

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2018-00197**

**IN THE MATTER OF THE APPLICATION FOR JUDICIAL REVIEW PURSUANT TO
THE JUDICIAL REVIEW ACT CHAPTER 7:08**

BETWEEN

STEVE REGIS

CLAIMANT

AND

THE TEACHING SERVICE COMMISSION

DEFENDANT

Before the Honourable Madame Justice Margaret Y. Mohammed

Dated the 25th September 2018

APPEARANCES:

Mr. Rennie Gosine Attorney at law for the Claimant.

Ms. Natoya Moore and Ms. Maria Belmar-Williams instructed by Ms. Svetlana Dass and Ms. Khadine Matthews Attorneys at law for the Defendant.

JUDGMENT

1. The Claimant is a teacher at the Queen's Royal College and holds the substantive post of Teacher III within the Teaching Service. The Defendant is the statutory body under section 125 of the **Constitution of Trinidad and Tobago**¹ and is responsible for the appointment,

¹ Chapter 1:01

promotions, transfer, removal and the exercise of disciplinary control over persons holding or acting in public office in the Teaching Service established under the **Education Act**².

2. The Claimant instituted the instant action against the Defendant seeking the following reliefs:

- (a) A declaration that the decision made to demote the Claimant from Teacher III to Teacher II is null, void and of no effect.
- (b) A declaration that the impugned decision is unlawful, unfair and unreasonable.
- (c) A declaration that the Claimant is entitled to remain in his substantive position as Teacher III as he was appointed on 13th November 2007 and to receive the appropriate salary based on his appointed position.
- (d) A declaration that the Defendant violated and/or contravened the legitimate expectation of the Applicant that he would remain in this position and be paid his salary as a Teacher III.
- (e) A declaration that the Claimant was treated unfairly.
- (f) A declaration that the Claimant is entitled to his pay in the sum of \$15,511.00 (COLA deducted) for the month of July and continuing.
- (g) An Order of Mandamus directing the Defendant to reinstate the Claimant to his position of Teacher III and pay the Claimant the sum owed to him.
- (h) An Order prohibiting the Defendant from embarking upon any initiative to reduce the Claimant's salary or to downgrade the Claimant's position until the determination of this claim.
- (i) Damages.
- (j) Costs.

² Chapter 39:01

3. The Claimant filed his affidavit on the 18th January 2018 in support of his reliefs and the Defendant's position was set out in the affidavits of Martel Waldron, Acting Executive Director, Human Resource Management, Teaching Service Commission, Service Commission Department filed on the 9th April, 2018.
4. According to the Claimant he has been employed with the Teaching Service Commission, the Defendant on a temporary basis as a Teacher III (Secondary) since 8th September 2003. He was assigned to the Queen's Royal College. At the commencement of his employment he received a salary of \$6,179.00 per month in Grade 4.
5. By letter dated 13th November 2007, the Claimant was further appointed as a Teacher III (Secondary) in the Teaching Service with effect from 1st September 2005. He was allotted for duty at the Queen's Royal College with a Grade 4 salary of \$8,054.00-\$9,697.00/\$10,870.00 per month (2005). By letter dated 3rd December 2007, the Claimant was permanently appointed by the Defendant and by letter dated 17th November 2008, the Defendant confirmed the Claimant's appointment as Teacher III (Secondary) in the Teaching Service with effect from 1st September 2005.
6. The Claimant has been reporting to work in the Teaching Service pursuant to his appointment and has been receiving the salary of a Teacher III, that is, Grade 4. On or about September 2014, the Claimant took two-year leave of absence to take up the McKensley Nathansingh Scholarship at Cipriani College of Labour and Cooperative Studies. The Claimant completed this in or about September 2016. By letter received on 14th September 2016, the Claimant was re-introduced to resume duty as a Teacher III in the same vacancy that he previously occupied. The Claimant reassumed his position as Teacher III at the Queen's Royal College and continued to be paid a monthly salary of \$15,511.00 until July 2017.
7. On or about 4th September 2017, the Claimant collected his pay slips for the months of May, June and July 2017. He observed that his salary for the months of May and June, less

his COLA was consistent with his Grade 4 salary and updated increments. However, his salary for July 2017 was decreased by \$2,572.00 amounting to \$12,939.00.

8. On the said 4th September 2017, the Claimant made inquiries at the Paysheets Department, Ministry of Education and he was informed that authorization was given by the Human Resources Department of the Ministry of Education to downgrade his salary to that of a Teacher II. The Claimant visited the Human Resources Department and spoke to the attending clerk and he was informed that his salary was downgraded to Teacher II because he was assessed at his interview in 2001 as a Teacher II. Further, an officer representing herself to be in charge of Queen's Royal College indicated to the Claimant that she used his assessment as Teacher II and consequently in preparing his re-introduction letter after his two-year leave, used that assessment.
9. According to the Claimant, by virtue of his re-introduction letter from the Ministry of Education received by the Principal, Queen's Royal College on 14th September 2016, he was reintroduced to the Teaching Service as a Teacher III and not as a Teacher II.
10. By letter dated 6th September 2017, the Claimant wrote to the Permanent Secretary of the Ministry of Education, the Chief Education Officer of the Ministry of Education, the Director of School Supervision, the School Supervisor III and Mr. David Simon, Principal of Queen's Royal College in an effort to obtain clarification. He received no response. He also presented his documents to the Industrial Relations Officers of the Trinidad and Tobago Unified Teachers Association, Messrs. Valentine and De Freitas and requested that a formal grievance procedure be initiated. This did not materialize.
11. By Pre-Action Protocol letter dated 3rd October 2017, the Claimant caused his Attorney at Law to write to the Permanent Secretary of the Ministry of Education, copied to the Chief Education Officer of the Ministry of Education, the Director of School Supervision, the School Supervisor III and Mr. David Simon, Principal of Queen's Royal College. By letter dated 16th October 2017, the Legal Services Division of the Ministry of Education responded to the Claimant's Attorney's letter indicating that the matter was receiving

urgent attention and that they have requested the relevant information and instructions to facilitate a response to the letter dated 3rd October 2017.

12. By letter dated 5th December 2017, the Claimant caused his Attorney at Law to issue another letter to the Ministry of Education but he received no response.
13. Mr. Waldron has not disputed the various letters of appointments which ultimately ended with the Defendant's confirmation of the Claimant's appointment as a Teacher III (Secondary) in the Teaching Service with effect from 1st September 2005. According to Mr. Waldron, by memorandum dated dated 14th September 2017 from the Senior Human Resource Officer, Ministry of Education to the Commission, the Ministry of Education recommended inter alia:-

“The Teaching Service Commission is hereby approached to rescind the appointment of Mr. Steve Regis as Teacher III (Secondary) and instead to appoint Mr. Regis as Teacher II, (Secondary) with effect from 1st September, 2005. Mr. Steve Regis was assessed as Teacher II, History by letter dated 5th June, 2001. Mr. Regis was successfully interviewed at the Teaching Service Commission on 6th August, 2002 and assumed duty at the Queens Royal College with effect from 8th September, 2003.

Approval for Temporary Appointment was granted to Mr. Regis as Teacher III, for the period 8th September, 2003 to 7th December, 2003 and salary was paid to him as such under Delegated Authority for that period.

By memorandum dated 25th February, 2004, your department was approached to approve the continued employment on a temporary basis of Mr. Regis as Teacher III (Secondary), with effect for 8th December, 2003.

This recommendation was erroneous.

The Commission by memorandum dated 28th February, 2007 granted approval as requested for the continued temporary appointment of Mr. Regis as Teacher III (Secondary) with effect from 8th December, 2003. Mr. Regis was appointed Teacher III (Secondary), Queens Royal College, subject to medical fitness and on one (1) years' probation with effect from 1st September, 2005 and was subsequently confirmed in the position of Teacher III (Secondary).

During the collation of the data collect at the recently concluded School Audit exercise it was discovered that there was no record of Mr. Regis completing the requisite courses for re-assessment as Teacher III. In April, 2017 Mr. Regis' file was forwarded to the Director of Curriculum Division for review and reassessment. The initial assessment as Teacher II (History) was maintained.

By letter dated 3rd May, 2017 Mr. Regis was informed through the Principal, Queens Royal College that his assessment as Teacher II (Secondary) was maintained and that he should seek to pursue courses in the four (4) subject areas listed if he was desirous of obtaining a re-assessment as Teacher III (Secondary).

In June 2017 the Director of Finance and Accounts was instructed to cease paying Mr. Regis as Teacher III and instead to pay him as Teacher II in keeping with his assessment.

In light of the above, the Director of Personnel Administration (Teaching Service Commission) is asked to:-

- (i) Rescind the appointment of Mr. Regis as Teacher III (Secondary) Queen's Royal College with effect from September 01, 2005 in the Office of Teacher III (Secondary) Queen's Royal College/Technical Vocational Teacher IV consequent on the retirement from the teaching service of Mr. Cyril De Coteau, Teacher III (Secondary) with effect from 28/08/03.

(ii) Appoint Mr. Steve Regis as Teacher II (Secondary), Queen's Royal College with effect from September 1, 2005 in the Office of Teacher II (Secondary) Queen's Royal College/Technical Vocational Teacher IV consequent on the retirement from the teaching service of Mr. Cyril De Coteau, Teacher III (Secondary) with effect from 28/08/03."

18. Mr. Waldron also stated that on 21st September, 2017, the Director of Personnel Administration received the said memorandum dated 14th September 2017 but it was returned to the Ministry of Education because proper protocol was not followed. According to Mr. Waldron, the proper protocol is that any correspondence sent from a Ministry should be sent under the hand of the Permanent Secretary, not by a Senior Human Resource Officer at the Ministry. The Ministry of Education was advised to resend same through the proper channel.
19. By memorandum dated 27th October 2017, the Permanent Secretary, Ministry of Education wrote to the Director of Personnel Administration, requesting that the Claimant's appointment as a Teacher III be rescinded and he be appointed as a Teacher II.
20. By memorandum dated 28th November 2017, the Permanent Secretary Ministry of Education wrote to the Director of Personnel Administration, requesting cancellation of the appointment of the Claimant as a Teacher III 'on a temporary basis'; cancellation of the appointment of the Claimant as a permanent Teacher III; appointment of the Claimant as temporary basis Teacher II; and appointment of the Claimant as a permanent Teacher II.
21. Mr. Waldron stated that when the Ministry of Education makes a recommendation (appointment/promotion) the Service Commissions Department, through the hand of the Director of Personnel Administration, gathers all the relevant information (facts) and submits a 'Note' to the Defendant for its consideration, based on the recommendation contained in the correspondence.

22. Therefore, in February 2018, Mr. Waldron was preparing a Note relative to the said two memoranda received from the Ministry of Education to submit to the Defendant for their consideration. However, on 22nd February 2018, the Director of Personnel Administration on behalf of the Defendant, was served with the Claimant's Fixed Date Claim Form and Affidavit and therefore the Note was put on hold, pending the Court's determination of the matter.
23. On 21st March 2018, at the Defendant's statutory meeting, Mr. Waldron informed the Defendant of the Claimant's Fixed Date Claim Form and Affidavit and that a hearing was scheduled. To date the Commission has not considered the Ministry's recommendation to cancel and/or revoke the Claimant's appointment as a Teacher III. The Commission has not instructed anyone to cease payment of the Claimant's salary as a Teacher III. According to the current records of the Commission, the Claimant holds the substantive position of Teacher III within the Teaching Service.
14. Based on the evidence, the first issue to be determined is whether the adversity suffered by the Claimant was as a result of the decision of the Defendant. If the Claimant crosses this hurdle, the next issue is whether the Court can grant the reliefs he seeks.
15. In my opinion, the Claimant has failed to demonstrate from his own evidence that his adversity was due to a decision of the Defendant.
16. It is settled law that judicial review proceedings are against the decision maker. In **Michael Fordham's Judicial Review Handbook** at paragraph 4.7 the author stated that judicial review may be characterised as "too soon" and the Court may regard it inappropriate to rule on a grievance which is not yet "ripe" for review, and which may turn out not to have practical significance.
17. Under Regulation 126 of the Public Service Commission Regulations, as adopted by the Defendant, every application for first appointment to an office of teacher in the Teaching Service is to be addressed to the Permanent Secretary of the Ministry of Education on the

prescribed form. Regulation 126 outlines the Permanent Secretary's duty to check every application to ensure that the applicant is eligible for appointment to the office of teacher in accordance with the **Education Act** and the Regulations. According to Regulation 126 the Permanent Secretary has a duty to also forward the applications of all eligible applicants to the Defendant.

18. Paragraph 1 (1) of the Schedule to the Teaching Service Commission (Delegation of Powers) Order, 1969 (hereinafter referred to as "the said Schedule"), outlines the power delegated by the Defendant to the Permanent Secretary, Ministry of Education to appoint person temporarily in the office of Teacher for both Government and Government Assisted Schools, for a period not exceeding three months, from a priority list of candidates approved by the Defendant. There is no delegated power vested in the Permanent Secretary, Ministry of Education by the Defendant to rescind the appointment of an officer in a confirmed position. The Defendant has the sole responsibility to do so.
19. According to paragraph 15 of the Claimant's affidavit he visited the Paysheets Section of the Ministry of Education and was informed by the staff and verily believed to be true that authorization was given by the Human Resources Department of the Ministry of Education to demote him and downgrade his salary to that of a Teacher II.
20. Paragraphs 25 and 26 of Mr. Waldron's affidavit is clear that the Defendant has not considered the Ministry's recommendation to cancel and/or revoke the Claimant's appointment as a Teacher III; that the Defendant has not instructed anyone to cease payment of the Claimant's salary as a Teacher III; and that according to its records, the Claimant holds the substantive position of Teacher III.
21. There was no evidence from the Claimant that any adversity he has suffered is a result of a decision of the Defendant. From the evidence of Mr. Waldron, it appears that this was the action of the Ministry of Education which is an entirely different public body from the Defendant. Therefore, it is clear that any decision to demote the Claimant and downgrade his salary was not that of the Defendant. Having failed to establish that any adversity

suffered by the Claimant was not as a result of a decision of the Defendant, the issues of whether the Defendant acted unlawfully, unfairly or unreasonably do not arise for determination.

22. Even if the Claimant had proven that the Defendant had made the decision which was adverse to him, he still cannot obtain the relief he seeks since the role of the Court in judicial review matters is supervisory. In judicial review matters, the Courts have the responsibility of ensuring that the public authority in question does not misuse its powers or exceed its limits. The extent of the Courts' responsibility in relation to a particular exercise of power by a public authority depends on the particular circumstances, including the nature of the public authority in question, the type of power being exercised, the process by which it is exercised and the extent which the power of the public authority has limits or purposes which the courts can identify and adjudicate on³. It is a supervisory and not an appellate jurisdiction. Michael Fordham in **Fordham's Judicial Review Handbook (3rd edition)** paragraph 13.7 describes the approach to be taken by the Court as:

“In general, the Court looks at the matter under review from the point of view of the decision-maker whose approach is sought to be impugned. This means that judicial review is normally directed solely to that material which was before the decision-maker.”

23. The basis when the Court can intervene in judicial review matters was described in **R Crown Court at Manchester ex p. Mc Donald**⁴ as:

“It is important to remember always that this is judicial review of and not an appeal against the judge's decision. We can only intervene if persuaded that his decision was perverse, or that there was some failure to have regard to material considerations or that account was taken of immaterial consideration... Still less can we be persuaded by arguments that the judge should have reached a different

³ AXA General Insurance Ltd. v. HM Advocate [2011] UKSC 46

⁴ [1999] 1 WLR 841

conclusion because he should have attached more weight to one rather than another factor.”

24. Similar sentiments have been echoed in this jurisdiction in **Favianna Gajadhar v Public Service Commission**⁵ at paragraphs 48 and 49 as:

“48. In so far as the judge made an order of mandamus compelling the respondent to reappoint the appellant, we find that there was no justification for this. Indeed, both parties have agreed before this court that that relief is not appropriate. What is appropriate is an order of mandamus compelling the respondent to re-open its inquiry and reconsider the appellant’s reply/representations in light of this opinion so as and to ensure that natural justice and fundamental fairness are afforded the appellant in the process, and we so order.

49. Administrative actions generally review process and procedure and courts hesitate to substitute their opinions on the merits or to impose the decisions they may think are appropriate to make. Decision making is for the public authorities and the supervisory jurisdiction of the court is to scrutinize them for and insist on procedural propriety and the other public law principles that conduce to good public administration. Further, in public law relief is always discretionary. It must be shaped to meet the particular needs of each case.” (Emphasis added)

25. The declarations which the Claimant seeks that he is entitled to remain in his substantive position as a Teacher III and prohibiting the Defendant from embarking upon any initiative to reduce the Claimant’s salary or to downgrade his position until the determination of the instant action cannot be granted by the Court since those reliefs are entirely within the remit of the Defendant. Even if there was a decision and the Claimant had been treated unfairly, the Court in its supervisory function is mandated to refer such matters to the Defendant for reconsideration. In this case, this is not in issue.

⁵ Civil Appeal No. P170 of 2012

Conclusion

26. The Claimant has failed to demonstrate that the adversity suffered by him was as a result of the decision of the Defendant. The Defendant’s evidence demonstrates that the Defendant has not considered the Ministry’s recommendation to cancel and/or revoke the Claimant’s appointment as a Teacher III; that the Defendant has not instructed anyone to cease payment of the Claimant’s salary as a Teacher III; and that according to its records, the Claimant holds the substantive position of Teacher III. Any adversity the Claimant suffered was as a result of the actions of the Ministry of Education which is a different public body from the Defendant. Therefore, the issue of whether the Defendant acted unlawfully, unfairly or unreasonably does not arise for determination.

Order

27. The Claimant’s Fixed Date Claim filed on the 30th January 2018 is dismissed.
28. The Claimant to pay the Defendant its costs of the action to be assessed by the Registrar in default of agreement.

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Margaret Y Mohammed
Judge