

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2015-04145

BETWEEN

SHELIA SEECHARAN

APPLICANT / INTENDED CLAIMANT

AND

THE PUBLIC SERVICE COMMISSION

RESPONDENT / INTENDED DEFENDANT

Before the Honourable Madame Justice C. Pemberton

Appearances:

For the Applicant/Intended Claimant:

Mr. M. Quamina instructed by Ms. G.
Gopeesingh

For the Respondent/Intended Defendant:

Mr. R. Martineau, S.C. instructed by Mr.
S. Julien

DECISION

[1] FACTS

Shelia Seecharan (SS), the Applicant in the matter at bar, held the position of Deputy Permanent Secretary in the Ministry of Legal Affairs. By letter dated 30th September,

2014, from the Director of Personnel Administration (DPA), SS was informed of the initiation of an investigation regarding a report of professional misconduct. Thereafter, SS exchanged correspondence with the Permanent Secretary of the Ministry of Public Administration, who was also the assigned Investigating Officer in the matter.

[2] By letter dated 1st July, 2015, SS was informed by the DPA that the Investigator's Report was received and that the Commission, ("the PSC") made a determination that disciplinary charges be preferred against her. The DPA further informed that the PSC proposed to interdict her from duty on half salary, pending the outcome of the hearing and determination of those charges. The DPA invited SS to make representations to the PSC as to why she should not be interdicted and to state whether she admitted or denied the allegations. She was advised that in that correspondence she could give any explanation that she chose to give in the matter.

[3] By letter dated 16th July, 2015, SS requested a copy of the letter of allegations of misconduct by the named officer and the Investigator's Report. By letter dated 28th July, 2015, the DPA informed SS that her request for both the copy of the letter of allegations and the Investigator's Report was denied. SS made no representations to the PSC.

[4] By letter dated 30th October, 2015, the DPA informed SS of the PSC's decision to interdict her from duty on half salary, in accordance with Regulation 89 of the **PUBLIC SERVICE COMMISSION REGULATIONS**¹ (PSC Regulations). On 2nd December, 2015, SS filed an Application for Judicial Review of the PSC's decisions.

[5] **PSC DECISIONS FOR JUDICIAL REVIEW**

SS's Application requests leave for judicial review of the two decisions of the PSC.

1. The decision of 28th July, 2015, not to provide SS with the Investigator's Report of her alleged misconduct.
2. The decision of 30th October, 2015, to interdict SS from performing duty on half salary, pursuant to PSC Regulation 89, Chapter 1:01.

¹ Chap. 1:01

SS is seeking the usual following relief:

- i) *An order of certiorari to remove into the High Court of Justice and quash the said decisions;*
- ii) *A declaration that the said decisions are unlawful and in breach of the principles of fairness and/or natural justice;*
- iii) *A declaration that the said decisions are unreasonable, and/or irregular and/or improper exercise of discretion and/or are irrational;*
- iv) *A declaration that the said decisions are in breach of sections 4(b) and 5(2)(e) of the Constitution of the Republic of Trinidad and Tobago, i.e. the right of the individual to the protection of the law, and the right not to be deprived of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of their rights and obligations;*
- v) *A declaration that the said decisions were in breach of section 20 of the Judicial Review Act, chapter 7:08, that is the duty of a public authority when acting in the exercise of a public duty or function to exercise that duty or perform that function fairly.*
- vi) *An order of mandamus directing the Public Service Commission to disclose to the Applicant the report of the investigating officer appointed pursuant to Regulation 87 of the Public Service Commission Regulations, Chapter 1:01, to investigate allegations of misconduct against her;*
- vii)
- viii)

[6] SS sought these reliefs on the following five grounds:

1. *The PSC's decision to interdict SS, prior to her being heard on whether or not she would be interdicted, was a misrepresentation by the PSC.*
2. *The decision to interdict SS was a breach of Section 20 of the **JUDICIAL REVIEW ACT**².*
3. *The decision to interdict was an unreasonable/irregular/improper exercise of discretion and an abuse of the PSC's power.*
4. *The PSC's decision not to release the Investigator's Report to SS was a breach of natural justice and/or the principle of fundamental fairness.*
5. *The decisions taken against SS, breached her right to protection of the law and her right not to be deprived of the right to a fair hearing.*

On 18th February, 2016, the Court ordered the parties to make written submissions on the veracity of SS's Application for leave with respect to the decisions of the PSC.

[7] **LAW**

The **PSC REGULATIONS** at 84-114 set out the Disciplinary Regime for public officers who may find themselves at variance with the Rules and Regulations of the Public Service. Of

² Chap. 7:08.

moment here are **REGULATION 89** and **REGULATION 90**. Regulation 89(1) speaks to interdiction and more particularly provides for such a step when disciplinary proceedings for dismissal are contemplated against a public officer, and where the PSC is “*of the opinion that the public interest **requires** that that officer shall forthwith cease to perform the functions of his office*”. (Emphasis mine).

- [8] Regulation 90 speaks to investigation and charges and outlines the steps to be taken once disciplinary charges are contemplated against a public officer. Of importance to this matter are the provisions dealing with the appointment of an Investigating Officer; that the Officer under investigation is given an opportunity to give an explanation in writing to the Investigating Officer of the report or allegation made; the Investigating Officer’s mandate to forward “***for the information of the Commission***” an “***investigating officer’s report consisting of the original statements and all relevant documents together with his own report on the particular act***”. The Regulations go on to provide that the PSC after considering the Report and any explanation given to the investigating officer by the officer under investigation shall decide whether the officer shall be so charged and shall inform the officer as soon as possible of its decision “***together with such particulars as will leave the officer under no misapprehension as to the precise nature of the allegations on which the charge is based.***”.

[9] **SS’s SUBMISSIONS**

Counsel for SS, Mr. Quamina, submitted that the evidence on the Application satisfies the requirements of the test for the grant of leave found in **SHARMA v. BROWN-ANTOINE**³. This test indicated that there must be a “*realistic probability of success*”, which is demonstrated by SS’s Application, as the decisions by the PSC amounted to a breach of the principles of fundamental fairness and natural justice.

[10] **PUBLIC INTEREST FACTOR AND THE DECISION TO INTERDICT**

Counsel highlighted PSC’s invitation, in accordance with Regulation 89, to SS to make representations as to why she should not be interdicted. He referred to **SHERMAN MC**

³ Para. 4. [2006] UKPC 57.

NICOLLS v JUDICIAL AND LEGAL SERVICES COMMISSION⁴ where Jamadar J (as he then was) highlighted that if the intent is for a person who the PSC intends to visit with disciplinary proceedings to provide a meaningful response, then the PSC is obligated to provide the public interest factors to that person. Counsel's argument is that the PSC, with respect to SS, ought to have done the same, and these not having been provided, deprived his client of the opportunity of a fair hearing.

[11] **THE DECISION NOT TO RELEASE THE INVESTIGATOR'S REPORT AND A COPY OF THE ALLEGATIONS MADE BY AN OFFICER.**

Counsel submitted that PSC's decision not to provide SS with a copy of the Investigator's Report amounted to breach of the principles of natural justice. His explanation is that since the Investigator's Report is the basis of the decisions to prefer charges against SS and interdict her, then that report ought to have been provided to her. PSC's reliance on Regulation 90(5) indicating that the Regulation did not require the Investigator's Report to be provided to anyone else, is inadequate because the PSC invited SS to make representations in her defence.

[12] Counsel further opined that Regulation 90(5) "*must be read subject to the requirements of a fair hearing*". Counsel relied on **KANDA v. GOVERNMENT OF MALAYA**⁵ to buttress his submission that any individual in receipt of an invitation to be heard by a decision maker, must be provided with all the relevant evidential materials.⁶ In light of these reasons, SS has demonstrated an arguable case against the PSC.

[13] **PSC's SUBMISSIONS**

Counsel for PSC, Mr. Martineau, S.C., submitted that SS's Application for leave does not meet the required threshold in the **SHARMA** case⁷. The PSC is within its legal authority through Regulation 84 to initiate disciplinary proceedings against any officer who is alleged

⁴ **CV 2007-03132.**

⁵ **[1962] AC 322.**

⁶ *If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence is given and what statements have been made affecting him: and then he must be given a fair opportunity to correct and contradict them.* per Lord Denning in **KANDA**.

⁷ See footnote 3.

to be guilty of misconduct; and through Regulation 89 to invoke interdiction proceedings against officers facing disciplinary proceedings. Counsel noted that Regulation 89(4) entitles officers who receive a favourable decision from the PSC disciplinary proceedings to remuneration of their loss in pay. Further, the decisions to prefer charges against SS and interdict her are solely within the discretion of the PSC, which did so through authority granted to it in Regulation 90(6).

[14] **PUBLIC INTEREST FACTOR AND THE DECISION TO INDERTICT**

Counsel submitted that interdiction has two requirements; the institution of dismissal proceedings and in the public interest. After the satisfaction of both requirements, the officer may then be interdicted. Counsel noted that in **THE POLICE SERVICE COMMISSION v. MURRAY**⁸ the officer was invited to comment, but like SS, decided against doing so. In that case the court found that there was no breach of natural justice. In the case at bar, since SS was given the opportunity to be heard, she falls within the same class as **MURRAY**, so that the finding of this Court should follow suit.

[15] **THE DECISION NOT TO RELEASE THE INVESTIGATOR'S REPORT AND A COPY OF THE ALLEGATIONS MADE BY AN OFFICER.**

The PSC gave SS the requisite written notice under Regulation 90(3). The provision of written statements from persons having knowledge of the alleged misconduct to SS is not a requirement since those documents are for the use of the PSC, not SS. Upon the completion of the investigation, the original statements and the Investigator's Report are forwarded to the PSC for their information. Counsel submitted that the SS' Application will fail based on the PSC Regulations and **MURRAY** which states that there is no requirement for disclosure to the officer facing disciplinary charges of the investigator's report or any public interest factors which the PSC may have considered.

[16] Counsel distinguished **KANDA** from the case at bar, noting that **KANDA** addresses the right to be heard, while in this case, no right to be heard exists at this time. Notwithstanding, SS was invited to make representations, which she refused to do. Also,

⁸ Civ. App. No 143 of 1994.

the case at bar is at an earlier stage in the process, than in **KANDA** where in that case, the Commission already determined the allegations of misconduct. The submission was further buttressed by dicta in **MAXWELL**⁹.

[17] Further, Counsel submitted that it was not clear how the information requested could assist SS in making her representations in relation to the question of interdiction. SS has since been charged and the public interest is now obvious and a matter for the PSC alone and has since been disclosed. He submitted that SS does not have an arguable case for disclosure of the Investigator's Report and is not entitled to the reliefs requested.

[18] **ANALYSIS**

PUBLIC INTEREST FACTOR AND THE DECISION TO INTERDICT

Absolute provisions are included in the Regulations. These are clear terms of references where disciplinary proceedings for the dismissal of a public officer have been instituted by the PSC. They include where the PSC is of the opinion that the public interest requires that the officer shall be interdicted, that is, to forthwith cease to perform functions of the office on such conditions as the PSC may determine. In such circumstances, the PSC shall interdict him. I agree with Counsel for the PSC. There is nothing in SS's papers to convince me that leave should be granted on this footing. The decision to interdict is not bound up with the issue of non-disclosure but rests on the fact or decision that disciplinary proceedings have been initiated by the preferring of disciplinary charges against her. The PSC is the competent body for making such a determination and there is no evidence before me of any fact to show unreasonableness/irregularity/improper exercise of discretion on the part of the PSC, or misrepresentation, or abuse of power, or a breach of Section 20 of the **JUDICIAL REVIEW ACT**. Now that charges have been laid, this question is otiose.

⁹ **MAXWELL v DEPARTMENT OF TRADE AND INDUSTRY** [1974] 2 ALL ER 122 AT P 132 e-f

In terms of their reference the inspectors were specifically instructed to report on this matter of information... The inspectors were not instructed to investigate any charge against the plaintiff ... their duty was to find out what happened and report their opinion. This was a very different task from that which is sometimes imposed on those holding inquiries when they are asked to decide whether allegations of specific misconduct have been made out... That which fairness calls for in one inquiry may not be called for in another. Those conducting an inquiry are in the best position to decide what fairness calls for.

[19] THE DECISION NOT TO DISCLOSE THE REPORT OF THE INVESTIGATING OFFICER

“...if the Defendant’s intent is to have a meaningful response from the Claimant as to why he should not be interdicted, and given that public interest justification is a matter for the opinion of the Defendant, then I think that the Defendant could give the Claimant the public interest factors that it is considering that support its proposals to interdict the Claimant. By doing so, the Claimant can meaningfully respond and assist the Defendant in deciding whether or not it should interdict the Claimant. Indeed, in the special circumstances of this case, fundamental fairness may even demand that such a course be adopted.”¹⁰

This passage seemed to have moved Mr Quamina to take action for his client. Let me reiterate that Regulation 89 does not speak to any opportunity to be given to the public officer to make representations for the PSC’s consideration. That course was introduced in the correspondence between the DPA and SS, and seen to be part of modern industrial relations practice. The Learned Judge’s dicta is to be taken as a commentary on that new wind of pleasant change and we take guidance from it.

[20] To my mind, if I were to recast that passage, I would posit that the Learned Judge was indeed highlighting that if the intent is that a person who the PSC intends to visit with disciplinary proceedings is provided with an opportunity to give a response to the issue of interdiction, then the PSC “could” give the officer “the public interest factors” that it is intending to support its decision to interdict. This, the Learned Judge opined would enable the officer to give a meaningful response to the PSC so as to assist them in coming to a decision whether to interdict or not. The Learned Judge was careful to point out that “in the special circumstances” of the **MC NICOLLS** case, fairness may “have demanded “that such a course be adopted”.

[21] I agree with the Learned Judge. Does that passage and interpretation help SS in her quest? I think not. SS held high office in which trust and confidence were reposed in her.

¹⁰ **SHERMAN MC NICOLLS v THE JUDICIAL AND LEGAL SERVICES COMMISSION.**
See para. 4 *infra*.

This she knew. Disciplinary charges of a grave nature were preferred against SS for alleged breaches. This she knew as well. What other matters could constitute “*public interest*” as required by the Regulations? Can this case qualify as a special case? There is no evidence to support this. In any event, I opine that this case can in no means qualify as special circumstances as for instance, either in the **MC NICOLLS**¹¹ or in the **R. v. SECRETARY OF STATE FOR THE HOME DEPARTMENT**¹² sense.

[22] Further, it is clear from **MC NICOLLS** that the learned judge is saying that the basis of the disciplinary charges should come from the Investigator’s Report and the explanation. Even though the **MURRAY** case was not featured in **MC NICOLLS** that not having been the case, does not render the learning in either case suspect. I reiterate that nowhere does it say in either case that the Investigator’s Report or any documents upon which the PSC has reference to, can be made the subject of what are essentially disclosure proceedings at this stage. This is so especially since Jamadar J. made it quite clear that the only two documents that the PSC must take into account in its decision to prefer the charges was the Investigator’s Report and the explanation given by the affected officer. The Investigator’s Report is for the guidance of the Commission and the Commission is under no obligation to reveal that report to anyone else. The Judicial Review Court cannot provide the waters for a fishing expedition.

[23] SS, in her further affidavits, admits that she did receive public interest considerations from the DPA and as Jamadar J. says, “*public interest justification is a matter for the opinion of the defendant*”. The mere fact that she considers them generic is of no moment and as such, this leg for the grant of leave is shaky at best.

¹¹ **MC NICOLLS** involved the institution of disciplinary proceedings against a sitting Chief Magistrate and involved criminal proceedings against a sitting Chief Justice.

¹² **[2004] 1 AC 604. R. v. SECRETARY OF STATE FOR THE HOME DEPARTMENT** involved a challenge to the Secretary of State’s decision to ban referral fees. The Claimants were two Lawyers’ Associations who argued that the effect of the decision was to significantly reduce fees to solicitors representing a certain class of clients. This was seen as an access to justice issue.

[24] **CONCLUSION**

For the reasons given, I cannot grant SS leave to file for Judicial Review of the PSC's decisions to interdict her on the terms stated or not to release to her the Investigator's Report as the Application does not meet the threshold test as laid down in **SHARMA** – that her case has a realistic prospect of success. The claim is dismissed with costs.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Application filed on 2nd December, 2015, be and is hereby dismissed.
2. The Applicant to pay the Respondent's costs, to be assessed if not agreed.
3. Statement of Costs to be filed and served on or before 9th July, 2016.
4. Responses to be filed and served on or before 23rd July, 2016.
5. Assessment of Costs to be considered in Chambers.

Dated this 22nd day of June, 2016.

/S/ CHARMAINE PEMBERTON
HIGH COURT JUDGE