

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Cv. 2008-04363

BETWEEN

IMTIAZ MOHAMMED

CLAIMANT

AND

PUBLIC SERVICE COMMISSION

PUBLIC SERVICE EXAMINATION BOARD

AND

TRINIDAD AND TOBAGO FIRE SERVICE

EXAMINATIONS BOARD

DEFENDANTS

BEFORE THE HONOURABLE MADAME JUSTICE DEAN-ARMORER

APPEARANCES

Mr. A. Ramlogan & C. Bhagwandeem for the Claimant.

Mr. R. Martineau S.C. & A. Ramsaran for First and Second Defendants.

Mr. I. Benjamin for the Third Defendant.

JUDGMENT

Introduction

In this application for judicial review, the Claimant, a fire officer, challenges the legality of the appointment of the Fire Service Examinations Board by the Minister of National Security under Regulation 14 of the *Fire Service (Terms and Conditions of Employment) Regulations*¹ and the subsequent adoption by the Public Service Commission of the results of examinations held under the purview of the Examinations Board. In the course of this judgment, the Court considered the

¹ Ch. 35:50 (Subsidiary legislation)

decision of their Lordships in *Cooper and Balbosa v Director of Personnel Administration*² and its applicability to the Fire Service Examinations Board.

Procedural History

1. On 5th November, 2008, the Claimant filed his *ex parte* application for leave to apply for judicial review pursuant to Part 56.3 of the *Civil Proceedings Rules 1998*.
2. On 21st November, 2008, leave was granted to the Claimant to apply for the following orders:
 - “1. *A declaration that the appointment of the present Fire Service Examinations Board by the Minister of National Security pursuant to section 14 of the Fire Service (Terms and Conditions of Employment) Regulations 1998 is illegal null and void and of no legal effect ...*’
 2. *An order of certiorari, quashing the appointment of the present Fire Service Examinations Board appointed by the Minister of National Security pursuant to section 14.*
 3. *Alternatively and/or additionally a further declaration that the Examinations Board by a Cabinet Minister pursuant to section 14 of the Fire Service Regulations 1998 is illegal and unconstitutional.*
 4. *An order of certiorari quashing the decision of the Public Service Commission set out in Station Notice No. 3 of 2008 adopting the results of the Fire Sub-Officer Practical Examinations 2006 and the Fire Service Promotion Examinations Board.*
 5. *A declaration that it is the sole responsibility of the Public Service Commission to appoint the Examinations Board referred to in the aforesaid regulation and Regulation 14.”*

² Privy Council Appeal No. 47 of 2005; (2006) 68 WIR 477

Grounds

In his *ex parte* application for leave, the Claimant relied on the following as the grounds of his application:

- “1. *Regulation 14 (1) of the Fire Service (Terms and Conditions of Employment) Regulations 1998 mandates the relevant Minister to appoint in writing an Examinations Board for the Fire Service for the purpose of setting and conducting promotion examinations.*
2. *Regulation 6 states that firefighters must pass practical examinations conducted by the Examinations Board.*
3. *The Examinations Board is defined in Regulation 2 as the Examinations Board established under Regulation 14.*
4. *The duties and responsibilities of the Fire Service Promotion Examinations Board (appointed by the Minister of National Security) are identical to those of the lawfully appointed Public Service Examination Board. This amounts to unlawful usurpation by the former illegal board of the lawful duties of the latter board.*
5. *The setting and conducting and assessing of examinations for promotion for various ranks in the Fire Service ... is an integral part of the exercise of the jurisdiction to promote.*
6. *Section 121 of the Constitution vests the sole and exclusive jurisdiction of the right to promote fire officers in the independent Public Service Commission. As such only the Public Service Commission can lawfully appoint an Examinations Board for the purpose of setting conducting and assessing promotion examinations in the fire service.*
7. *The Minister or the Executive Arm of the State therefore has no power to appoint such an Examinations Board and the appointment of this Board by the Minister is therefore illegal, unconstitutional, null and void and of no legal effect.*
8. *The Public Service Examination Board by Station Notice No. 3 of 2008 purported to adopt the results of the Fire Sub-Officer Practical Examinations 2006 and Promotion Examinations 2006 conducted by the Fire Service Promotion Examinations Board appointed by the Minister of National Security. The appointment of the Fire Service Promotion Examinations Board by the Minister*

and/or the conduct of promotion examinations in the fire service by this Board is illegal, unconstitutional, null and void and of no legal effect.

9. *The Public Service Examination Board could not adopt these illegal results and the decision to adopt same is illegal null and void and of no legal effect. To do so would conflict with the policy of the Constitution which seeks to preserve the independence of the Service Commissions. It amounts to an abdication of its constitutional duties and/or an improper and illegal delegation of its function.*
10. *The adoption of these illegal results which were conducted by a board without lawful authority and jurisdiction to do so.*
11. *The Public Service Examination Board is the only lawful body that can conduct promotion examinations for the Fire Service in Trinidad and Tobago The adoption of these results amounts to a breach of or omission by the Public Service Commission to perform its duties under the Constitution. It is ultra vires and contrary to law”*

The Claimant also relied on grounds identified at section 5(3), (a), (c), (e), (f), (i), (m) and (o) of the *Judicial Review Act*³.

Facts

1. There was no cross-examination in this matter and the relevant facts were to be gleaned from the following affidavits:
 - (i) The affidavit of the Claimant filed on 5th November, 2008 in support of his application for leave to apply for judicial review;
 - (ii) The affidavit of the Claimant filed on the 11th December, 2008, following the grant of leave.
 - (iii) The affidavit of Gloria Edwards-Joseph filed on the 26th March, 2009 on behalf of the First and Second Defendants.
 - (iv) The affidavit of Keith Greaves filed on 2nd April, 2009 on behalf of the Third Defendant.

³ Ch. 7:08

2. The Claimant, at the time of the commencement of proceedings, was a firefighter having joined the fire service on 1st August, 1987.
3. The Fire Service promotion examinations were held between October and December, 2006, under the supervision of the Fire Service Examinations Board. The Claimant was a candidate at those examinations.
4. In July, 2007, the Chief Fire Officer published Station Notice No. 13 of 2007. This Station Notice bore a list of candidates who had been successful in the 2006 examination.
5. On 14th December, 2007, the Public Service Commission appointed the Public Service Examination Board, in the wake of the decision of the Judicial Committee of the Privy Council in *Cooper and Balbosa v Director of Personnel Administration*⁴.
6. On that day, the Public Service Commission also took a decision to adopt the results of the 2006 examination, which had been conducted by the Fire Service Examinations Board.
7. On 17th January, 2008, the Director of Personnel Administration (“the DPA”) wrote to the Permanent Secretary in the Ministry of National Security in order to confirm that the Public Service Commission was the sole body responsible for the conduct of examinations.
8. In that letter, the DPA wrote under the caption of “*the Fire Service Examinations Board ...*” and referred to the Privy Council, decision of *Cooper and Balbosa*. The DPA had this to say:

“In this judgment the Privy Council recognized that the sole responsibility for the conduct of examinations for appointment and promotion lies with the Commission ...”

The DPA concluded:

“The constitutional functions and the supporting regulations of the Police Service Commission and the Public Service Commissions are identical so that the Public Service Commission has the responsibility for the conduct of examinations ... The Fire Service Examinations Board therefore must be appointed by the Public Service Commission.

⁴ Privy Council Appeal No. 47 of 2005

9. On 21st January, 2008, the DPA informed the Chief Fire Officer of the adoption of the results of 2006 and on the 31st January, 2008, the Chief Fire Officer published Station Notice 3 of 2008 which bore the following notation:
“The Public Service Examination Board has adopted the results of the Fire Sub Officer Practical Examinations 2006 conducted by the Fire Service Promotion Examinations Board. Consequently, Station Notice No. 13 of 2007 ... is hereby rescinded.”
10. In April, 2008, persons identified in Station Notice 3 of 2008 were appointed to act in higher posts. It was also in April, 2008, according to the Claimant’s evidence, that he became aware of the Fire Service Examinations Board’s decision to adopt the 2006 results.

LAW

1. The parties in this matter relied on the written submissions of their respective attorneys-at-law. Mr. Martineau, S.C. for the first and second Defendants made an oral submission in reply on the issue of delay, following which the Court received further written submissions on the issue of delay.
2. ***Cooper and Balbosa v Director of Personnel Administration***⁵.
In the landmark decision of ***Cooper and Balbosa*** their Lordships considered the constitutionality of the Public Service Examination Board, as appointed by the Cabinet. In particular their Lordships considered whether the appointment by the Cabinet of the Public Service Examination Board conflicts with the guidance given in ***Thomas v The Attorney General of Trinidad and Tobago***⁶.

At paragraph 28 of the judgment, Lord Hope of Craighead had this to say:

“The Constitution requires that the powers which it has given to the public service Commissions, and to the Police Service Commission in particular, to appoint persons to hold or act in public offices and to make appointments on promotion must be exercised free from inference or influence of any kind by the

⁵ *Ibid*

⁶ (1981) 32 WIR 375

executive. There is room in this system for the taking of some initiatives by the Cabinet. A distinction can be drawn between acts that dictate to the Commissions what they can or cannot do, and the provision of a facility that the Commissions are free to use or not to use as they think fit. The appointment of a Public Service Examination Board by the Cabinet for the Commissions to use if they choose to do so is not in itself objectionable. The advantages of using such a centralized body are obvious, and in practice the Commissions may well be content to continue to make use of them. The objection which has given rise to these proceedings lies in the misapprehension as to where the responsibility for choosing that system lies. In their Lordships' opinion the proposition in the media release of 8 July 2002 that the sole responsibility for the conduct of examinations falls under the Public Service Examination Board's purview was based on a profound misunderstanding of where the line must be drawn between the functions of the Commissions and those of the executive."

Lord Hope continued this at paragraph 29:

"There is no doubt that the Police Service Commission Regulations envisage the existence of an Examination Board. Regulation 15(5) requires that the interview of a police officer who is successful in the promotion examination for promotion to any office in the Service must be conducted jointly by, among others, the chairman of the Examination Board. So the appointment of an Examination Board is an essential part of the whole process. The Constitution, for its part, does not permit the executive to impose an Examination Board on the Commission of the executive's own choosing. It is for the Commission to exercise its own initiative in this matter, free from influence or interference by the executive. It may, if it likes, make use of a Public Service Examination Board appointed by the Cabinet. There may be advantages in its doing so. This no doubt is a service that must be paid for somehow. Where resources are scarce the Commission cannot be criticized if it chooses to make use of an existing facility. On the other hand it cannot be

criticized if it chooses not to do so. The Constitution requires that it must have the freedom to exercise its own judgment. It must be free to decline to use the services of the Public Service Examination Board if it suspects that the executive is seeking to use the Board as a means of influencing or interfering, whether directly or indirectly, with appointments to or promotions within the Police Service. Those are matters that lie exclusively within the responsibility of the Police Service Commission.”

3. ***Regulation 14 of the Fire Service (Terms and Conditions of Employment) Regulations***⁷

Regulation 14, which is impugned in this Claim, was made by the President under section 34 of the ***Fire Service Act***⁸. Regulation 14 provides:

14. (1) An Examinations Board appointed in writing by the Minister shall -

(a) set and conduct at least once a year the examination which is to be passed by an officer prior to appointment to an office in the Service; and

(b) assess each examination paper submitted.

(2) A candidate shall apply in writing to sit an examination referred to in subregulation (1) and shall undergo an examination conducted by the Examinations Board.

Reasoning and Decision

1. In my view, two principles emerge from the decision of their Lordships in ***Cooper and Balbosa v Director of Personnel Administration***⁹:

a. The sole responsibility for the conduct of examinations lies with the Commission in which the Constitution invests responsibility for appointments and promotions of the officers in question. The principle which had been applied in ***Cooper and Balbosa*** in respect of police officers and the Police Service Commission is equally applicable to fire officers and the Public Service Commission; and

⁷ Ch. 35:50 (Subsidiary legislation)

⁸ Ch. 35:50

⁹ (2006) 68 WIR 477

- b. The manner in which the Commission in question discharges its responsibility is a matter for the Commission itself to determine. This may include making use of an examination board appointed by the Cabinet or a member of the executive such as a Minister of Government.
2. The undisputed evidence in this case and in particular the letter of 17th January, 2008 from the Director of Public Administration to the Permanent Secretary, Ministry of National Security suggests that the Director of Public Administration was acutely mindful of the import of *Cooper and Balbosa* and that the sole responsibility for the conduct of the fire service examination rested upon the shoulders of the Public Service Commission.
 3. Thereafter, having accepted its constitutionally conferred responsibility, it was within the power of the Public Service Commission to discharge its responsibility as it saw fit. It was within the power of the Public Service Commission to make use of an examination board appointed by the Minister of National Security.
 4. In the light of the decision in *Cooper and Balbosa*, the appointment of an examination board by the Minister of National Security is not objectionable *per se* (see paragraph 28, *Cooper and Balbosa*¹⁰). The illegality would arise where the Commission permits the examination board to be used as an instrument of interference by the executive. In my view there is no evidence of such interference in this Claim.
 5. Accordingly it is my view and I hold that there had been no illegality in the adoption by the Public Service Commission of the results of the 2006 examination. The Claim is therefore dismissed.
 6. Having regard to my finding at paragraph 5 supra it is unnecessary for this Court to rule on the issue delay, which, if applicable, would have operated as a discretionary bar to the grant of relief.

¹⁰ (2006) 68 WIR 477

Order

1. The Claim filed herein on the 5th November, 2008 is dismissed.
2. The Claimant do pay to the First and Second Defendants costs fit for two counsel and the Third Defendants costs fit for Counsel.
3. Costs to be quantified by the Register of the Supreme Court in default of agreement.

Dated this 15th day of February, 2011.

Mira Dean-Armorer¹¹
Judge

¹¹ Judicial Research Assistant – Camille Warner
Secretary – Mrs. Irma Rampersad