TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. 1626 of 2004

BETWEEN

VERNON ASHBY **APPLICANT**

AND

THE REGISTRAR OF THE INDUSTRIAL COURT **RESPONDENT**

Before the Honourable Justice P. Moosai

APPEARANCES:

Mr. V. Kokaram and Ms. S. Indarsingh led by Mr. M. Daly SC for Applicant
Ms. A. Humphrey led by Mr. A. Sinanan SC instructed by
Ms. K. Mohammed-Carter for Respondent

JUDGMENT

A. INTRODUCTION

1. By way of Notice of Motion filed on June 17, 2004, the Applicant sought judicial review of the decision of the Registrar of the Industrial Court whereby the Registrar refused to pay him a chauffeur allowance for the periods 1989 to the present on the ground that the Applicant did not employ a chauffeur during the period.

B. THE ISSUE

2. The substantive issue that arises for determination is whether the Applicant, as a judge of the Industrial Court, is entitled to a Chauffeur allowance for the period 1989 to the present and continuing whether or not he employs a chauffeur.

C. THE FACTS

3. There was no cross-examination on the affidavits. The material facts are substantially undisputed and are contained in the following paragraphs – (paras 4 to 25).

4. The Applicant is a member of the Industrial Court (Essential Services Division). The Industrial Court is a superior Court of record established by the provisions of the Industrial Relations Act, Chapter 88:01 ("IRA") "and shall have in addition to the jurisdiction and powers conferred on it by this Act all the powers inherent in such a court": section 4(1) IRA.

5. The Applicant was first appointed a member on April 17, 1989 by the President of the Republic of Trinidad and Tobago and received subsequent re-appointments in the years 1992, 1995, 2000 and 2003.

6. The Respondent is a public officer appointed under section 6 of the IRA. The holder of the office of Registrar is the accounting officer of the Industrial Court responsible for, among other matters, the passing of vouchers for payment and the preparation of cheques for the payment of such vouchers in respect of salaries and allowances due and payable to members of the Industrial Court and supervises the accounting unit of same: see Financial Regulations of the Exchequer and Audit Act, Chapter 69:01.

7. Prior to the Applicant's first appointment as a member of the Industrial Court, the Salaries Review Commission ("the SRC") reviewed the terms and conditions of

service of the office holders, inclusive of members of the Industrial Court, to whom section 141 applied. The SRC recommended, among other matters, that a chauffeur allowance equivalent to the minimum salary of a chauffeur II in the Public Service be paid to all members of the Industrial Court. This recommendation was duly published in the second Report of the SRC dated July 1980.

8. In accordance with section 141 (2) of the Constitution, the second Report of the SRC was duly submitted to the President, who forwarded a copy thereof to the Prime Minister for presentation to the Cabinet and for laying on the table of each House.

9. It is clear on the evidence that Cabinet considered the Second Report of the SRC and made amendments thereto prior to laying same on the table of each House. However, none of these amendments touched or concerned the issue of the chauffeur allowance. The amended recommendation was duly tabled and laid in Parliament. Exhibit 'JS2' reveals that the Second Report was laid:

(i) in the House of Representative on July 18, 1980 and debated on in 1980 on October 31st, November 3rd and 11th.
(ii) in the Senate on July 15, 1980 and debated on in 1980 on November 25th.

10. As is evident from the Seventh Report of the SRC dated December 1982, the second Report of the SRC, after intense debate, was finally adopted by Parliament subject to a number of amendments which are set out in Appendix 1 of the Seventh Report: see exhibit "VA7". Again none of these amendments touched or concerned the issue of the chauffeur allowance.

11. Thereafter and no doubt in recognition of what had transpired with the Second Report of the SRC as aforesaid, Minister of Finance Circular No. 2 of 1981 dated January 16, 1981 was then issued to all Permanent Secretaries and Heads of Departments advising that after consideration of the recommendations of the SRC, ***the revised remuneration arrangements for members of the Industrial Court included payment of a chauffeur allowance***. This was a clear directive from Cabinet for

implementation of the decision of the SRC with respect to the payment of the chauffeur allowance to members of the Industrial Court. As the Respondent explains at para 5 of his affidavit:

> 5. With particular respect to reports of the Salaries Review Commission, under whose purview the office of Member of the Industrial Court falls, as Accounting Officer for the Industrial Court, I am not authorized to act on the recommendations contained in such reports unless and until instructions are issued to me either by way of a Minister of Finance Circular or a Circular from the Chief Personnel Officer. This is because before a report of the Salaries Review Commission can be implemented, Cabinet must agree to it. Once Cabinet agrees to implement a decision of the Salaries Review Commission or certain recommendations contained therein, this decision of Cabinet is communicated to me either by way of Ministry of Finance Circular or a Chief Personnel Officer Circular together with instructions for the implementation of the decision.

12. Thereafter, in or about July 1981, the Personnel Department received instructions from the Cabinet Secretariat ***that Cabinet had agreed to revised conditions with respect to the payment of a chauffeur allowance to the holders of offices under the purview of the SRC for which a chauffeur allowance was payable***.

13. The Chief Personnel Officer ("CPO") by a circular dated November 30, 1981 ("the 1981 CPO Circular) informed all Permanent Secretaries and Heads of Department accordingly. The relevant part of the 1981 CPO Circular is set out hereunder:

> *Review of Travelling Allowances for Holders of Offices which fall under the Purview of the Salaries Review Commission*
>
> I wish to inform you that Cabinet has agreed to the following revised conditions with respect to the payment of Travelling Allowances to holders of offices within the purview of the Salaries Review Commission.

Chauffeur Allowance

(a) Where the approved terms and conditions of service provide for a Chauffeur Allowance, this shall be payable only if the holder of the particular office actually employs a Chauffeur.

14. Pausing there, in or about July 1981 Cabinet, clearly of its own volition purported to make the receipt of the chauffeur allowance conditional upon the employment of a chauffeur. As the Respondent's attorney admits, the Seventh Report of the SRC dated December 1982 made no alteration nor review nor further recommendation with respect to the entitlement of a member of the Industrial Court to a chauffeur allowance, nor were there any other Reports of the SRC which affected allowances to be paid to members of the Industrial Court prior to the Applicant's appointment in 1989.

15. In its 23rd Report dated August 1991, the SRC again reviewed the salaries and other conditions of service of members of the Industrial Court and recommended that the other terms and conditions, including the chauffeur allowance, continue in effect. The SRC expressed some concern about the wide range of offices to which the facility of a personal chauffeur was now provided and recommended an exercise be conducted with a view to rationalising this facility, consideration being given to the possible cessation of assigning a chauffeur to certain offices. The relevant extract from VA9 is reproduced hereunder:

Chauffeur Allowance

In reviewing the Chauffeur Allowance, we were concerned about the wide range of offices to which the facility of a personal chauffeur is now provided. It is our understanding that the rationale for this benefit was originally to facilitate an office-holder who was required to travel long distances during the course of performing his official duties. The arrangement was extended to other offices, taking into account their level of responsibility and status. It has been found that an incumbent may or may not utilise the facility, depending on the nature of his responsibilities and his personal circumstances and preference.

Accordingly, we recommend that as a special exercise, an examination should be undertaken with a view to rationalizing this

facility, consideration being given to the possible cessation of assigning a chauffeur to certain offices.

16. In its 27th Report dated May 12, 1994, the SRC reviewed the chauffeur allowance provided to holders of certain offices under its purview, including members of the Industrial Court. The SRC recommended that the chauffeur allowance be discontinued for all members of the Industrial Court but this would only apply to office holders whose appointments took effect on or after the date of implementation of the revised arrangements. Para 32(v) of the 27th Report ("VA10") states:

> With respect to incumbents of special and similar offices protected by section 136(6) of the Constitution, as well as holders of offices under section 5(b) of the Tax Appeal Board Act and section 5(3) of the Industrial Relations Act the new conditions will apply only to persons whose appointments take effect on or after the date of implementation of the revised arrangements.

17. By virtue of a Minister of Finance Circular No. 5 of 1995 dated February 17, 1995, all persons who were eligible for a chauffeur allowance (which included members of the Industrial Court), but in respect of whom neither a personal chauffeur nor a service allowance had been granted were to retain the facility of a chauffeur allowance as personal to them during their tenure in office. The said Circular provided, among other matters, as follows:

> (iv) Incumbents of special and similar offices which are covered by section 136(6) of the Constitution, as well as holders of offices under section 5(5) of the Tax Appeal Board Act or section 5(5) of the Industrial Relations Act are guaranteed special protection of their terms and conditions of service.
> As such, incumbents of any office among this group are not to be affected adversely by the terms of this circular.
>
> (v) Persons who are eligible for a chauffeur allowance but in respect of whom neither a personal chauffeur nor a Service Allowance has been granted are to retain the

> facility of a chauffeur allowance as personal to them during their tenure in the respective office…

18. During his tenure as a member of the Industrial Court the Applicant has neither employed a chauffeur nor been paid a chauffeur allowance from 1989 to the present.

19. By letter dated June 2, 2003, the Applicant, based on the decision of Madam Justice M. Dean Armorer in ***HCA No. 461 of 2003 Gafoor v The Registrar of the Industrial Court***, requested from the Respondent payment of his chauffeur allowance for the period April 1989 to June 2003.

20. By letter dated July 24, 2003 the Applicant not having heard from the Respondent, reminded the Respondent of his letter aforesaid.

21. By letter dated July 24, 2003 the Respondent acknowledged receipt of the said letter and indicated that he would be in a position to respond to the Applicant after he perused a copy of the judgment aforesaid.

22. By letter dated August 11, 2003 the Respondent refused to accede to the Applicant's request for a chauffeur allowance for two reasons:

1. He did not actually employ a chauffeur in accordance with the 1981 Circular; and;

2. He was not in receipt of a chauffeur allowance as at December 31, 1994 in accordance with the Ministry of Finance Circular No. 5 of 1995.

23. By letter dated November 4, 2003, the Applicant took issue with the Respondent contending that the chauffeur allowance is an entitlement of the Applicant and is not subject to the CPO's condition that it is payable only if the office holder actually employs a chauffeur or any condition laid down by him or anyone else that would have the effect of diminishing the terms of the Applicant's office contrary to section 5(3) of the IRA. The Applicant asked the Respondent to reconsider his position.

24. By letter dated November 10, 2003, the Respondent responded by saying that he needed to seek a legal opinion from the Solicitor General.

25. By memorandum dated March 15, 2004, the Respondent informed the Applicant that a chauffeur allowance could not be paid to him for the period April 1989 to the present since he did not employ nor have a chauffeur for that period. However, the Respondent, contrary to his earlier stance also informed the Applicant that the facility of a chauffeur allowance had been preserved for him in accordance with section 5(3) of the IRA. However, to receive the chauffeur allowance he had to actually employ a chauffeur.

26. As indicated earlier the substantive issue that arises for consideration is whether the applicant as a judge of the Industrial Court is entitled to be paid a chauffeur allowance for the period 1989 to the present and continuing whether or not he actually employs a chauffeur.

D. ANALYSIS

27. The applicant is and was a member of the Industrial Court, Essential Services Division. The Industrial Court is a superior Court of record: section 4 of the IRA. Section 5 of the IRA governs the payment of salaries and other allowances to members of the Industrial Court. The relevant part provides:

> 5. (1) The members of the Court appointed shall be paid such salaries as the President of Trinidad and Tobago may determine and shall hold office for such periods, being not less than three or more than five years as is specified in their reportive instruments of appointment, but shall be eligible for reappointment.
>
> (2) The President of the Court and other members of the Court shall receive such allowances as may be prescribed by regulations made by the President of Trinidad and Tobago.
>
> (3) The salary and allowances payable to a member of the Court …….and his other terms of service shall not be altered to

> his disadvantage after his appointment, and, for the purposes of this subsection, in so far as the terms of service of any person depend upon the option of that person, the terms for which he opts shall be taken to be more advantageous to him than any other terms for which he might have opted.
>
> (4) …….
>
> (5) The salaries, allowances, gratuity, pension or other superannuation benefits payable under this section shall be a charge on the Consolidated Fund.

28. It is clear that the legislative intent was to provide a degree of insulation for members of the Industrial Court from improper pressure being brought to bear by the executive and legislative arms of the State thereby undermining their judicial independence by having their salaries and allowances **determined by the President of Trinidad and Tobago,** and by protecting their terms and conditions of service from being altered to their disadvantage. However no regulations have been made by the President in accordance with Section 5 (2) of the IRA. Rather the offices of President, Vice-President and members of the Industrial Court were placed under the purview of the SRC by virtue of Section 5 (1) of the Constitution (Prescribed Offices) Act, Ch. 1:02 which provides:

> **5**. (1) For the purposes of section 141 (1) of the Constitution the offices set out in the Second Schedule are prescribed.

Thus members of the Industrial Court were provided with a commensurate degree of protection formerly enjoyed. This was achieved by having their salaries and other conditions of service reviewed by the very body responsible for, among others, the review of the terms and conditions of service of judges of the Supreme Court. Thus their terms and conditions of service became statutorily and constitutionally underpinned. It is therefore necessary to consider the provisions of the Constitution dealing with the constitution and functions of the SRC. At this stage it might be helpful to set out the other relevant constitutional provisions:

140. (1) There shall be a Salaries Review Commission which shall consist of a Chairman and four other members all of whom shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

(2) The members of the Salaries Review Commission shall hold office in accordance with Section 126.

141. (1) The Salaries Review Commission shall from time to time with the approval of the President review the salaries and other conditions of service of the President, the holders of offices referred to in section 136 (12) to (15), members of Parliament, including Ministers of Government and Parliamentary Secretaries, and the holders of such other offices as may be prescribed.

(2) The report of the Salaries Review Commission concerning any review of salaries or other conditions of service, or both shall be submitted to the President who shall forward a copy thereof to the Prime Minister for presentation to the Cabinet and for laying, as soon as possible thereafter, on the table of each House.

22. There shall be a President of Trinidad and Tobago who shall be elected in accordance with the provisions of this Chapter who shall be the Head of State and Commander-in-Chief of the Armed Forces.

126. (1) A person who--

(a) is a member of the House of Representatives or the Senate; or

(b) holds or is acting in any public office or has held any public office within the period of three years preceding his proposed appointment, is not qualified to hold the office of member of a Service Commission.

(2) A person who has held office or acted as a member of a Service Commission shall not, within a period of three years commencing with the date on which he last held or acted in such an office, be eligible for appointment to any public office.

(3) The office of a member of a Service Commission shall become vacant--

(a) upon the expiration of five years from the date of his appointment or such shorter period, not being

less than three years, as may be specified at the time of his appointment; or

(b) where with his consent he is nominated for election to the House of Representatives or where he is appointed a Senator.

(4) A member of a Service Commission, other than the Judicial and Legal Service Commission, may be removed from office by the President acting in his discretion for inability to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause, or for misbehaviour.

(5) A member of a Service Commission may not be removed from office except in accordance with the provisions of this section.

(6) Before entering upon the duties of his office a member of a Service Commission shall take and subscribe the oath of office before the President or a person appointed by the President for the purpose.

74. (1) The executive authority of Trinidad and Tobago shall be vested in the President and, subject to this constitution, may be exercised by him either directly or through officers subordinate to him.

(2) Without prejudice to the generality of subsection (1), the supreme command of the armed forces of Trinidad and Tobago shall be vested in the president and the exercise of this power shall be regulated by law.

(3) Nothing in this section shall prevent parliament from conferring functions on persons or authorities other than the president.

75. The Cabinet

(1) There shall be a Cabinet for Trinidad and Tobago which shall have the general direction and control of the government of Trinidad and Tobago and shall be collectively responsible therefor to Parliament.

(2) The Cabinet shall consist of the Prime Minister and such number of other Ministers (of whom one shall be the Attorney General), appointed in accordance with the provisions of section 76, as the Prime Minister may consider appropriate.

80. (1) In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where other provision is made by this Constitution or such other law, and, without prejudice to the generality of this exception, in cases where by this Constitution or such other law he is required to act--
(a) in his discretion;
(b) after consultation with any person or authority other than the Cabinet; or
c) in accordance with the advice of any person or authority other than the Cabinet.

(2) Where by this Constitution the President is required to act in accordance with the advice of, or after consultation with, any person or authority, the question whether he has in any case so acted shall not be enquired into in any Court.

(3) Without prejudice to any other case in which the President is authorised or required to act in his discretion, the President shall act in accordance with his own deliberate judgment in the performance of the following functions:
(a) in the exercise of the power to appoint the Prime Minister conferred upon him by section 76(1) or (4);
(b) in the exercise of the powers conferred upon him by section 78 (which relates to the performance of the functions of the Prime Minister during absence, illness or suspension) in the circumstances described in the proviso to subsection (2) of that section;
(c) in the exercise of the power to appoint the Leader of the Opposition and to revoke any such appointment conferred upon him by section 83.

29. Before analysing the specific provisions it is necessary to go back to first base. Our Constitution which follows the Westminister model is at the very minimum implicitly underpinned by the principle of the separation of powers: ***Hinds v R*** [1977] AC 195 [PC]. At page 213 Lord Diplock stated:

> The more recent constitutions on the Westminster model, unlike their earlier prototypes, include a Chapter dealing with fundamental rights and freedoms. The provisions of this Chapter form part of the substantive law of the state and until amended by whatever special

> procedure is laid down in the Constitution for this purpose, impose a fetter upon the exercise by the legislature, the executive and the judiciary of the plenitude of their respective powers. The remaining Chapters of the Constitutions are primarily concerned not with the legislature, the executive and the judicature as abstractions, but with the persons who shall be entitled collectively or individually to exercise the plenitude of legislative, executive or judicial powers - their qualifications for legislative, executive or judicial office, the methods of selecting them, their tenure of office, the procedure to be followed where powers are conferred upon a class of persons acting collectively and the majorities required for the exercise of those powers.

In ***Wilson and others v Minister of Aboriginal and Torres Strait Islanders Affairs*** [1996] 189 CLR 1 [HCA], the majority judgment of the Australian High Court (at pp.10-11) made clear that the separation of powers doctrine exists not because the powers of one branch of government could not be exercised effectively by the repository of the powers of another branch, but because the separation of functions is designed to provide checks and balances on the exercise of power by the respective organs of government in which the powers are reposed.

30. Reverting to sections 140 and 141, the SRC was established by section 140 of the Constitution and vested by section 141 with the responsibility, with the approval of the President, of reviewing the salaries and other conditions of service of certain offices under its purview. In my view the framers of the Constitution clearly intended to entrust the responsibility of reviewing the salaries and other conditions of service of some of the highest office holders in the land, some of whom required additional protection because of the nature of the functions they performed (such as the higher judiciary), to an autonomous body such as the SRC. These office holders included the President, Prime Minister, Chief Justice, Speaker, Cabinet Ministers, Ministers, Leader of the Opposition, Members of the House of Representatives. The means adopted to ensure its independence was twofold: (i) to insulate the membership of the SRC from influence by the executive and the legislature; and (ii) to insulate the process of review from similar influence. Inherent in the entire process were the necessary checks and balances to inspire public confidence in any resultant award.

31. In ***Thomas v. Attorney General of Trinidad and Tobago*** [1985] AC 113 Lord Diplock at p.124 elucidated on the purpose of autonomous commissions comprising "the Public Service":

> The whole purpose of Chapter V111 of the Constitution which bears the rubric 'the Public Service' is to insulate members of the civil service, the teaching service, and the police service in Trinidad and Tobago from political influence exercised upon them directly by the government of the day. The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service.

Further Lord Diplock concluded that the provisions contained in section 126 of the Constitution secured at the independence of the commissions from both the executive and the legislature. These provisions are expressly applicable to members of the SRC (section 140 (2)):

> In respect of each of these autonomous commissions the Constitution contains provisions to secure its independence from both the executive and the legislature. No member of the legislature may serve on the commission; all members must be appointed for a fixed term of years which must not be less than three or more than five, during which a member may only be removed for inability to discharge his function or for misbehaviour. The quarantine period imposed by making it a requirement of eligibility that a member shall not have served in any public office within the last three years and also making him ineligible for appointment to any public appointment for three years after ceasing to serve as a member of the commission is clearly intended to avoid any risk of his being influenced in favour of the executive by considerations of advancement in his own career.

It should also be noted that members of the SRC are given special protection, similar to judges of the Supreme Court, from having their terms and conditions of service altered to their disadvantage after their appointment: section 136 (6).

32. With regard to insulating the process of review from influence by the executive and the legislature, the framers have by virtue of section 141 expressly prescribed the constitutional mechanism for any review of the salaries and other conditions of service of office holders under its purview. The Constitution being the

supreme law this requirement must be strictly complied with (section 2). However the fundamental question to be determined is whether the constitutional scheme envisages Cabinet as the authority responsible for approval and implementation of the salaries and other terms and conditions of service as reviewed by the SRC.

33. The premise of insulating the membership of the SRC and its process of review from influence from the executive and the legislature would conduce to the framers of the Constitution opting for a constitutionally protected mechanism designed, not necessarily to eliminate all such influence, but to minimise same, particularly where high level politicians, judicial officers and other sensitive offices such as the Director of Public Prosecutions were included within the remit of the SRC. In that regard it would not have escaped the framers that an independent judiciary exists not for the benefit of the judges but for the benefit of the citizenry.

34. Further it is unlikely that members of the Industrial Court, a component of the judicial arm of the State, whose salaries and allowances fell to be determined by the **President** (section 5 (1) and (2) of the IRA), would have been placed under the umbrella of the Constitution and the purview of the SRC where **Cabinet** would have been responsible for the approval and implementation of their salaries and other terms and conditions of service.

35. Section 74 (1) of the Constitution vests the executive authority of Trinidad and Tobago in the President. However his powers are circumscribed by other provisions in the Constitution. Section 80 makes clear that in the manner and exercise of his functions the President must act in accordance with the Constitution or any other law. Thus in the manner and exercise of his functions section 80 creates three broad categories:

1. Where the President shall act in accordance with the advice of;
2. Where the President is required to act after consultation with;
3. Where the President is required to act in his discretion: section 80 (1) (a).

36. Having regard to the constitutional scheme, the framers of the Constitution must have intended that the President in his executive capacity play an overarching role and

exercise an independent discretion in the review process. I am therefore of the view that the President is the one endowed with the authority to prescribe the terms and conditions of service of such office holders and to determine the date of implementation of same.

37. Pursuant to section 141 "the [SRC] shall from time to time with the approval of the President review the salaries and other conditions of service" of such office holders. It is manifest that the President is authorised to act in his discretion to invoke the review process from time to time. In doing so the President is exercising his own independent authority as to when conditions are ripe for such a review. Such a review by the SRC can only be undertaken with the approval of the President. After the Presidential mandate to review, the SRC prepares its Report. The evidence establishes that the commendable practice of the SRC is to invite oral/written submissions on behalf of all the remit groups which ensures that all stakeholders, which would include members of the executive arm of the State, are given the opportunity to participate in the process. Thereafter, under the constitutional scheme the SRC reports not to the executive but to the President.

38. Following upon the receipt of the Report, the President forwards a copy thereof to the Prime Minister for presentation to the Cabinet and for laying on the table of each House. This is undoubtedly because of the recognition that the functions of Cabinet are generally the framing of policy, distribution of limited resources among the competing interest and setting generally of the terms and conditions of service of persons employed by the State: section 75 (1) of the Constitution. Section 75 (1) confers wide powers on Cabinet by making Cabinet responsible for the general direction and control of the government subject however, to its collective responsibility to Parliament.

39. It does seem to me, given the fact that the President has a discretion to exercise, that when the SRC Report has been presented to the Prime Minister for submission to the Cabinet, there is nothing which precludes the Prime Minister, prior to the Report being laid in Parliament, from bringing to the attention of the President issues which Cabinet thinks ought to be addressed by the SRC. In those

circumstances the President may submit the Report back to the SRC for further consideration. This provides the executive with an opportunity to consider the Report in its entirety and address matters which might not have been considered by the SRC. The forwarding of the Report thereof to the Prime Minister provides an acceptable level of executive input into the review process.

40. After such a review by the SRC its Report, on being submitted to the President, becomes, in effect, subject to what is stated at para 40 above, the terms and conditions of service which the President is prescribing for those office holders. Thereafter the President is simply following the recognised procedure for laying the Report on the table of each House. But even here the constitutional scheme prescribes a safeguard against abuse in that the executive cannot just sit on the report, but stipulates that the Report is to be laid as soon as possible thereafter on the table of each House.

41. It is common ground that in essence the process of laying simply means that the documents be presented to Parliament: para 6 of affidavit of Ms. Jacqueline Sampson. There is no requirement that such a Report be debated and approved, although the practice is that it can be, nor is it subject to a negative or affirmative resolution. Moreover Members of Parliament may even ask questions on same. Thus the act of laying the Report in Parliament allows for a degree of parliamentary scrutiny thereby bringing to the attention of Parliament, and by implication the wider population, the varied salaries and terms and conditions of service. This provides an acceptable level of transparency and accountability to the process.

42. Having concluded that sections 140 and 141 of the Constitution establish a constitutionally protected mechanism for the review of the salaries and other terms and conditions of service of office holders under the purview of the SRC, it seems to me that once such a review has been completed and the requisite procedure under section 141 followed, the salaries and other terms and conditions of service as varied remain fixed and unalterable otherwise than in accordance with the Constitution. To hold otherwise and determine that Cabinet is the ultimate determinant would be to confer absolute power on Cabinet to modify such salaries and other terms and

conditions of service as it likes, and even to reject the Report in its entirety. This, in the language of ***Hinds***, would be contrary to the manifest intention of the constitutionally protected mechanism designed to impose a fetter upon the exercise by the executive arm of the State of the plenitude of its powers in determining generally the terms and conditions of service of persons employed by the State.

43. There is no dispute that the Applicant is entitled to a chauffeur allowance nor that he would receive it if he had employed a chauffeur. Indeed both parties agree that in those circumstances the Applicant would be entitled to have the chauffeur allowance paid directly to him based on ***Gafoor v. The Registrar of Industrial Court*** **HCA No. 461 of 2003.** In that regard the Respondent has preserved the facility of a chauffeur allowance for the Applicant in accordance with section 5 (3) of the IRA (which forbids the alteration of the Applicant's terms and conditions after his appointment), but makes payment of same conditional upon the Applicant actually employing a chauffeur. The Applicant is contending that as a judge of the Industrial Court he is entitled to payment of the chauffeur allowance from the date of his appointment (April 17, 1989) to the present whether or not he actually employs a chauffeur.

44. The factual matrix reveals that after the section 141 (2) review was completed towards the end of 1980, the position with respect to the chauffeur allowance was that members of the Industrial Court were entitled to payment of a chauffeur allowance without qualification. Some support for this is to be gleaned from Minister of Finance Circular No. 2 of 1981 dated January 16, 1981 advising that after consideration of the recommendations of the SRC, the revised remuneration arrangements for members of the Industrial Court included payment of a chauffeur allowance.

45. In accordance with my analysis of the law above, once that review had been completed pursuant to section 141, the salaries and other conditions of service remained fixed and unalterable otherwise than in accordance with the Constitution. In purporting to revise those terms and conditions of its own accord in July 1981 without conforming to the constitutionally prescribed route and impose a qualification of making the chauffeur allowance payable to members of the Industrial Court only if

they actually employed a chauffeur, Cabinet acted outwith the powers granted to it under the Constitution. Moreover the effect of imposing such a qualification amounted to an alteration of the terms and conditions of such members to their disadvantage contrary to section 5 (3) of the IRA.

46. As can be gleaned from the facts, none of the SRC reports after the Second Report of 1980 made any alteration or qualification or recommendation with respect to the entitlement of a member of the Industrial Court to a chauffeur allowance. Additionally there were no other reports of the SRC which affected allowances to be paid to members of the Industrial Court prior to the Applicant's first appointment on April 17, 1989.

47. By reason of the foregoing the Applicant is entitled to the payment of the chauffeur allowance without qualification and was so entitled upon his appointment to office by the President.

48 In the premises I find for the Applicant and propose to grant the relief set out at para 59.

E. PRELIMINARY POINT

49. I shall now provide my ruling on the preliminary point. I have chosen to do so at this point in time as the substance of the judgment really fleshes out my ruling on the preliminary issue.

(i.) Respondent's submission

50. The Respondent submitted in limine that given the nature of the Applicant's claim, the judicial review procedure is inappropriate and constitutes an abuse thereof, and that the Applicant should have proceeded by way of a common law action for breach of contract. The Respondent articulated that the essence of the Applicant's claim is the payment of money, that is, recovery of a sum of money to which he says he is entitled by reason of the terms of his employment namely, his chauffeur

allowance. That being the case, the failure to pay him is a breach of contract and accordingly he is entitled to bring an action in that regard.

51. Mr. Sinanan SC further submitted that whether or not a particular matter fell within the court's public law jurisdiction is to be determined by whether it truly and sufficiently exhibits the characteristics of a public law dispute and the presence of a public law element is so dominant and prominent that it is inescapable that such dispute really is within the realm of public law. The Applicant's employment as a judge of the Industrial Court is infused with an amalgam of rights, public law and private law rights – but the right which he now seeks to enforce, the subject matter of his claim, sounds in private law.

(ii.) Applicant's submission

52. The Applicant submits that this is not a common law or dressed up common law action for breach of contract, but that the application is deeply rooted in public law. The substratum of this case is that the decision of the Respondent amounts to an abuse of power and the imposition of an unlawful restriction on the Applicant's rights as a member of a superior court of record without any authority so to do. The nature of the Applicant's appointment and tenure as a member of a superior court of record of itself raises public law rights.

53. The Applicant further submits that the Respondent's submission is a disingenuous attempt to circumvent the fundamental statutory underpinning encapsulated in section 5(3) of the IRA. The right to allowances within the scheme of the IRA is a public law right as a judge of the Industrial Court and cannot be interfered with by any accounting officer in the shape of the Respondent.

(iii.) Conclusion on preliminary submission.

54. It is trite law that judicial review describes the process by which the courts exercise a supervisory jurisdiction over the activities of public authorities in the field of public law. The Respondent can only succeed on the preliminary issue on the basis that, accepting all of the Applicant's complaints as valid, the remedy of judicial

review is nevertheless inappropriate and the continuance of the application for judicial review would involve a misuse of the procedure under **CPR Part 56**: ***R v East Berkshire Health Authority, ex parte Walsh*** [1984] 3 All ER 425 [CA] at 428-429. However it is to be noted that substantially all the facts in this case are not disputed. In this case, it was held that whether a dismissal from employment by a public authority was subject to public law remedies depended or whether there were special statutory restrictions on dismissal which underpinned the employee's position, and not on the fact of employment per se or the employee's seniority or the interest of the public in the functioning of the authority.

55. Sir John Donaldson M.R in ***Ex p Walsh*** relied on Lord Wilberforce's statement in ***Malloch v Aberdeen Corp*** [1971] 2 All E R 1278 which case contained a special statutory provision bearing directly on the right of the public authority to dismiss the plaintiff. At p. 1294 Lord Wilberforce stated:

> One may accept that if there are relationships in which all requirements of the observance of rules of natural justice are excluded (and I do not wish to assume that this is inevitably so), these must be confined to what have been called "pure master and servant cases," which I take to mean cases in which there is no element of public employment or service, no support by statute, nothing in the nature of an office or a status which is capable of protection. If any of these elements exist, then, in my opinion, whatever the terminology used, and even though in some inter partes aspects the relationship may be called that of master and servant, there may he essential procedural requirements to be observed, and failure to observe them may result in a dismissal being declared to be void.

Sir John Donaldson concluded that "it is the existence of these statutory provisions which injects the element of public law necessary in this context to attract the remedies of administrative law. Employment by a public authority does not per se inject any element of public law. Nor does the fact that the employee is in a 'higher grade' or is an 'officer.' This only makes it more likely that there will be special statutory restrictions on dismissal or other underpinning of his employment.… It will be this underpinning and not the seniority which injects the elements of public law."

56. Sir John Donaldson goes on at p.431 to give an example of the type of contract that may attract administrative law remedies:

> Parliament can underpin the position of public authority employees by directly restricting the freedom of the public authority to dismiss, thus giving the employee 'public law' rights and at least making him a potential candidate for administrative law remedies.

57. In the instant case the Applicant has both a statutory underpinning (section 5 of IRA) and a constitutional underpinning (section 141 of the Constitution) to his terms and conditions of service.

58. In ***Fraser v Judicial and Legal Service Commission*** and ***AG*** [2008] UKPC 25 a magistrate was appointed in St Lucia for a one-year-period but with a contractual proviso giving the government a right to determine on three months' notice or payment of one month's salary. The Constitution of St Lucia gave the JLSC the power to exercise disciplinary control over persons holding the office of magistrate and the power to remove such persons from office. The magistrate was summarily dismissed from office without any appropriate procedure being followed by the JLSC, but reliance was placed on the contractual proviso to minimise the resulting liability. The Privy Council held that "removal" from office included bringing a magistrate's contract to an end against his will prior to its natural expiry, and that the magistrate had constitutional protection against removal from office which operated over and above the contractual proviso.

59. Similarly in ***Dattatreya Panday v The Judicial and Legal Service Commission*** P.C App. No 33 of 2007 the Supreme Court rejected the appellant's case on the simple basis that his appointment was temporary and subject to one month's notice and could therefore be terminated at will by giving such notice. However Lord Mance in the Privy Council at para 9 was of the view that "that would be the situation if his appointment had been purely contractual and subject only to private law. It is true that the contractual aspect of Mr. Panday's appointment, cannot be entirely ignored ……. but its basis in the Constitution and the role of the Commission give Mr. Panday's appointment a public law aspect which also cannot be ignored."

60. By analogy the Applicant's terms and conditions of service are both statutorily and constitutionally protected. Indeed the Applicant has a constitutionally protected

mechanism for determining his terms and conditions of service. The Applicant's contention is really that the laying of the Report of the SRC in Parliament as required by section 141 (2) of the Constitution creates the right in a member of the Industrial Court to receive the chauffeur allowance without any further condition that he employ a chauffeur.

61. The Applicant having been appointed in 1989 without amendment to that chauffeur allowance either by the SRC or by the President, the Applicant claims to be entitled to the chauffeur allowance unconditionally. The Applicant therefore claims that the Respondent acted ultra vires in imposing a qualification that he employ a chauffeur before he received his chauffeur allowance.

62. I agree with the Applicant's Attorneys that the Applicant's claim is deeply rooted in public law. This would involve a construction of the provisions of the Constitution and the IRA in order to determine the ambit of the powers of the President, Cabinet, Parliament and the SRC under the constitutionally protected scheme. On determining same, the Court would then be able to resolve the issue of whether the decision of the Respondent amounts to an abuse of power and the imposition of an unlawful restriction on the Applicant's rights as a member of a superior court of record without any authority so to do.

63. There was some argument that the Respondent was not the decision-maker and so there was no decision of his which was susceptible to judicial review. However as para 6 above clearly shows, the Registrar is the accounting officer of the Industrial Court responsible for, among other matters, the passing of vouchers for payment and the preparation of cheques for the payment of such vouchers in respect of salaries and allowances due and payable to members of the Industrial Court and supervises the accounting unit of same. When called upon by the Applicant to pay him his chauffeur allowance, the Respondent cannot hide behind the coat-tails of anyone else, but must exercise a mind of his own and, if necessary, defend his action. For the foregoing reason I hold that the Respondent is the proper party to this action.

64. There were several objections on the ground of hearsay but, having regard to my findings, it is not necessary to determine same as they are irrelevant.

F. DISPOSITION

65. In the premises I find for the Applicant and grant the following relief:

a. An Order of Certiorari to remove into this Honourable Court and quash the Respondent's decision made memorandum by dated 15th March, 2004 refusing to pay to the Applicant a chauffeur allowance for the period 1989 to present on the basis that the Applicant did not employ or have a chauffeur for that period as being null, void, illegal and of no effect and/or contrary to law.

b. A Declaration that the Respondent's decision made on or about 15th March 2004 not to pay to the Applicant a chauffeur allowance on the basis that the Applicant did not employ or have a chauffeur is null, void, illegal and of no effect and/or contrary to law and/or an abuse of power.

c. A Declaration that the said decision of the Respondent made on 15th March 2004 is contrary to section 5 (3) of the Industrial Relations Act Chapter 88:01.

d. A Declaration that the Respondent's decision to continue to withhold and/or the continuing withholding by the Respondent of the payment of a chauffeur allowance to the Applicant is null, void, illegal and of no effect and/or the imposition of a restriction upon the payment of a chauffeur allowance to the Applicant is null, void, illegal and of no effect and/or contrary to law.

e. A Declaration that the Applicant by virtue of holding the office of Member of the Industrial Court is and was at all material times from the date of his appointment to the said office entitled to the payment directly of a chauffeur allowance.

f. An order that the Respondent as accounting officer in the Industrial Court do pay or cause to be paid immediately and continue to pay to the Applicant directly a chauffeur allowance.

g. Costs of the action are to be paid by the Respondent to the Applicant certified fit for senior and junior counsel.

h. I also propose to entertain further submissions from the parties as to the additional orders to be made.

G. Damages

(a) General

66. On September 30, 2009 I delivered my substantive judgment. However I entertained further submissions from the parties as to the issue of damages. I therefore go on to consider the issue of damages. The Judicial Review Act ("JRA"), Chapter 7:08, empowers the Court to grant the prerogative remedies of mandamus, prohibition or certiorari: section 8 (1) (a). Its powers include, among other matters, the power to grant such other orders, directions or writs as it considers just and as the circumstances warrant: s. 8(1) (d). The Court may also award damages to the applicant if: (a) the applicant has included in the application a claim for damages arising from any matter to which the application relates; **and** (b) the Court is satisfied that if the claim had been made in an action begun by the applicant at the time of making the application, the applicant could have been awarded damages: s.8 (4). Further the Court, having regard to all the circumstances, may grant in addition or alternatively an order for restitution or for the return of property, real or personal: s.8 (5).

67. Part 56 of the Civil Proceedings Rules ("CPR") deals with the procedural rules governing claims for judicial review, including where the claimant is seeking damages, restitution or recovery of a sum due or alleged to be due (CPR56.7). Thus a claim for damages may be included in a claim for judicial review. Such a claim may, however, only be awarded to the claimant if the two conditions set out at section 8 (4) JRA have been satisfied. Further an action for the purpose of section 8 (4) includes an ordinary action brought either by writ or some other form of originating process e.g. a constitutional motion: ***Josephine Millette v Sherman Mc Nicholls*** Civ. App. No. 155 of 1995 per de la Bastide CJ at page 14.

68. Having regard to my findings at trial, the parties do not dispute that the Applicant would have been entitled to bring a private law action to which the

Limitation of Certain Actions Act would apply. However there is considerable dispute as to whether the Applicant is entitled to constitutional redress.

69. Having considered the submissions, I agree with the Applicant that he also had a cause of action grounded in the Constitution in that the decision to make payment of the chauffeur allowance subject to the condition that he employ a chauffeur, infringed the Applicant's constitutional right not to be deprived of property otherwise than by due process. The imposition of the said condition violated the due process of sections 140 and 141 of the Constitution: see ***Harrikisoon v AG of Trinidad and Tobago*** [1980] AC 265 [PC] at 269 to 270.

(b) Constitutional proceedings and delay.

70. The issue to be determined is whether the Applicant should now be disentitled to constitutional redress in the nature of damages by virtue of his inordinate delay. It must be remembered that the Applicant was appointed in 1989, some eight years after Cabinet purported to impose the said, as I have found, illegal qualification. From the time of his appointment the Applicant did nothing until, as he said, the judge delivered her judgment in ***Gafoor*** on May 29, 2003. The judge held that the claimant, a judge of the Industrial Court, was entitled to be paid a chauffeur allowance directly and that the decision of the Registrar to withhold the direct payment of, and to refuse to pay to the claimant directly, the chauffeur allowance was unlawful, irrational, an abuse of power and, accordingly, illegal, null and void and of no legal effect. In the instant case it is clear that from that day (May 29, 2003) this Applicant acted with the utmost promptitude. It must also be borne in mind that the Applicant's right to the chauffeur allowance is a continuing one.

71. Chapter 1 of the Constitution of Trinidad and Tobago makes provision for the recognition and protection of fundamental human rights and freedoms. The machinery for the enforcement of the said rights and freedoms is contained in section 14 within Part 5 of the Constitution. Section 14 empowers the High Court to hear and determine disputes about contraventions of the Chapter 1 provisions and to grant the appropriate remedy in respect thereof. The grant or refusal of a remedy in constitutional proceedings is a matter in respect of which the court has a judicial

discretion by virtue of its inherent jurisdiction to prevent abuse of process that applies as much to constitutional proceedings as it does to others. Section 14 provides:

> "(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), and (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (4), and may, subject to subsection (3), make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.
>
> (3). The State Liability and Proceedings Act shall have effect for the purpose of any proceedings under this section."

72. Unlike in private law actions, the Constitution is not subject to any express limitation period for the commencement of constitutional proceedings: ***Durity v Attorney-General of Trinidad and Tobago*** [2003] 1 AC 405 [PC]. However an applicant's delay in approaching the Constitutional Court can provide a basis upon which constitutional relief may be denied. At pages 416 and 417 Lord Nicholls articulated the principle:

> At the forefront of the Constitution is a resounding declaration of fundamental human rights and freedoms. It is axiomatic that these rights and freedoms, expressly declared, are not to be cut down by other provisions in the Constitution save by language of commensurate clarity. The Constitution itself so declares. The rights and freedoms recognised and declared in section 4 are not to be abrogated, abridged or infringed by any law except as expressly provided in Chapter 1 of the Constitution or in section 54 (amendment of the Constitution): see section 5. Clearly, the inherent jurisdiction of the High Court to prevent abuse of its process applies as much to constitutional proceedings as it does to other proceedings. And the grant or refusal of a remedy in constitutional proceedings is a matter in respect of which the court has a judicial discretion. These limitations on a citizen's right to pursue Constitutional proceedings and obtain a remedy from the court are inherent in the High Court's jurisdiction in respect of alleged contraventions of constitutional rights and freedoms. But the Constitution itself contains no express limitation period for the commencement of constitutional proceedings.

> The court should therefore be very slow indeed to hold that by a side wind the initiation of constitutional proceedings is subject to a rigid and short time bar. The very clearest language is needed before a court could properly so conclude. Such language is noticeably absent in the present case.
>
> When a court is exercising its jurisdiction under section 14 of the Constitution and has to consider whether there has been delay such as would render the proceedings an abuse or would disentitle the claimant to relief, it will usually be important to consider whether the impugned decision or conduct was susceptible of adequate redress by a timely application to the court under its ordinary, non-constitutional jurisdiction. If it was, and if such an application was not made and would now be out of time, then, failing a cogent explanation the court may readily conclude that the claimant's constitutional motion is a misuse of the court's constitutional jurisdiction. This principle is well established. On this it is sufficient to refer to the much repeated cautionary words of Lord Diplock in ***Harrikissoon v Attorney General of Trinidad and Tobago*** [1980] AC 265, 268 . An application made under section 14 solely for the purpose of avoiding the need to apply in the normal way for the appropriate judicial remedy for unlawful administrative action is an abuse of process.

73. The Privy Council remitted ***Durity*** to the Court of Appeal to address the issue of delay. In the Court of Appeal, Warner JA in ***Durity*** Civil Appeal No.140 of 1998 at para 48 inclined to the view that the delay had to be inordinate:

> It is to be expected that in a matter of this nature, some delay was inevitable - the question however is whether it was so inordinate to deny the appellant relief.

Where therefore such delay is inordinate then, failing a cogent explanation, a court may deny an applicant relief.

74. In considering the issue of delay, it must also be borne in mind that there is no element of mala fides or any oppressive conduct on the part of the State. Further it is clear that all parties proceeded on a mistake of law, namely on the mistaken belief that Cabinet was entitled to act as it did by qualifying the receipt of the chauffeur's allowance. Indeed the Court can take judicial notice of the fact that that was the prevailing view not only of the office holders falling within the remit of the SRC, but all stakeholders involved in the process. It is not uncommon for individuals to harbour a suspicion or incline to a view that they may have been placed in an

unfavourable position for which they suspect redress ought to be available. However they may be unable to determine with any degree of certainty whether their suspicions or views are justified and/or justifiable and/or under which legal framework their grievance can most appropriately fit. The Respondent however asserts that this failure to take action for some 15 years constitutes "gross delay," but the flipside of the coin may provoke a different take on the matter. One can quite understand that by virtue of the nature of the position held by the Applicant, he may have been reluctant not "to generate any or any negative publicity that may be attendant on initiating proceedings or which may negatively impact upon the working relationship with other members of the Court and the Respondent and/or jeopardise his re-appointment": para 6.3 of Applicant's Statement. It was not until the subject matter was ventilated in the courts that the Applicant got the assurance that the judicial landscape was contoured in his favour and that he did in fact have legal recourse. The foregoing, in my view, provides a cogent explanation for the delay.

75. With respect to a mistake of law, the court is also entitled to consider that, at present, in an action founded on contract, the limitation period would not be four years, but would only begin to run four years from the date that the Applicant has discovered or could with reasonable diligence have discovered the mistake: section 14 of the Limitation of Certain Actions Act ("LCAA"); **Chitty on Contracts**, 13th edn, Vol 1, paras 28-088 to 28-089; ***Kleinwort Benson Ltd v Lincoln CC*** [1999] 2 AC 249 [HL]. By virtue of the transitional provision (section 20) the LCAA does not apply to any action brought upon a cause of action which accrued before the commencement of the said Act (November 17, 1997). The Applicant would therefore have been entitled to his contractual remedy from November 17, 1997. In those circumstances there can be no objection to the court in its constitutional manifestation, by analogy, awarding damages from that date.

76. Another factor to be considered by the court is prejudice. It is in the public interest that the State ought not to deprive a judicial officer of his lawful salary. It is difficult to discern any prejudice to the State in paying a judicial officer the remuneration to which he is lawfully entitled.

(c) Constitutional proceedings and damages.

77. In ***Attorney-General of Trinidad and Tobago v Ramanoop*** [2005] UK PC 15, [2005] 2 WLR 1325 the Privy Council articulated the approach to be adopted by a court when awarding damages in the exercise of its constitutional jurisdiction. Lord Nicholls at paras 17 to 20 stated:

> 17.....Section 14 recognises and affirms the court's power to award remedies for contravention of chapter 1 rights and freedoms. This jurisdiction is an integral part of the protection chapter 1 of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ("without prejudice to") all other remedial jurisdiction of the court.
>
> 18 When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.
>
> 19 An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive

> damages" or "exemplary damages" are better avoided as descriptions of this type of additional award.
>
> 20 For these reasons their Lordships are unable to accept the Attorney General's basic submission that a monetary award under section 14 is confined to an award of compensatory damages in the traditional sense. Bereaux J stated his jurisdiction too narrowly. The matter should be remitted to him, or another judge, to consider whether an additional award of damages of the character described above is appropriate in this case.

78. It is a matter of general constitutional principle that when fundamental rights have been transgressed, the court has ample power to ensure that effective redress is granted: ***Gairy v Attorney General of Grenada*** [2002] 1 AC 167 [PC] at 177 per Lord Bingham. In the instant case the breach is one of an important fundamental right, namely the deprivation of property without due process. It would be subversive of such an important fundamental right if the court were to countenance a principle authorising unlawful retention by the executive of remuneration lawfully due to a judicial officer. Further the breach strikes at the very heart of another important constitutional principle, the separation of powers and the independence of the judiciary. Public confidence in the administration of justice would be eroded if the nation thought that judicial officers had somehow or the other been reduced to making an approach to the executive or the legislature cap in hand for remuneration lawfully due to them. The clear intent of the framers was to insulate judicial officers and protect judicial remuneration from falling below an acceptable minimum. The nature of this case is such that I am of the view that the comparable common law measure of damages would not provide the Applicant with effective redress.

79. Having regard to the importance of the constitutional right, the nature of the breach and all the circumstances and in the exercise of my undoubted discretion, I am of the view that the Applicant ought to receive damages equivalent to the chauffeur's allowance from the date that same became lawfully due, namely from April 30, 1989. It is manifest that the failure to pay the Applicant the chauffeur's allowance was based on a mistake of law involving no element of bad faith. I therefore do not propose to award an additional sum by way of vindicatory damages. By parity of reasoning the Applicant should also be awarded interest on the sum awarded.

d. Interest

80. On September 27, 2000 sections 25 and 25A of the Supreme Court of Judicature Act, Chapter 4:01("SCJA") were amended to increase the award of simple interest on judgment debts from 6% per annum to 12% per annum

> "25. In any proceedings tried in any Court of record for recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment, but nothing in this section-
>
> (a) shall authorise the giving of interest upon interest;
>
> (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
>
> (c) shall affect the damages recoverable for the dishonour of a bill of exchange.
>
> 25A(1) Every judgment debt entered up carries interest at the rate of twelve per centum per annum from the time of entering up the judgment, until the same shall be satisfied and such interest may be levied under a writ of execution on such judgment."

81. It is manifest that the power to award interest is discretionary and, like any discretion vested in a judge whether by statute or common law, it must be exercised judicially. Thus section 25 confers on the court the discretion whether to award interest at all, at what rate, on what part of the damages, and for what period between accrual of cause of action and date of judgment, to award interest: **Mc Gregor on Damages** 18th edn. (2009) para. 15 – 031. Although I have found that the Applicant has provided a cogent explanation for the delay in commencing proceedings for judicial review and therefore entitled to recover his entire unpaid allowance from 1989, the court is not precluded in the exercise of its discretion from reducing the interest to be awarded as a result of the delay in instituting proceedings.

82. The principles to be applied when awarding interest on damages in personal injury cases have been distilled in ***Jefford v Gee*** [1970] 2 WLR 702. Attorneys accept that the principles are equally applicable in determining the manner in which

interest is to be awarded for the Applicant's past pecuniary loss up to trial. The governing principle is that interest should not be awarded as compensation for the damages done, but should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him: per Lord Denning MR. at 709G.

83. In the instant case the non-payment of the chauffeur allowance occurred over a 20-year-period. **McGregor on Damages** ibid at para. 15-086 approved of the guidelines laid down in ***Jefford v Gee*** when a court has to consider the issue of interest where the loss is a continuing issue.

> "d) ***Interest where the loss is a continuing one***. Where there has been continuing loss to a claimant which has accrued, at regular or irregular intervals, over the years, then, strictly speaking, for each separate slice of loss the time from which the interest should run will differ, being from when that slice accrues. However, a particular short-hand method has been developed for the computation where the claim is for personal injury and fatal injury;…"

84. Lord Denning MR at 710 E and H articulated the "short-hand" approach when considering the rate of interest to be awarded on the special damages which involved loss of wages, medical expenses and damage to scooter and clothing. Special damages should be dealt with on broad lines. Further the court held that in general interest should be allowed on special damages from the date of the accident to the date of the trial at half the appropriate rate:

> **Loss of wages:**
>
> This occurred week by week. In principle, the interest should be calculated on each week's loss from that week to the date of trial. But that would mean too much detail. Alternatively, it would be possible to add up the loss every six months and allow interest on the total every six months until trial. That would seem fair, especially as the loss for the initial weeks might be for total incapacity, and afterwards only for partial incapacity when he could do light work. More rough and ready, the total loss could be taken from accident to trial: and interest allowed only on half of it, or for half the time, or at half the rate.
>
> **Medical expenses:**
>
> In principle interest should run from the date on which they are paid. But they are not usually so large as to warrant separate calculation.

> **Damage to scooter and clothing:**
>
> In principle interest should run from the date when the account is paid for repairs or replacements. But, here again, the amounts are not so large as to warrant separate calculation.
>
> **Overall result:**
>
> Taking all these things into account, we think that the special damages should be dealt with on broad lines. The amounts of interest at stake are not large enough to warrant minute attention to detail. Losses, expenditure and receipts should all go into one pool. In all ordinary cases we should have thought it would be fair to award interest on the total sum of special damages from the date of the accident until the date of trial at half the rate allowed on the other damages. In Mr. Jefford's case this is interest on £2,131 11s. 6d. for two and a half years at a rate which we will later consider.

85. While adopting the broad principles enunciated in ***Jefford v Gee***, the instant case can be considered distinguishable as interest is a significant component of the entire award. Lord Dennings opined that a fair alternative where loss of wages was in issue would be to add up the loss every six months and allow interest on the total every six months until trial. In the instant case we have a clear demarcation in the award of interest on judgment debts which can be used as a starting point in calculating the rate of interest. Thus the legislature on September 27, 2000 amended section 25A SCJA, thereby doubling the award of interest on judgment debts from 6% to 12% per annum. No doubt this was due in large measure to the prevailing economic conditions. In seeking to arrive at a realistic rate of interest, I also factor in that approximately one-half of the damages using the ***Jefford v Gee*** formula (half the appropriate rate) would only have attracted 3% per annum prior to the amendment in 2000 (one-half of 6%), while the balance would have attracted 6% (one-half of 12%). Further I consider that the total sum of $480,053.07 on which I propose to award interest was not sustained 20 years ago, but was a continuing loss to the claimant accruing at monthly intervals over a 20-year-period. I also note that Shah J in ***Sandra Juman v A.G of Trinidad and Tobago*** et al., H.C.A No. S490 of 2001 at pp.14-16 has rightly voiced concerns about the current state of both the local and world economy, and the consequential decline in interest rates.

86. Having regard to all the circumstances, including the disparate interest rates on judgment debts pre-2000 and post-2000, and taking an average between 3 and 6% (***Jefford v Gee*** 714G), interest ought to be awarded on the sum of $480,053.07 at

4½% per annum from May 1, 1989 to today's date. However I consider that as a result of the delay in instituting proceedings there should be some diminution in the interest to be awarded. Accordingly I hold that the appropriate and fair rate at which interest should be awarded on the sum of $480,053.07 is 4% per annum from May 1, 1989 to today's date (July 14, 2010). Thereafter interest shall be at the rate of 12% per annum until payment.

H. Order.

87. The parties have assisted me in computing the damages ($480,053.07) in the event that I were minded to award same from the date of the Applicant's appointment. The said figure was arrived at after crediting the Applicant with the service allowance paid to him. In the circumstances I award:

(1) Damages in the sum of $480, 053.07.

(2) Interest on the sum of $480,053.07 at the rate of 4% per annum from May 1, 1989 to today's date (July 14, 2010).

(3) Costs of the action are in accordance with my judgment to be taxed by the Registrar in default of agreement.

(4) Liberty to apply.

DATED this 14th day of July, 2010.

……..

PRAKASH MOOSAI

JUDGE