

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-02797

Between

CHAD ANTOINE

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Thursday 18 June 2020

Appearances:

Mr. Kenneth Thompson for the Claimant

Mr. Duncan Byam instructed by Mr. Brent James for the Defendant

JUDGMENT

I. Introduction

[1] By Fixed Date Claim Form filed on 17 August 2015, the Claimant brought constitutional proceedings against the Defendant for allegedly breaching his right to equality of treatment by a public authority in the exercise of a public function guaranteed by **section 4(d) of the Constitution of Trinidad and Tobago** (hereinafter “**the Constitution**”). The Claimant sought redress pursuant to **section 14 of the**

Constitution for infringement of his constitutional right. The Claimant sought the following relief:

- (a) A declaration that the decision of the Commissioner of Police, a servant of the Defendant, whereby he failed to pay the Claimant pension and gratuity for his service in the Trinidad and Tobago Police Service as a result of the Claimant having been charged with a disciplinary offence, found guilty as charged, and dismissed from office, but paid pension and gratuity to former Assistant Superintendent of Police Mr. Endell Thomas, to whom the Claimant was similarly circumstanced, contravened the Claimant's fundamental right to equality of treatment from a public authority in the exercise of a public function, as guaranteed by **section 4(d) of the Constitution**.
- (b) An order requiring the Defendant and/or the Commissioner of Police to compute the Claimant's pension and gratuity and pay the same to the Claimant.
- (c) An order for disclosure of all relevant documents with respect to the gratuity paid to former Assistant Superintendent of Police, Mr. Endell Thomas, and the monthly pension of which he is in receipt.
- (d) An order for monetary compensation in favour of the Claimant for the breach of his aforesaid fundamental right.
- (e) Costs.
- (f) Interest.

II. Factual Background

- [2] The Claimant filed his affidavit in support of his Fixed Date Claim Form on 17 August 2015. In his affidavit, the Claimant deposed that on 4 February 1980, he enlisted as a police constable in the Trinidad and Tobago Police Service (hereinafter "the TTPS") as constituted under the **Police Service Act, Chap 15:01**.
- [3] On 16 January 2001, whilst the Claimant was attached to the Rapid Response Branch of the TTPS, he was charged by the Police Service Commission (hereinafter "the

Commission”) with one count of the disciplinary offence of discreditable conduct contrary to **Regulation 163(2)(a) of the Police Service (Amendment) Regulations, 1990.**

- [4] The charge arose out of a complaint that was made against the Claimant by Livia Gay and Bisnath Warren. The essence of the complaint was that on 5 January 2000 at around 11:30pm at the Queen’s Park Savannah South, Port of Spain, whilst the Claimant was on duty, he insisted that Ms. Gay and Mr. Warren have sexual intercourse in his presence in motor vehicle registration HBE 5207 in which they were sitting.
- [5] After the Claimant was charged with the disciplinary offence, the Commission appointed a three-man disciplinary tribunal to hear the evidence and find the facts with respect to the charge. The Claimant took part in the hearing before the disciplinary tribunal. The disciplinary tribunal heard evidence from both sides and submitted a report on its findings to the Commission. Thereafter, the Commission, by letter dated 30 June 2003, dismissed the Claimant from service effective on the date on which he received the letter, 7 July 2003.
- [6] On 14 July 2003, the Claimant appealed the decision of the Commission in the letter dated 30 June 2003 to the Public Service Appeal Board (hereinafter “the Board”). The Claimant lodged the appeal pursuant to **section 132(1) of the Constitution.** The Board heard the Claimant’s appeal and dismissed same on 23 March 2004.
- [7] The Office of Police Constable in the TTPS is a public office which carries with it the right to pension and gratuity. At the time of the Claimant’s dismissal, his monthly salary was \$3,800.00 and he was in receipt of allowances for housing and meals. As a direct result of his dismissal, the Claimant has lost his salary, allowances, pension and gratuity.
- [8] Pensions and gratuities are paid to police officers by the Commissioner of Police, a servant of Trinidad and Tobago, on behalf of the State of Trinidad and Tobago. When the Claimant was dismissed in 2003, such benefits were paid pursuant to the

provisions of the **Pensions and Gratuities Rules** contained in the **Sixth Schedule to the Police Service Act, Chap 15:01**.

- [9] At the time of the Claimant's dismissal, he had over 23 years' service in the TTPS. The Claimant has made a rough calculation of the sum to which he is entitled as gratuity for such service. The Claimant arrived at a figure in the region of \$160,000.00. The Claimant has also calculated his monthly pension to be about \$3,700.00.
- [10] According to the Claimant, in or about 1970, Former Assistant Superintendent of Police, Mr. Endell Thomas (hereinafter "ASP Thomas") was charged by the Commission with three disciplinary offences namely, two counts of neglect of duty contrary to **Regulation 74(2)(d) of the Police Service Commission Regulations 1966** and one count of failure to conduct an investigation in a proper manner contrary to **Regulation 74(1)(a) of the Police Service Commission Regulations 1966**. ASP Thomas appeared before a disciplinary tribunal appointed by the Commission. The tribunal heard the evidence and submitted a report to the Commission. The Commission considered the report and found ASP Thomas guilty and dismissed him from service.
- [11] According to the Claimant, he was similarly circumstanced to ASP Thomas. However, the Commissioner of Police in or about 2010 paid ASP Thomas pension and gratuity for his service in the TTPS but failed to pay the Claimant the same benefits. The Claimant averred that the conduct of the Commissioner of Police, in effecting payment of the aforesaid benefits to ASP Thomas while denying the Claimant the same benefits, constituted a contravention of his fundamental right to equality of treatment from a public authority in the exercise of a public function as guaranteed by **section 4(d) of the Constitution**. The State of Trinidad and Tobago discriminated against him and treated him unfairly by denying him his pension and gratuity while granting those same benefits to ASP Thomas, to whom he was similarly circumstanced.
- [12] By letter dated 3 July 2015, the Claimant's attorney-at-law wrote to the Solicitor General complaining about his dismissal without pension and gratuity. The letter also stated that the treatment meted out to him by the Commissioner of Police constituted a contravention of his aforesaid right owing to the fact that the Commissioner of Police had paid pension and gratuity to ASP Thomas. The Claimant's attorney-at-law asked

that the benefits be paid to him on or before 3 August 2015. However, at the time of filing the Claim (17 August 2015), the Commissioner of Police had not paid the Claimant his pension and gratuity.

[13] There is no evidence filed on behalf of the Defendant before the Court. Counsel for the Defendant, Mr. Byam, had informed the Court that the Defendant did not intend to file any evidence in the matter but wished to make submissions on the question of law. However, there was no filing of submissions by the Defendant up to the time of preparation of this Judgment notwithstanding several enquiries made by Court staff of the Solicitor General's Department regarding the non-filing of the Defendant's submissions.

[14] As a result of no evidence being led by the Defendant in response to the Claimant's affidavit in support, all the facts and evidence adduced by the Claimant remained unchallenged. In those circumstances, the only issues for determination in this matter are issues of law, that is, whether in law, the Claimant is entitled to the declaration/relief sought given the undisputed evidence.

III. Submissions

[15] Counsel for the Claimant, Mr. Thompson, submitted that the fundamental right in issue is that which is guaranteed by **section 4(d) of the Constitution** namely, *the right of the individual to equality of treatment from a public authority in the exercise of a public function*. It was further submitted that this Court has jurisdiction to hear and determine this Claim pursuant to **section 14 of the Constitution**.

[16] Mr. Thompson contended that in this case, the public officer who is alleged to have contravened the Claimant's fundamental right is the Commissioner of Police, a senior public officer who is empowered by **section 123A of the Constitution** to manage the service. Furthermore, the Commissioner is now the head of the TTPS which is now constituted under the **Police Service Act 2006**.

[17] Mr. Thompson submitted that one of the functions of the Commissioner of Police is to pay pension and gratuity to police officers pursuant to the **Pensions and Gratuities Rules** contained in the **Sixth Schedule to the Police Service Act, Chap 15:01**. It was

further submitted that there is no private dimension to the payment or non-payment of pension and gratuity to police officers. Therefore, the Commissioner performed a public function when he paid ASP Thomas pension and gratuity and refused to pay the same to the Claimant. Mr. Thompson referred the Court to **Rule 4 of the Pensions and Gratuities Rules**, in particular, **Rule 4(3)**. Mr. Thompson contended that the effect of this Rule (**Rule 4(3) of the Pensions and Gratuities Rules**) is that a police officer who has served for ten years or more and who is dismissed or have his service dispensed with and is not otherwise eligible for pension, may be granted a monthly pension not exceeding 1/960ths of a month's pay for each completed month of service. Consequently, the Claimant has a right to be paid pension and gratuity for his service under **Rule 4(3) of the Pensions and Gratuities Rules**.

[18] Mr. Thompson submitted that the principle of equality has long been recognised as a fundamental rule of law and that it predates the Constitution. Counsel cited the **Declaration of Rights of Man 1789** which recognised that “*Men are born and remain free and equal rights*”. Counsel submitted that it is further proclaimed in the **American Declaration of Independence** that “*the self-evident truth that all men are created equal*”.

[19] Mr. Thompson contended that the English common law sets its face against discrimination. He referred to the authorities of **Constantine v Imperial Hotel**¹ where the plaintiff was refused hotel accommodation on the ground of his race and **Nagle v Fielden**² where a Jockey Club refused a woman a trainer's licence on the ground of her sex.

[20] Mr. Thompson contended that insofar as bills of rights are concerned, the right of equality is ubiquitous, existing as it does in the Constitution of every democratic country. Counsel cited the Privy Council case of **Matadeen v Pointu**³ wherein the Board at page 26 opined as follows:

“Equality before the law requires that persons should be uniformly treated unless there is some valid reason to treat them differently. Their Lordships

¹ [1944] KB 693

² [1966] 2 QB 433

³ [1988] 3 WLR 18

do not doubt that such a principle is one of the building blocks of democracy and necessarily permeates any democratic constitution. Further, their Lordships would go further and say that treating like cases alike and unlike cases differently is a general axiom of general behaviour.”

[21] Mr. Thompson contended that the Constitution recognises and affords protection to the fundamental right to equality otherwise referred to as the right to freedom from discrimination. Such recognition and protection are found not only in **section 4(d) of the Constitution** but also in **section 4(b) of the Constitution** namely, *the protection of the law and equality before the law*. It was further contended that those are free-standing rights that are not subject to qualifications or limitation unlike similar rights which exist in the Constitutions of Mauritius and a few other countries which prohibit discrimination only on race and other specified grounds. Counsel referred to **Matadeen v Pointu** (*supra*) in support of this proposition.

[22] Mr. Thompson submitted that a finding by the Court that the Claimant’s right to equality of treatment has been contravened necessarily requires a prior finding that the Claimant was similarly circumstanced to ASP Thomas. Counsel relied on the Privy Council authority of **Mohanlal Bhagwandeem v The Attorney General of Trinidad and Tobago**⁴.

[23] Mr. Thompson averred that as the Claimant’s evidence showed, both the Claimant and ASP Thomas were officers of the TTPS over whom the Commission had powers of disciplinary control. Both the Claimant and ASP Thomas were charged by the Commission with disciplinary offences, each was tried by a disciplinary tribunal appointed by the Commission and found guilty as charged. As a consequence, they were both dismissed from the TTPS by the Commission without pension and gratuity. However, some 35 years after ASP Thomas’ dismissal, he was paid pension and gratuity by the Commissioner for his service in or around 2010 whereas the Commissioner failed and/or refused to pay same to the Claimant. Counsel referred to

⁴ Privy Council Appeal No 43 of 2003

the authorities of Annissa Webster v The Attorney General of Trinidad and Tobago⁵ and Alleyne v The Attorney General of Trinidad and Tobago⁶.

[24] Mr Thompson, in his submissions, presumed that the payment of pension and gratuity to ASP Thomas was effected pursuant to the Rule 4(3) of the Pensions and Gratuities Rules which authorises the Commissioner to pay pension to a police officer who has, inter alia, been dismissed. Mr. Thompson submitted that the Claimant is not certain with respect to the legal basis for the payments that were made to ASP Thomas as the Solicitor General did not respond to the Claimant's pre-action protocol letter dated 3 July 2015, providing details on the matter, neither has the Commissioner nor the Defendant made any relevant disclosure.

[25] Mr. Thompson, however, submitted that there was one difference between the Claimant and ASP Thomas. ASP Thomas at the time of his dismissal in or around 1970 was an Assistant Superintendent of Police, an officer of the First Division of the TTPS whereas the Claimant was a police constable, an officer of the Second Division of the TTPS. It was further submitted that this does not set the two officers markedly apart and is wholly immaterial. Consequently, ASP Thomas is a true comparator of the Claimant and the Claimant is similarly circumstanced to ASP Thomas.

[26] Mr. Thompson contended that where such a finding that the Claimant is similarly circumstanced is made, the burden then lies on the alleged discriminator, in this case, the Commissioner, to show that the differential treatment is proportionate and has a legitimate objective. Mr. Thompson submitted that the Defendant is deemed to have admitted the evidence in the Claimant's affidavit by its refusal to file evidence in this Claim. As a consequence, the Defendant has provided no rationale for the unequal treatment meted out to the Claimant by the Commissioner.

[27] Mr. Thompson further submitted that the Defendant can proffer no basis either in law or public policy for the differential treatment and consequently there is no valid reason for such treatment in the instant case. Accordingly, the Defendant has not discharged the burden of showing that the discrimination had a legitimate objective and was reasonably proportionate and has therefore contravened the Claimant's fundamental

⁵ Privy Council Appeal No 0048 of 2003

⁶ [2015] UKPC 3

right to equality of treatment from a public authority in the exercise of a public function under **section 4(d) of the Constitution**.

IV. Issues

[28] Having considered the case as pleaded by the Claimant, the evidence filed on behalf of the Claimant in support of the pleaded case and the Claimant's submissions, the Court is of the opinion that two issues arise for determination, namely:

- 1. Is the Claimant entitled to pension and gratuity pursuant to the Police Service Act, Chap 15:01?*
- 2. Has the Claimant been treated unfavourably and/or unequally and/or differently pursuant to section 4(d) of the Constitution and, if so, is he entitled to redress pursuant to section 14 of the Constitution?*

V. Law and Analysis

Issue 1: Is the Claimant entitled to pension and gratuity pursuant to the Police Service Act, Chap 15:01?

[29] The Claimant in his affidavit in support filed on 17 August 2015 averred that when he was dismissed in 2003, pensions and gratuities were paid pursuant to the provisions of the **Pensions and Gratuities Rules** contained in the **Sixth Schedule to the Police Service Act, Chap 15:01**. Moreover, Mr. Thompson in the written submissions filed on 30 September 2016 contended that one of the functions of the Commissioner of Police is to pay pension and gratuity to police officers pursuant to the **Pensions and Gratuities Rules** contained in the **Sixth Schedule to the Police Service Act, Chap 15:01**. It was submitted that the Claimant has a right to be paid pension and gratuity for his service under **Rule 4(3) of the Pensions and Gratuities Rules**.

[30] **Rule 4(3) of the Pensions and Gratuities Rules** provides as follows:

“(3) If a police officer to whom this part applies or who has served in the Police Service for ten years or more does not at the end of any period of re-enlistment obtain permission under the Regulations to re-enlist as provided or shall be dismissed or shall have his services dispensed with

in accordance with the Regulations, such police officer if not otherwise eligible for pension, may be granted a monthly pension not exceeding 1/960ths of a month's pay for each completed month of service."

[31] The Court, at this juncture, wishes to highlight that the **Pensions and Gratuities Rules** to which the Claimant and his attorney referred, are contained in the Sixth Schedule to the **Police Service Act, Act No 30 of 1965**. This Act, however, was repealed by **section 80 of the Police Service Act, Act No 7 of 2006** which came into operation on 1 January 2007.

[32] Nevertheless, it appears at first glance that at the time of the Claimant's dismissal from the TTPS in 2003, he would have been entitled to be paid pension and gratuity for his service. However, a further reading of the **Pensions and Gratuities Rules** in the **Police Service Act, Act No 30 of 1965** at **Rule 8(1) of the Pensions and Gratuities Rules** revealed as follows:

"8. (1) No pension, gratuity or other allowance shall be granted in respect of a period of service that is broken by suspension, dismissal or removal in consequence of disciplinary proceedings."

[33] In that regard, at the time of the Claimant's dismissal in 2003, he was not entitled to pension and gratuity under the **Police Service Act, Act No 30 of 1965** as manifested by **Rule 8(1) of the Pensions and Gratuities Rules**. Nonetheless, the Claimant is still not entitled to pension and gratuity pursuant to **Regulation 188(1) of the Police Service Regulations** made under **section 78 of the Police Service Act, Act No 7 of 2006** and which came into operation on 6 August 2007.

[34] Consequently, the Court is of the view that the Claimant is not entitled to pension and gratuity under the **Police Service Act, Chap 15:01**. The Claimant, however, alleged that one ASP Thomas, though dismissed from the TTPS, was paid pension and gratuity for his service in the TTPS by the Commissioner of Police. As a consequence, the Claimant alleges unequal treatment by the Commissioner of Police. The Court will

now consider whether the Claimant was treated unfavourably and/or unequally and/or differently pursuant to **section 4(d) of the Constitution**.

Issue 2: Has the Claimant been treated unfavourably and/or unequally and/or differently pursuant to section 4(d) of the Constitution and, if so, is he entitled to redress pursuant to section 14 of the Constitution?

[35] The Claimant's Claim is grounded in **Section 14 of the Constitution** which provides as follows:

"14(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.

(2) The High Court shall have original jurisdiction - (a) to hear and determine any application made by any person in pursuance of subsection (1)."

[36] **Section 4(d) of the Constitution** enshrines the right of the individual to equality of treatment by any public authority in the exercise of any functions. In the Privy Council decision of **Mohanlal Bhagwande v The Attorney General of Trinidad and Tobago**⁷, Lord Carswell, at paragraph 18 of the judgment, stated as follows:

"A claimant who alleges inequality of treatment or its synonym discrimination must ordinarily establish that he has been or would be treated differently from some other similarly circumstanced person or persons, described by Lord Hutton in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] 2 All ER 26 at paragraph 71 as actual or hypothetical comparators. The phrase which is common to the anti-discrimination provisions in the legislation of the United Kingdom is that the comparison must be such that the relevant circumstances in the one case are the same, or not materially different, in the other..."

⁷ Privy Council Appeal No. 45 of 2003

[37] In the Privy Council case of **Annisia Webster and Ors. v The Attorney General of Trinidad and Tobago**⁸, Lady Hale summarised the approach to **section 4(d) of the Constitution** at paragraph 24 as follows:

“(1) The situations must be comparable, analogous, or broadly similar, but need not be identical. Any differences between them must be material to the difference in treatment.

(2) Once such broad comparability is shown, it is for the public authority to explain and justify the difference in treatment.

(3) To be justified, the difference in treatment must have a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

(4) Weighty reasons will be required to justify differences in treatment based upon the personal characteristics mentioned at the outset of section 4: race, origin, colour, religion or sex.

(5) It is not necessary to prove mala fides on the part of the public authority in question (unless of course this is specifically alleged).”

[38] Accordingly, in order to establish a violation of a right under **section 4(d) of the Constitution**, one has to produce cogent and compelling evidence that someone similarly circumstanced was treated more favourably by a public authority or that the person complaining of the treatment was treated less favourably than those persons similarly circumstanced: **Amina Homeward v The Attorney General of Trinidad and Tobago**⁹.

[39] Jamadar J.A. (as he then was) in **Dennis Graham v Police Service Commission and the Attorney General of Trinidad and Tobago**¹⁰ at paragraph 25 of his judgment stated as follows:

⁸ [2015] UKPC 10

⁹ CV2010-01180

¹⁰ Civil Appeal No 8 of 2008

“I therefore remained convinced, that in order to establish a section 4(d) breach of the Constitution all that is required is proof by an aggrieved party that he was less favourably treated than other similarly circumstanced persons and/or that they were more favourably treated than he was. This determination is to be undertaken by a court on a consideration of all of the evidence, both of the Claimant and of the respondent. The duty of all parties is of candour... Once a prima facie case of the violation of the right to equality of treatment is raised, the onus shifts to the public authority to explain and justify its decision and to show that there is no breach of the right... At the end of the process it remains for a Claimant to show both a difference in treatment and a lack of any legitimate or lawful reason for that treatment. In my opinion, this approach is clear, fair and balanced. It is also an approach that would make sense and be acceptable to the ordinary Trinidadian and Tobagonian.”

[40] In that regard, it is for the Claimant to adduce before the Court cogent evidence of unequal treatment by the public official, in this case, the Commissioner of Police. Once that is established, the evidential burden then shifts to the public official to demonstrate to the Court that the unequal treatment is reasonable and/or justifiable in all the circumstances.

[41] The Claimant alleged unequal treatment by the Commissioner of Police resulting in breach of his constitutional right pursuant to **section 4(d) of the Constitution**. The Claimant contended that his comparator is ASP Thomas who was also charged with disciplinary offences by the Commission, found guilty of same and dismissed from service. However, ASP Thomas, after being dismissed, was paid pension and gratuity for his time in the service.

[42] There is no documentary evidence tendered into Court corroborating the testimony of the Claimant that ASP Thomas was treated more favourably than he was or that he was treated less favourably than ASP Thomas who was similarly circumstanced.

[43] There is no documentary evidence adduced by the Claimant of the following: (1) that ASP Thomas was charged for the three disciplinary offences; (2) that ASP Thomas was found guilty of the disciplinary offences; (3) ASP Thomas was dismissed from service; and (4) ASP Thomas did in fact receive pension and gratuity after his dismissal from the TTPS. This evidence is both relevant and necessary for the fair disposition of the matter, that is, whether the Claimant has been subjected to inequality of treatment under the Constitution.

[44] The Claimant ought to produce documentary evidence in relation to persons in similar situation as the Claimant to assess whether he was afforded equality of treatment. This documentary evidence, however, would certainly be stored in the notional possession of the Defendant, on behalf of the decision-maker, as well as in the hands of ASP Thomas. However, the Court notes that there was no application made by the Claimant for disclosure nor is there any evidence before the Court that the Claimant made a request of the Defendant for any of the information stated above in paragraph [43].

[45] Although the Claimant's evidence remained unchallenged as a consequence of the Defendant not filing any affidavit in reply, the evidential burden still rests on the Claimant to make a prima face case of inequality of treatment of a public authority contrary to the protection conferred upon him by the provisions of the Constitution. It would be reckless of this Court if it accepts the testimony of the Claimant without more on such a fundamental issue. The Court has to rely on proof not presumptions.

VI. Disposition

[46] Given the reasoning, analyses and findings above, the Court is of the opinion that on the evidence before the Court, the Claimant has not established his case and is therefore not entitled to the relief sought in his Constitutional Motion. As a consequence, the Claim ought to be dismissed.

[47] On the issue of costs of the Claim, notwithstanding that the Claimant has lost his case and that the Defendant is therefore the winner, the Court must take into account that neither response affidavits/documents nor any submissions were filed on behalf of the

Defendant. In the circumstances, the Court will be justified in making no order as to costs.

[48] Accordingly, the order of the Court is as follows:

ORDER:

- 1. The Claimants' Constitutional Motion by Fixed Date Claim filed on 17 August 2015 be and is hereby dismissed.**
- 2. There be no order as to costs.**

Robin N. Mohammed
Judge