

REPUBLIC OF TRINIDAD AND TOBAGO

**In the High Court of Justice
Sub-Registry, San Fernando**

Claim No: CV 2021-02843

Between

SAMUEL FRIDAY

Claimant/Applicant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant/Respondent

Before the Honourable Mr. Justice R. Rahim

Date of delivery: Tuesday June 21, 2022

Appearances

Claimant: Mr. P. Ramadhar instructed by Mr. T. Roopnarine

Defendant: Ms. M. Smith instructed by Ms. S. Ramhit

JUDGMENT

1. This is a claim by constitutional relief arising out of what the Claimant alleged to be the failure, refusal or omission of the State to pay to him his lawfully due pension and gratuity (hereinafter referred to as “benefits”) upon retirement within a reasonable time. The first case management conference was heard by this court on October 4, 2021 and adjourned to October 5, 2021. On the latter date, the Defendant indicated that the benefits had since been paid into the bank account of the Claimant some two (2) years after it was due according to the Claimant. The issue of the payment has therefore been resolved but the claim is continued on the basis of alleged breach of the constitutional rights. The issue of damages therefore, also remains alive and so too is interest.
2. The Claimant alleges that the failure to pay the Claimant violated his right to the enjoyment of property and the right not to be deprived thereof except by due process of law under section 4(a) of the Constitution. Further, the failure of the State to comply with regulations 183(1), 183(2) and 184(1) of the Police Service Regulations (“the Regulations”) denied the Claimant his constitutional right to protection of the law enshrined in section 4(b) of the Constitution.
3. Finally, the Claimant asserts in broad measure that his rights under sections 4 and 5 were contravened.

The Facts

4. The Claimant joined the Trinidad and Tobago Police Service (TTPS) on May 28, 1984. He retired on December 4, 2019 having sustained an injury while on duty over eight (8) years before retirement. By October 2020 the Claimant was not yet in receipt of his benefits which according to him resulted in inability to service his debts. It is uncontested that he was served with a pre-action letter of demand from the bank in relation to outstanding mortgage payments on October 29, 2020.
5. Not having received his benefits by February 8, 2021, he made a Freedom of Information request to the Commissioner of Police pursuant to the Freedom of Information Act Chapter 22:02 (FOIA). The information requested was that of a date for payment. The request was acknowledged by the Administrative Secretary of the Office of the Commissioner. On February 22, 2021 a reminder was sent to the Commissioner in relation to the FOIA request. The court notes that the period for reply

to this request is set in law as thirty (30) days and that the period had not yet expired at the date of the reminder.

6. On March 29, 2021 the Claimant received a letter from the Legal Unit of the TTPS which indicated that the payment of his benefits was engaging the attention of the internal auditors and that he would receive a response by April 28, 2021. The letter also set out that payment was dependent on the availability of financial resources. By April 28, 2021 no letter was forthcoming from the TTPS as promised. About one month thereafter on May 20, 2021 the TTPS wrote to the Claimant saying that there had been no response because of the challenges faced because of the Covid 19 Pandemic and it requested until June 21, 2021 so to do.
7. In the meantime, on June 16, 2021, the bank wrote once again to the Claimant threatening legal proceedings if the mortgage was not serviced.
8. By June 25, 2021 nothing was heard from the TTPS despite its promise and so July 6, 2021 a pre-action letter was dispatched to the Defendant by Attorney at law for the Claimant. The day after, namely, on July 7, 2021 the TTPS requested a further extension to August 6, 2021 to provide a response to the FOIA request made some six (6) months earlier.
9. Prior to August 6, 2021, on July 13, 2021, the TTPS wrote to the Claimant indicating that his file had been submitted to the Auditor General's department for approval on May 26, 2021 and that approval had not yet been provided by that department to its Pensions Branch.
10. Once again, pressure from the bank mounted as another letter dated July 20, 2021 was sent by the bank to the Claimant setting out the outstanding sum owing as that of one hundred and seventy-four thousand, two hundred and thirteen dollars and forty-five cents (\$174,213.45) with accruing daily interest of twenty-nine dollars and ninety-seven cents (\$29.97) and legal fees of five thousand, five hundred and forty-seven dollars and seventy-five cents (\$5,547.75). On August 16, 2021 another enquiry was made of the Attorneys for the Claimant by the bank in relation to sums outstanding.

11. Up to that date nothing further had been forthcoming from the TTPS some almost three (3) months since the submission of the file to the Auditor General. As a consequence the Claim was filed on August 27, 2021.
12. After the filing of the Claim, a cheque for the sum of one hundred and seventy-eight thousand, five hundred and eighty-five dollars and eighty-four cents (\$178,585.84) dated September 30, 2021 was prepared for collection by the Claimant and a further sum of one hundred and twenty-eight thousand, one hundred and six dollars and five cents (\$128,106.05) was deposited by the Accounts department into the Claimant's account on October 5, 2021.

The Law

13. Part XV of the **Police Service Regulations** sets out at Regulation 183 as follows:

- (1) The computation and authorisation of gratuities and pensions of officers whose retirement from the Service is known to be impending shall be treated as urgent matters of high priority.
- (2) The Commissioner shall ensure that particulars of service and pay of all officers whose retirement is known to be imminent are furnished accurately to the Comptroller of Accounts not less than three months before the date on which the officers concerned are due to retire, in order to enable the computation and checking of pensions, retiring allowances and gratuities to be completed by the Comptroller of Accounts and the Auditor General and submitted for authorisation before the date on which the officer's retirement from the Service is due to take effect.

Regulation 184(1) reads:

- (1) As a contribution towards the special superannuation allowances provided to officers, there shall be deducted from the pay of every officer a sum at such yearly rate as the President from time to time directs, not being a greater rate than one and a quarter per cent; and all such sums shall be paid to the Comptroller of Accounts on or before the eighth day of every month.

14. It is uncontested that the Claimant would have made his contributions every month pursuant to Regulation 184(1). The Claimant submits that the money to which he was entitled was property within the meaning of section 4(a), a submission that is also not contested. In the court's view, the main issues are as follows:

- a. Did the TTPS fail to pay to the Claimant his benefits within a reasonable time. If so, did that failure constitute a breach of the section 4(a) and/or 4(b) rights that entitles him to an award of damages.
- b. Whether as a consequence of the delay in payment, the Claimant is entitled to interest.

15. Standing Order 43 of the Standing Orders of the TTPS sets out the process to be followed by a retiring officer. Sub 37 of that Order provides:

- (1) A Police Officer whose retirement is imminent or wishes to retire voluntarily shall apply on writing to the Commissioner of Police at least six months before the date of retirement with a view to having his benefits computed.

Discussion

16. The Defence argues that the delay in this case has not been unreasonable in all of the circumstances and therefore, the failure to pay for some two (2) years was not unconstitutional. The starting point must of course be the reasons provided by the Defence for the delay.

17. Lucien Ferguson is an Assistant Superintendent of Police attached to the Police Administration building and assigned to the Human Resource Branch of the TTPS. He was also assigned to the Legal Unit previously. He is one of the custodians of the personnel files of the officers of the TTPS. In treating with the issue of delay this deponent set out the process for the application under Standing Order 43. In summary, the officer is required to attach an original Birth Certificate and an Option Form to his application. The officer must elect in that Option Form whether to receive a reduced pension and gratuity on retirement. The witness did not condescend to particulars but it is a matter of logic that the Option Form is relevant to the officer who retires voluntarily before the age of

retirement so that he is afforded the opportunity to immediately receive a reduced pension due to the fact that he has not yet reached the age of retirement. The Option Form would therefore, have not been relevant to the Claimant as he was retiring at the age of retirement.

18. The application is submitted through the head of the Division/Section/Branch to which the officer is attached and runs the gamut until it reaches the Senior Superintendent, Human Resource Branch together with the retiring officer's Divisional Personnel file and Inset Sheet bearing an up to date entry and record of sick leave and vacation leave. The Senior Superintendent then forwards the information and application to the Commissioner for his approval. After the approval is granted the application is processed and the intended retirement and leave entitlement are published in a Departmental Order.
19. Then there is more. The Permanent Secretary in the Ministry of National Security, the Comptroller of Accounts and the Director of Human Resource are then informed of the officer's intention to retire by memorandum. The Senior Superintendent, Human Resource Branch forwards the relevant documents to the Senior Superintendent, Finance Branch for computation of the benefits. The documents include a copy of the Memorandum to the Comptroller of Accounts, the Birth Certificate, Marriage Certificate (or Divorce Absolute), Option Form, Conduct Sheet and Sick Leave Record showing full pay sick leave, no pay sick leave, half pay sick leave and absent from duty leave.
20. By letter of May 25, 2017, the Claimant was informed of his tentative pre-retirement date of July 21, 2018 and a retirement date of December 4, 2019. The Claimant then made the application for compulsory retirement on June 4, 2018. The Commissioner approved the retirement application by minute of October 6, 2018. It means that the process to arrive at and obtain the Commissioner's approval as set out above would have taken some four (4) months after the Claimant made his application.
21. The Senior Superintendent, Human Resource Branch then informed the Finance Branch and the Office of the Commissioner then informed the Office of the Comptroller of Accounts by way of Memoranda both dated October 9, 2018, some three (3) days after the Commissioner approved the application.

22. Consequently, the intention to retire was published in Departmental Order 132 dated October 26, 2018. The file was then sent to the Separations Section at Human Resource Branch for initial processing of the retirement benefits. That department computes the amount of sick leave taken which must match the sick leave set out in the Officer's personnel file. In the court's view this means that if there is a conflict; same must be reconciled as a matter of common sense. This would mean contacting the relevant division in an attempt to resolve the true position of the sick leave days taken. Sick leave has also to be classified and the entitlement to vacation leave outstanding calculated. The dates of entry into the service, pre-retirement date and retirement dates are verified. Again should there be inconsistency, same would have to be resolved as a matter of logic before the application can move forward. In the case of the Claimant, there appeared to be sick leave applications that were not previously classified so that his file and sick leave applications were returned to the Absent Management Section of the Human Resources department for classification in December 2019. Some two (2) months later, the said department having prepared a worksheet dated February 3, 2020, returned the file to the Separation Section for continuation of the process. The final sick leave record was compiled on July 6, 2020. On August 3, 2020, the process having been completed at the Separation Section, a package was compiled and dispatched to Finance Branch – Pension Section. That package included the proper sick leave record as well as other documents. Upon dispatch, the file of the Claimant was returned to the vault on the said day to be collected by the Pension/Audit Section.

23. There was to be another hurdle. The Finance Branch made a sick leave related query and referred the package back to the Separation Section, which in turn passed same to the Absent Management Section for verification of sick leave taken in 1987 as per the query. Consequently, another classification was done on April 13, 2021 and the file was re-sent to the Pension Section on April 27, 2021 for continued processing. The affidavit of Ferguson does not provide a date on which the query was sent by the Finance Branch nor does it provide the date on which the Separation Section passed the file to the Absent Management Section. Suffice it to say that some eight (8) months passed between submission to the Finance Branch – Pension Section and the eventual return of the file to that branch.

24. The inference appears to be that the process of verifying the sick leave periods and of classifying same was a protracted one as a consequence of the high number of sick leave days taken by the

Claimant. In the court's view this was not an unexpected occurrence, the Claimant having been injured while on duty in 2011. Although it is reasonable to expect the number of sick days having regard to the nature of the injury, whether expected or unexpected the process of verification and calculation would remain the same. In that regard, the evidence is that between February 5, 2011 and October 21, 2018 some two thousand, seven hundred and twenty-nine (2,729) days sick leave was taken and that this leave required classification. There were also periods of unauthorised absence in 1987 (prior to injury), 2011, 2014 and 2017 which required classification.

25. Additionally, there had to be amendments to the classification of sick leave taken in 1994, 1995 and 1996. The witness deposed that it appears that the adjustments would have required the movement of the file back and forth between the three sections so as to generate the correct information to include with the package.

26. To compound matters, as a consequence of the Covid 19 pandemic the Human Resource Department was closed on more than three occasions in 2020 because staff tested positive for Covid and on two occasions in 2021 for sanitisation.

27. A cheque for the sum of one hundred and seventy-eight thousand, five hundred and eighty-five dollars and eighty-four cents (\$178,585.84) dated September 30, 2021 was prepared for collection by the Claimant and a further sum of one hundred and twenty-eight thousand, one hundred and six dollars and five cents (\$128,106.05) was deposited by the Accounts department into the Claimant's account on October 5, 2021. The Claim was filed on August 27, 2021 and the CMC heard on October 5, 2021.

28. The purposive interpretation of Regulation 183(2) of **Part XV of the Police Service Regulations**, imposes a mandatory requirement that the Commissioner of the TTPS must and/or "shall ensure that particulars of service and pay of all officers whose retirement is known to be imminent are furnished accurately to the Comptroller of Accounts not less than three (3) months before the date on which the officers concerned are due to retire...."

29. The purpose of the regulation is to ensure that the retiring officer who is no longer in receipt of a monthly salary is able to access his benefits within a reasonable time after retirement so as to not

suffer any untoward consequences of lack of finances. The regulations envisage that a period of three (3) months before the date of retirement would be an appropriate period for the Comptroller of Accounts to process payment so that the burden is placed on the Commissioner to ensure that the relevant documents are dispatched to that department by that time.

30. In the court's view, there is a balancing exercise to be conducted when the tension between the duty of the Commissioner to ensure that the information provided that forms the basis for the payment of funds out of the public purse is considered and weighed against the duty of the Commissioner to ensure that there is compliance with timelines for submission of that information. The obvious tension that exists between the duties must also be considered against the backdrop of the consequences of the breach of those duties. In that regard, it is helpful to examine the duty imposed on the Commissioner as the Accounting Officer of the Police Service. These are set out below.

31. **Financial Regulations to the Exchequer and Audit Act Chap. 69:01**, sections 4 and 5 set out as follows:

4. *An accounting officer shall be responsible for ensuring—*
 - (a) *that the financial business of the State for which he is responsible is properly conducted; and*
 - (b) *that public funds entrusted to his care are properly safe-guarded and are applied only to the purposes intended by Parliament.*
5. *All accounting officers are personally and pecuniary responsible for—*
 - (a) *the due performance of the financial duties of their departments;*
 - (b) *the proper collection and custody of all public moneys receivable by them; and*
 - (c) *for any accounts rendered by them or under their authority.*

32. Section 8 of the said Act sets out the duties of accounting officers, the relevant ones of which are:

8. *It is the duty of an accounting officer to—*
- (a) *ensure that the proper system of accounting as prescribed by the Treasury is established and maintained;*
 - (b) *exercise supervision over the receipt of public revenue, ensure its punctual collection and bring promptly, to account under the proper heads and sub-heads, whether as revenue or other receipts, all moneys for which he is accountable;...*
 - (f) *ensure that no payment is made which is not covered by proper authority;*
 - (g) *ensure that all disbursements of the State are charged in the accounts under the proper heads and sub-heads of the Estimates or other approved classifications;*
 - (h) *ensure that the maximum interest authorised by the Treasury is not exceeded without the prior approval of the Treasury;*
 - (i) *exercise strict supervision over all officers under his authority entrusted with the receipt and expenditure of public moneys, and to take precautions, by the maintenance of efficient checks, against negligence and fraud;*

33. Accounting officers must also exercise strict supervision over all officers under their authority and ensure maintenance of efficient checks against negligence and fraud. They must be prepared at all times to address any queries of the Treasury or Auditor General and to produce records to justify their accounts (section 8(l)).

34. Further, sections 80 and 81 sets out as follows:

80. *Accounting officers shall keep such records of all officers paid from personal emoluments as will enable them to determine at all times in respect of each officer—*

(a) the rate of salary and any allowances payable;

(b) the authorised deductions to be made from the officer's salary;

(c) the dates on which increments become due;

(d) the leave due and taken;

(e) any other matters affecting the personal emoluments payable; and.....

35. The duties imposed on the Accounting Officer are onerous but designed so as to foster and ensure accuracy and transparency in the accounting process. Further, the law makes the person responsible for payment personally liable to make good on any overpayment if such overpayment cannot be recovered from the officer. This is set out at sections 83 and 84 of the Act. The scheme of the Act is therefore, heavily weighted in favour of accountability and personal liability for lack of accountability.

36. These are of course the weighty considerations that must factor into this decision when the court is called upon to treat with the obvious tension that has arisen.

37. The Claimant argued that the fact of non-compliance with the requirement of the Commissioner to forward the relevant documents to the Comptroller of Accounts at least three (3) months before the date of retirement is an infringement of the due process provision and the right to protection of the law.

Due Process and Protection of the Law

38. In *Wrenwick Theophilus v the Attorney General of Trinidad and Tobago*, CV2009-01683 at para. 14, Rajkumar J, as he then was, in determining whether the right to the protection of the law had been infringed, helpfully laid out the following:

In Christopher Lezama and others v. The Commissioner of Prisons and The Attorney General of Trinidad and Tobago H.C.A. 2098 of 2002 the Honourable Justice Stollmeyer, (as he then was) stated:

*The right to the protection of the law would also seem to include the right to due process. The fundamental concept of due process includes “the right to be allowed to complete a current appellate or other legal process without having it rendered nugatory by executive action before it is completed...[is part of the fundamental concept of due process] ” (See *Thomas v. Baptiste (PC) [2002] 2 AC 1 per Lord Millet at page 24*). It must also include the right to be allowed to initiate that process. The protection of the law therefore includes access to the appellate process, and in the instant case by the Applicants to the Appeal Court.” page 9 (emphasis added)*

*Lord Millet said in *Thomas v Baptiste [2000] 2 AC 1 at 22: “In their Lordships view “due process of law” is a compendious expression in which the word ‘law’ does not refer to any particular law and is not a synonym for common law or statute. Rather it invokes the concept of the rule of law itself and the universally accepted standards of justice observed by civilised nations which observe the rule of law...”**

Thomas v Baptiste [pg. 24] - It is the general right accorded to all litigants not to have the outcome of any pending appellate or other legal process pre-empted by executive action. This general right is not created by the Convention; it is accorded by the common law and affirmed by S. 4 (a) of the Constitution.

39. His Lordship went on to state at para. 16:

Due process of the law invokes the concept of the rule of law. Protection of the law includes the right to due process and therefore equally invokes the concept of the rule of the law. Its interpretation must be consistent with this. Protection of the law is however a wider right than the right to due process.

40. See **Lassalle v the Attorney General (1971) 18 WIR 379, Dilip Kowlessar v The Attorney General H.C.A. No. S-350 of 1997, Mark Jones v Noor Kenney Mohammed H.C.A No. 191 of 1998**. Phillips JA in Lassalle supra at 391 defined due process of law as “the antithesis of arbitrary infringement of the individual's right to personal liberty...”

41. In **Maya Leaders Alliance and others v Attorney General of Belize (2015) 87 WIR 178**, the Caribbean Court of Justice at para. 47 explained the evolving concept of *protection of law* encompassed the responsibility of the State to comply with its international obligations:

However, the concept ... includes the right of the citizen to be afforded, “adequate safeguards against ... fundamental unfairness” ... The right to the protection of the law may ... require the relevant organs of State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights.

42. The right to property is circumscribed by the principle of due process of law. That is, the individual is entitled to his property, except where a deprivation of such property is done with reference to those fundamental principles which are necessary for a fair system of justice.¹ The due process clause therefore gives constitutional protection to the concept of procedural fairness.²

43. In the case of **Steve Ferguson v AG**³, Smith JA had the following to say at paragraph 78:

“The ‘due process of law’ has been aptly described as a ‘compendious expression’. It has been stated and restated in different ways by different courts...

¹ See *The State v Boyce (Brad)* (2006) 68 WIR 437.

² See *Hilaire v Baptiste Privy Council Appeal No. 60 of 1998*, 119.

³ *Civil Appeal No. P-098 of 2013*.

I recognise that there is some seeming divergence of view of the scope and extent of this 'due process' concept.

Some judges have defined it in broad terms such as embracing 'the concept of ordered liberty'; 'the concept of the rule of law itself and the universally accepted standards of justice observed by civilised nations which observe the rule of law'; and the protection against the arbitrary infringement of the right to personal liberty. Other courts have limited its scope in a constitutional law context to the 'fundamental principles which are necessary for a fair system of justice'.

There has also been a discussion as to whether the concept of due process of law should only extend to protect procedural fairness or substantive fairness.

Whatever the conceptual differences may be, there is one common thread in the cases and it is that when one is considering the applicability of the due process protections in the Constitution, one needs to perform 'a realistic assessment of the proceedings considered as a whole'.

In fact, the more full quote in my view captures the essence of the due process protection and its interrelation with other similar concepts, namely:

In the context of the Constitution of Trinidad and Tobago there is a close link between the three guarantees of due process, protection of the law and fair hearing since the fundamental concept of a fair trial is common to them all (...) There is therefore no reason to doubt that the issue whether there has been a breach under any of these guarantees must be judged on a realistic assessment of the proceedings considered as a whole."

44. It must be noted that the Comptroller of Accounts was notified of the retirement by memo of October 9, 2018 short of two (2) months prior to the date of retirement. This was not done until sometime after retirement but the evidence of the Defendant appears to be unclear as to precisely

when the documents were in fact dispatched to the Comptroller of Accounts. Notwithstanding it is clear that the dispatch would have occurred long after the period prescribed in the regulations. Regulation 183(2) is designed to protect the individual from the deleterious effects of systemic delay. It is entirely protective in nature.

45. In the court's view, the fact that it took years to resolve issues of accuracy in the leave entitlement of the Claimant has operated against the substance of the protection afforded by the due process set out in the regulations. This process mandates the Commissioner to prepare the relevant documents before the date of retirement as it were so as not to deprive the officer of an income upon cessation of salary or within a reasonable time thereafter. That entitlement is of course subject to the exercise of transparency and accuracy in the process of calculation so as not to either deprive the officer of his lawful benefits and to ensure that the Accounting Officer fulfils his duty in authorising the expenditure of public funds. However, the longer the delay in the process employed in verification of the payment the more likely it becomes that the right to enjoyment of property is infringed through a process that is not the due process prescribed by law in keeping with the protection afforded in the regulations. Where no time is set in the law for a thing to be done there is a general presumption that the thing is to be done within a reasonable time.

46. In this case, it is apparent that the delay was not reasonable in the circumstances for several reasons. Firstly, the Commissioner did not prepare and furnish to the Comptroller the relevant documents in relation to the retirement of the Claimant until well after he retired. It is not the case that there was compliance with the requirement to provide the documents within the time prescribed but that there were issues of accuracy and queries that were raised after retirement. In this case there was an outright failure to provide the documents within three (3) months of retirement simpliciter. Further, it appears that the TTPS failed on several occasions to accurately set out the periods of leave and the entitlement. It is in no way suggested that this was the fault of the Claimant and the liability to be accurate must fall squarely on the office holder whose duty it is in law to ensure that accurate documents are provided. That duty lay squarely with the Commissioner and those entrusted with the task by him.

47. The evidence shows that an internal process which at first blush appears to have been designed to ensure that the several levels of checks and balances result in an accurate record has had in this

case the contrary result in that the several levels of checking and verifying have been slow and fraught with inaccuracies all redounding to the disadvantage of the Claimant. A result that the regulation was specifically designed to prevent. This would have resulted in unfair deprivation of the pension funds within a reasonable time after retirement. It follows that the Claimant would have been deprived of the protection of the due process afforded by the regulation.

48. In that regard, the court wishes to make it clear that this ruling is not to be interpreted as laying down the principle that a constitutional infringement would have occurred in every case where a retiree gives the required notice but is not paid by the date of retirement. Far from that assertion is the fact that each case must be considered on its own facts as the process of verification may carry with it unique circumstances. In this case however, the delay in submission to the Comptroller was inordinate and unreasonable in the circumstances and the court so finds. That responsibility for that delay lies in large measure with the TTPS and in some measure with the Office of the Comptroller from whom the court have been provided with no explanation as to the reasons for delay on its part.

49. In the court's view, should the Commissioner have complied with Regulation 183, it may have yet been unlikely having regard to other factors present within the local public service, matters specific to this case, and the Covid interruptions that payment would have been made on the day of retirement. However in the circumstances of this case, a period of three (3) months after retirement may have been reasonable for payment of benefits to be made. However, the facts demonstrate it took an inordinate amount of time to send the information to the Comptroller. This is supported by the letter from the TTPS to Attorney for the Claimant dated March 29, 2021 in which the TTPS admitted that the Claimant's file for gratuity and pension "are currently engaging the attention of the internal auditors"⁴. This means that by up to March 2021 the file had still not been transmitted to the Comptroller.

50. When all is considered it is clear to the court that the failure to pay the benefits to the Claimant in a timely manner within a reasonable time after retirement resulted in him being deprived of his property without the due process. In so doing, he was denied the protection of the very law that was enacted to ensure that he is paid his benefits in a timely manner.

⁴ See exhibit S.F 4 annexed to affidavit of the Claimant filed August 27, 2021.

Presumption of Regularity

51. The Defence submitted there exists a presumption of regularity in favour of the Defendant as a public body in the performance of its official duties, that the onus lies on the Claimant to rebut the presumption. In **Mohanlal Bhagwandeem v the Attorney General of Trinidad and Tobago** (2004) UKPC 21, Privy Council Appeal No.45 of 2003, Lord Carswell stated at paragraph 22:

“The presumption of regularity comes into play ... when there is no evidence either way whether a public authority or official has taken into account the correct considerations in reaching an administrative decision. In such case the decider is entitled to the benefit of the presumption of regularity and is not obliged to adduce evidence to establish that he took only the correct factors into account...”

52. In the court’s view, there is ample evidence in this case that the TTPS failed to act with due dispatch in keeping with the mandate of the Commissioner so to act. That failure had the undesirable result of inordinate delay in having to check and verify matters that ought ordinarily to have been so checked and verified earlier had there been compliance with Regulation 183. It would in those circumstances be inappropriate to rely on the presumption in the context of this case as there is no issue as to the factors considered or not considered by the Commissioner in making the late submission to the Comptroller. It does not appear on the evidence that the decision was a purposeful one but one made out of administrative inefficiency with the consequence that the Claimant was denied of his pension within a reasonable time after retirement.

53. According to Halsbury's:

“756. When the presumption of regularity does not apply
The force of the common law maxim that everything has been done according to due form varies with all the circumstances. It may be applied in a criminal case only with great care, and it has no application where there is definite evidence to prove or disprove what is sought to be presumed, nor where the giving or taking away of

jurisdiction is in question, nor where it is sought to impose by it an obligation rather than to presume a right⁵.

54. The court therefore, accepted the submission of the Claimant that the presumption that the State has discharged its official duties is clearly rebutted on the present facts and law (regulations).

Interest on Benefits

55. The court understands the argument of the Claimant to be that he is entitled to interest on the benefits up to the date of payment as part of the award for compensatory damages on the Claim. The argument is that interest runs on such a debt as a matter of right if payment is not made as prescribed in law. This issue has not been addressed by the Defence although the issue is set out by the Claimant in his original submissions.

56. The Claimant relied on two authorities, the first being a decision of the Supreme Court of India Civil Appeal No 3984 of 2010 **V. Sukumaran v State of Kerala and Another** (judgment delivered on August 24, 2020) and the order made thereon at paragraph 24 as follows:

“...The arrears of pension be remitted to the Appellant within a maximum period of eight (8) weeks from today with admissible interest as applicable to outstanding pension amounts....”

57. The Claimant also relied on Civil Appeal 399 of 2021 **The State of Andhra Pradesh & anr v Smt Dinavahi Lakshmi Kameswari** (judgment delivered on February 8, 2021) another decision of the Supreme Court of India at paragraph 10 as follows:

“...The only issue which now survives for determination is the liability to pay interest.”

and

⁵ Halsbury's Laws of England/Civil Procedure (Volume 11 (2020), paras 1–496; Volume 12 (2020), paras 497–1206; Volume 12A (2020), paras 1207–1740)/18. Evidence/(7) Common Law Rules as to Proof/(ii) Special Modes of Proof/B. Presumptions/756

“...There can be no gainsaying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate.”

58. In so far as **Sukumaran** is concerned, the court does not agree that that case lays down a general principle that interest is payable in circumstances where a statutory payment (such as is the case with the payment of the benefits in this case) is not made within the time prescribed. The issue in that case concerned the liability of the Government to pay pension to the Appellant based on his service for a period of thirty-two (32) years in various arms of the service. In that regard, the Government sought to pay benefits only for the period of twenty-five (25) years thereby not including his years of service as CLR in the computation of his pension. There is no discussion of a general entitlement to interest for pension payments that are overdue save and except for reference to “admissible interest” in the making of the order. The case is therefore, of little or no assistance to the court in that regard.

59. The case of **Kameswari** appears to be more on point. That case concerned the action of the State of Andhra Pradesh in depriving workers of part of their salaries and pensions as a result of the difficult financial position in which the state found itself due to the Covid pandemic. The Supreme Court heard the appeal arising out of a Petition for Constitutional relief. By then the financial position had been improved and a direction had been given by the state for the payment of pensions. The issue was whether interest was payable on the pension. At paragraphs 13 and 14 of the decision the court repeated with implicit approval the argument of Counsel as follows:

Learned counsel highlighted the serious hardships which would have been caused to pensioners as a result of the order of deferment and hence submitted that the High Court is fully justified in entertaining the PIL and in directing payment of interest at the rate of 12% per annum.

The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of

pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State.

The court then proceeded to reduce the rate of interest awarded in the court below to bring same in line with the current trend in interest and in so doing stated:

“.....we are of the view that the payment of interest cannot be used as a means to penalise the State Government. There can be no gainsaying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate.”

60. While the cases from the Indian Supreme Court are not binding on this court they do provide valuable insight into the rationale for the inclusion of interest on sums payable as of right. Closer to home however, the court prefers the approach that recognises that such award is not to be made as a penalty but can and ought be made as part of the damages awardable for the infringement of the rights in the circumstances where such interest is the cost incurred by the Claimant for being kept out of pocket for a sizeable period of time. In other words, it forms part of the compensatory damages to be awarded in the appropriate case. In this case, there was payment in two tranches, one on September 30, 2021 in the sum of one hundred and seventy-eight thousand, five hundred and eighty-five dollars and eighty-four cents (\$178,585.84) and one hundred and twenty-eight thousand, one hundred and six dollars and five cents (\$128,106.05) on October 5, 2021. A suitable award of interest at the rate of two point five percent (2.5%) per annum should therefore, be applied as compensatory damages for the relevant periods accordingly.

Vindictory Damages

61. The Defence has submitted that the Claimant having been paid, the issue of vindictory damages does not arise in this case and further that an award of damages ought not to be made at all. The court does not accept that submission as being a result that does justice to the hardship faced by the retired police officer who appeared to be on the brink of losing the house in which he lived as a consequence of the failure to pay to him his entitlement within a reasonable period.

62. In the case of Civ App No. 35 of 2011 **The Attorney General v Ravi Doodnath Jaipaul**, the Court of Appeal at paragraphs 73 and 74 stated:

“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 s 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminus with the cause of action at law.”

63. In relation to vindicatory damages the Court of Appeal in **Doodnath Jaipaul** stated as follows:

“[75] Where a vindicatory award is appropriate, its purpose is not punitive. In Merson v Cartwright the Privy Council stated: “The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in other cases an award of damages, including substantial damages, may seem to be necessary.” [Emphasis added].”

“[76] Additionally, the Privy Council has made it clear that damages may also be awarded in appropriate cases where a Claimant has suffered distress, anxiety and depression as a result of a constitutional breach. “

64. In the well-known case of **Felix Durity v The Attorney General** [2008] UKPC 59, a Magistrate on suspension with full pay was held to have had his constitutional rights substantially breached and Their Lordships set out the following:

“[33] The trial judge awarded the Appellant damages for inconvenience and distress together with what she described as 'aggravated', 'punitive' or 'exemplary' damages. She held that an award of aggravated damages was justified by the fact that the Appellant had made it clear from the beginning that he was exercising a judicial function, by a persistent failure to acknowledge his correspondence for more than three years, by the commission's abuse of its power to suspend and by its disregard for the independence of the judiciary.

[34] As Mr Yell pointed out, the trial judge did not have the benefit of the Board's observations in A-G v Ramanoop [2005] UKPC 15, [2005] 4 LRC 301 at [18]–[19] about the approach that the court should take when it is awarding damages in the exercise of its constitutional jurisdiction. In most cases something more than a declaration that the Constitution has been infringed will be necessary. Compensation measured by the comparable common law measure of damages may be awarded if the person has suffered damage, but in principle this may not suffice as the fact that the right that has been violated was a constitutional right adds an extra dimension to the wrong. An additional award may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right that has been violated and to deter further breaches. As punishment in the strict sense is not its object, the expressions 'punitive', 'aggravated' or 'exemplary' damages are best avoided. The purpose of the award, whether it is made to redress the contravention or as relief, is to vindicate the right, not to punish the executive. Vindication involves an assertion that the right is a valuable one, as to whose enforcement the complainant herself has an interest: Inniss v A-G [2008] UKPC 42, [2009] 2 LRC 546 at [27]. A copy is annexed as “5”.

[35] Mr. Dingemans criticised the grounds on which the trial judge made an additional award and invited the Board, should it be disposed to allow the appeal, to remit the question of damages to the Court of Appeal for its assessment. Their Lordships are not

persuaded that this would be the appropriate course in this case. It is clear that, although he was paid during the period of his suspension, the Appellant suffered distress because of the gross delay and its consequences to his reputation. Furthermore, this was a serious abuse of the commission's powers under the regulations which justifies an additional award according to the principles described in Ramanoop to vindicate the Appellant's right under ss 4(b) and 5(2)(e), (h) of the Constitution to have complaints against him investigated promptly while he was suspended from duty, to recognise the importance of that right and to deter further breaches of this kind. Although they do not endorse all the reasons given by the trial judge, their Lordships consider that the sum that she awarded, taken in the round, was an appropriate amount for the Appellant to receive by way of constitutional relief in all the circumstances."

65. The court is of the view that the mere declaration of the breach of the rights in this case will not assuage the distress suffered by the Claimant who it bears repeating was on the verge of losing his home. Further, the court is of the view that an award must be made that reflects the sense of outrage that must attend the breach of the right. It is well known in this jurisdiction that officers in the services face substantial delay in receipt of pension benefits after retirement. The court must therefore, make an award that deters further breaches.
66. The evidence before the court demonstrates that on several occasions the bank enquired of payment on the mortgage and indicated its intention to proceed under its rights under the mortgage for failure to service same. This caused the Claimant constant fear and distress. Additionally, the fact that the process took almost two (2) years is by itself an aggravating feature of this case which carries with it a level of suffering and deprivation as a matter of logic and reason.
67. In considering the appropriate award for vindicatory damages the court has had recourse to similar awards made in **Nicholas Lewis v The Attorney General of Trinidad and Tobago**, CV2020-01234 (delivered on December 14, 2021) and **Chynelle Arthur v The Attorney General of Trinidad and Tobago**, CV2021-00352 (delivered on March 4, 2022).

Disposition

68. The order of the court is therefore as follows:

- i. It is declared that the failure of the State to pay to the Claimant the pensions lawfully due to him within a reasonable time of the date of his retirement breached his right to the enjoyment of property and the right not to be deprived thereof except by due process of law enshrined in section 4(a) of the Constitution.
- ii. It is declared that the failure of the State to comply with Regulations 183(1), 183(2) and 184(1) of the Police Service Regulation (“the Regulations”) breached the constitutional right of the Claimant to protection of the law enshrined in section 4(b) of the Constitution.
- iii. The Defendant shall pay to the Claimant compensatory damages calculated at two point five percent (2.5%) per annum on one hundred and seventy-eight thousand, five hundred and eighty-five dollars and eighty-four cents (\$178,585.84) from March 5, 2020 to September 29, 2021 and two point five percent (2.5%) per annum on one hundred and twenty-eight thousand, one hundred and six dollars and five cents (\$128,106.05) from March 5, 2020 to October 4, 2021 such sums to be quantified by a Registrar in default of agreement between the parties.
- iv. The Defendant shall pay to the Claimant vindicatory damages in the sum of sixty thousand dollars (\$60,000.00).
- v. The Defendant shall pay to the Claimant costs of the claim to be assessed by a Registrar in default of agreement.

Ricky Rahim

Judge