2 of 1996 dated October 7th 1996 to convene a Medical Board for the purpose of having the Applicant examined to determine her fitness for further service and/or to determine whether Applicant's absence from duty for the period June 29th 2017 to present should be classified as 'injury leave' with pay;

c. An order of mandamus to compel the First and Second Respondent/Intended Defendant to convene a Medical Board pursuant to Regulations 59-60 of the Statutory Authority Service Commission Regulations and/or its administrative duty pursuant to Personnel Department Circular No. 2 of 1996 dated October 7th 1996 for the purpose of having the Applicant examined to determine her fitness for further service and/or to determine whether Applicant's absence from duty for the period June 29th 2017 to present should be classified as 'injury leave' with pay;

d. A declaration that the Applicant's legitimate expectation that she would be assessed before the Medical Board and her absence from duty for the period June 29th 2017 to present would be classified as 'injury leave' with pay has been breached;

e. A Declaration that the Applicant has been treated unfairly contrary to the principles of natural justice pursuant to Section 20 of the Judicial Review Act;

f. Damages;

g. Costs; and

h. Such further other orders, directions or writs as the Honourable Court considers just and as the circumstances of this case warrants pursuant to Section 8(1) (d) of the Judicial Review Act**.**

IV. This Order granting leave is conditional on the Applicant/Intended Claimant making a Claim for Judicial Review within 28 days hereof in accordance with Part 56 Rule (4) (11) of the Civil Proceedings Rule 1998, as amended.

V. This matter is referred to the Registrar to be reassigned to a Judicial Officer for further directions (if necessary) and to hear and determine the substantive Claim for Judicial Review.

DAVID C. HARRIS

HIGH COURT JUDGE

SEPTEMBER 11TH 2020