

THE REPUBLIC OF TRINIDAD & TOBAGO

**IN THE HIGH COURT OF JUSTICE
CLAIM NO. CV2019-00738**

**IN THE MATTER OF THE INTERPRETATION OF THE CIVIL SERVICE ACT CH.
23:01**

**AND IN THE MATTER OF THE DETERMINATION OF A NUMBER
OF DISPUTES THAT ARE PENDING BEFORE
THE SPECIAL TRIBUNAL ESTABLISHED BY SECTION 13 OF
THE CIVIL SERVICE ACT CH. 23:01**

BETWEEN

PUBLIC SERVICE ASSOCIATION

Claimant

And

CHIEF PERSONNEL OFFICER

And

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
(Added as a party by order of the Honourable Mr Justice Frank Seepersad dated 24th May
2021)**

Defendants

And

PUBLIC SERVICE COMMISSION

Interested Party

Before the Honourable Mr Justice Frank Seepersad

Date: 24 May 2021.

Appearances:

1. Mr. Lloyd Elcock and Ms. Gorgonia Auguste, Attorneys-at-law for the Claimant.
2. Ms. Amrita Ramsook and Ms. Karlene Seenath, Attorneys-at-law for the Defendants.
3. Ms. Nadine Nabie and Ms. Michelle Benjamin, Attorneys-at-law for the Interested Party.

DECISION:

1. Before the Court for its determination is the Claimant's Fixed Date Claim Form filed on 19 February 2019 by virtue of which the Court has been asked to determine the following matters:
 - a. Whether on a true and proper interpretation of section 14 of the Civil Service Act (“the Act”) and the Civil Service Regulations, the Special Tribunal established by section 21 of the Act and referred to in section 4D of the Industrial Relations Act (“IRA”) has jurisdiction to hear and determine trade disputes arising from grievances having to do with appointments, transfers and promotions of civil servants.
 - b. Whether the words “any grievances” referred to in section 14 of the Act refer to any and all grievances which civil servants may have with respect to their terms and conditions of employment specified in the Act and the Regulations and in particular any grievances over the appointment transfers and promotion of civil servants.
 - c. Whether disputes arising from such grievances under sections 17 and 18 of the Act over the appointment, transfer and promotion of civil servants by the Public Service Commission are justiciable before the Special Tribunal.

Historical context:

2. Matters involving the appointment, promotion and transfer of public officers are addressed exclusively by the Interested Party and disputes arising from such decisions are resolved before the High Court. The Claimant has claimed that the resolution of such disputes should also be determined before the Special Tribunal set up under the Civil Service Act Chap 23:01 (the Act).

3. The Claimant has essentially asked the Court to hold that a proper interpretation of the provisions of the Act and in particular section 14 thereof would result in a circumstance whereby issues attendant to the appointment, transfer or promotion of civil servants should be viewed as “grievances” and these issues should be justiciable before the Special Tribunal.

Issues:

4. The central issue which this Court must resolve is whether or not civil servants’ disputes with respect to matters of appointments, transfers or promotions made by the Public Service Commission (PSC) should be justiciable before the Special Tribunal.

The evidence:

5. The Claimant filed an affidavit by Watson Duke and the Defendants relied upon the affidavit of Michelle Brathwaite-James, a Human Resource Advisor attached to its benefits management division.

The Relevant Statutory Bodies:

6. To resolve the central issue in this matter, the Court has to consider the remit and authority of the Public Service Commission, The Special Tribunal and dissect the provisions of the Civil Service Act (the Act).

The Public Service Commission:

7. The Public Service Commission (PSC) was established in 1950 by the Trinidad and Tobago (Constitution Order in Council 1950), It was continued by the 1962 Constitution and

thereafter by section 121 of the Republican Constitution 1976. By section 121(1) of the Republican Constitution, the Commission was given power to make appointments, promotions and transfer of civil servants and also to take disciplinary action against them. This sub-section reads as follows:

“121. (1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in offices to which this section applies, including power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission.”

8. Pursuant to section 129, the Public Services Commission Regulations were enacted to facilitate the implementation of the provisions of section 121.

The Special Tribunal:

9. The Special Tribunal was established by section 21 of the Act, which reads as follows:

Section 21:

(1) There shall be established a Special Tribunal which shall consist of the Chairman of the Essential Services Division of the Industrial Court and two other members of that Division selected by him.

(2) In this section the expression “the Industrial Court” means the Court established under the Industrial Relations Act.

(3) The Special Tribunal shall hear and determine any dispute referred to it under section 20 and shall make an award on the dispute.

(4) An award made by the Special Tribunal shall be final.

(5) The Special Tribunal may provide its own procedure for the hearing and determination of any dispute referred to it.

(6) In addition to taking into account any submissions, arguments and evidence presented or tendered by or on behalf of the appropriate recognised association and the Chief Personnel Officer, the Special Tribunal in its judgment shall be guided by the considerations set out in section 20(2)(a) to (f) of the Industrial Relations Act.

10. Section 20 of the Act however provides as follows :

“20. (1) Where a dispute is deemed to exist under section 17 or 18, the Minister shall refer the dispute for settlement to the Special Tribunal established under section 21 within twenty-one days from the date on which the dispute was reported to him.

2) Where the Minister fails to refer the dispute to the Special Tribunal within the time specified in subsection (1) the appropriate recognised association that is a party to the dispute shall do so within twenty-one days from the date of the expiration of the time specified in the said subsection.

3) For the purposes of this Act the parties to a dispute shall be the Chief Personnel Officer and the appropriate recognised association of civil servants.”

The Civil Service:

11. The post-independence Civil Service of Trinidad and Tobago was established by the Civil Service Act and came into being on August 27, 1966. The establishment and structure of the Civil Service is set out in section 3 of the Act as follows:

Section 3:

(1) The several public offices in the public service from time to time set out in the First Schedule shall be deemed to constitute the Civil Service of Trinidad and Tobago which is hereby established for the purposes of this Act.

(2) A public officer who holds a public office in the public service that by subsection (1) is deemed to be an office in the Civil Service shall be referred to as a civil servant.

(3) The Minister may, from time to time, by Order add to, vary or amend the Classification of Offices in the Civil Service set out in the First Schedule.

(4) The Classification of Offices in the Civil Service set out in the First Schedule, shall be the basis hereafter for any Classification Order made under this section.

(5) The classification titles of the offices set out in the Classification of Offices in the Civil Service in the First Schedule shall be observed in all records and communications of the appropriate Commission, the Auditor General and the Treasury and in all departmental estimates and parliamentary returns and appropriations.

12. The administration and management of the Civil Service are regulated by sections 13 to 20. Section 13 and 14(1) provide as follows:

Section 13 :

(1) There is hereby established for the purposes of this Act a Personnel Department, which shall be under the general direction and control of the Minister to whom is assigned responsibility for the administration of that Department.

(2) The staff of the Personnel Department shall comprise—

- (a) the Chief Personnel Officer who shall be the Head of the Personnel Department; and
- (b) such number of civil servants as may be assigned to the Personnel Department.

Section 14 :

(1) The Department shall carry out such duties as are imposed on it by this Act and the Regulations, and in addition shall have the following duties:

- (a) to maintain the classification of the Civil Service and to keep under review the remuneration payable to civil servants;
- (b) to administer the general regulations respecting the Civil Service;
- (c) to provide for and establish procedures for consultation and negotiation between the Personnel Department and an appropriate recognised association or associations in respect of—
 - (i) the classification of offices;
 - (ii) any grievances;
 - (iii) remuneration; and
 - (iv) the terms and conditions of employment.

...

(4) Prior to formulating any recommendations under subsection (2), the Minister of Finance may require the Personnel Department to consult with representatives of the appropriate recognised association with respect to the matters specified in subsection (1)(c).

13. Section 16 of the Civil Service Act further provides for consultation between the Personnel Department and the association of civil servants at the request of the representative or whenever the Minister of Finance deems such consultation necessary. Where no agreement is reached on the proposals of the association during consultation and negotiations with the Personnel Department with respect to matters in section 14, section 17 of the Civil Service

Act provides that the Personnel Department or the association shall report the matter to the Minister of Finance and upon such report being made, a dispute will be deemed to exist.

14. Section 18 provides that where the Personnel Department does not consult with the representatives of the appropriate association before making proposals to matters in section 14, the Personnel Department shall submit the proposals to the association for consideration and agreement save that where the Personnel Department and the association are unable to reach an agreement, the Personnel Department or association shall report the matter to the Minister of Finance and upon the report being made, a dispute will be deemed to exist.

Resolution:

15. Courts have consistently underscored the exclusive power vested in the PSC in relation to the appointment, transfer or promotion of a civil servant. In the case of **Endell Thomas v Attorney General of Trinidad and Tobago [1982] AC 113**, Lord Diplock at page 124 issued the following pertinent and instructive observation:

“The whole purpose of chapter VIII 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 directly upon them 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. These autonomous commissions, although public authorities, are excluded by section 105 (4) (c) from forming part of the service of the Crown. Subject to the approval of the Prime Minister they may delegate any of their powers to any of their members or to a person holding some public office (limited in the case of the Police Service Commission to an officer of the police

force); but the right to delegate though its exercise requires the approval of the Prime Minister, is theirs alone and any power so delegated is exercised under the control of the Commission and on its behalf and not on behalf of the Crown or of any other person or authority ... In respect of each of these autonomous commissions the Constitution contains provisions to secure its independence from both the executive and the legislature."

16. The PSC has the exclusive purview to appoint, transfer or promote officers to the Public Service and in doing so there is no requirement that it must consult the Claimant. In the discharge of its exclusive mandate, the PSC, in principle, acts as an independent constitutionally established body and their appointments are insulated from executive interference although the actual terms and conditions of the respective offices are established by the executive by virtue of the terms of the individual contracts as between the officers and the State.
17. In *Endell Thomas* (supra) Lord Diplock noted that the functions of the Police Service Commission fall into two classes: (1) to appoint officers, including their transfer and promotion and confirmation in appointments and (2) to remove and exercise disciplinary control over them. It has no power to lay down terms of service for police officers. These are matters for the legislature and, in respect of any matters not dealt with by legislation, whether primary or subordinate. The same distinctions logically apply to the PSC.
18. Under section 20(3) of the Act the parties to disputes which shall be determined before the Special Tribunal, are expressly referenced as the Chief Personnel Officer and the appropriate recognized association of civil servants, notably the PSC has no *locus standi* before the Special Tribunal.
19. In the case of **Harinath Ramoutar v Commissioner of Prisons and The Public Service Commission [2012] UKPC 29**, the Board of the Privy Council pellucidly outlined that the duty to consult in relation to the terms and conditions of employment or to establish job

descriptions did not fetter the constitutional duty of the PSC to make their appointments or from taking ancillary steps. Lord Sumption also underscored the need for courts to ensure that public bodies must carry out the functions assigned to them by legislation.

20. In **Cooper and Another v the Director of Personnel Administration [2006] UKPC 37** the Court held at paragraph 22:

““There is no doubt that the constitutional principle would be breached if that body [the Service Commission] were to be used as an instrument which enabled the executive to interfere directly or even indirectly with the appointment and tenure of public offices. On the other hand, the formulation of policies aimed at uniformity of standards and consistency of practice in the making of appointments to public offices, and at the economic use of limited resources to avoid duplication where this is unnecessary, is a matter of legitimate concern to the executive. It falls within the ambit of the general direction and control of government.”

21. The Special Tribunal currently hears any issue as between interested parties in accordance with the provisions of the Act. Ultimately, the Special Tribunal has to ensure that the relationship, particularly as it pertains to terms and conditions of employment as between the State and civil servant is characterized by fairness and balance.
22. Disputes/grievances under the Act are first referred to the Minister of Finance who in turn will refer same to the Special Tribunal. Consequently, the argument that it is unlikely that the legislative intent was to refer matters involving the appointments, transfers and promotions of civil servants to the Minister of Finance for onward referral to the Special Tribunal is one which is not devoid of merit, especially given the rationale of executive insulation upon which the formation of the PSC was premised.

23. The Act regrettably does not define the term grievance and so the Court must review the Act in a purposive and contextual manner by employing the established rules of statutory interpretation.
24. The Court must first assume that any technical term is used in a technical sense, if one has been acquired, and, if there is no such acquisition, then the term should be given its ordinary grammatical meaning.
25. **Black's Law Dictionary 9th ed.** defines the term “grievance” as “an injury, injustice or wrong which gives rise to a complaint”. This definition is broad and a literal interpretation can give rise to a wide range of matters going before the Special Tribunal thereby potentially increasing the remit of the Tribunal in a manner not contemplated by the Act.
26. The Court must therefore strive to apply a meaning of the term which is consistent with the legislative intent. Where the literal meaning creates doubt, uncertainty, absurdity or ambiguity, then the Court must legitimately use other interpretative aids in its quest to ascertain the objective legislative intent of the word(s) used so as to give effect to the purpose of the legislation.
27. The Hansard for December 3, 1965 and January 18, 1966, as referenced by the Interested Party in its submissions, reveals that Dr Eric Williams stated that the Civil Service Act must be read in conjunction with the Public Service Commission Regulations. It was further stated that matters over which the PSC had exclusive jurisdiction ought not to be interfered with by the Civil Service Bill and as such, the Bill did not reference those matters over which the PSC had jurisdiction under the Constitution.
28. In this Republic, the Constitution is supreme and the term “grievance” as referenced in Section 14 of the Act must be read in conjunction with the Constitution which outlines the exclusivity of the functions which are to be exercised by the PSC.

29. The Court also has to consider the principle of “*generalibus specialia derogant*” which is explained at **paragraph 1038 of Bennion on Statutory Interpretation (6th ed.)** as follows :

“Where the literal meaning of a general enactment covers a situation for which specific provision is made by some other enactment within the Act or Instrument, it is presumed that the situation is intended to be dealt with by the specific provision.”

30. The Civil Service Regulations are devoid of any reference as to the ability to appointment, transfer or promote a Civil Servant. It is however apparent that the disciplinary function of the PSC falls under “grievances” in the Act and the PSC has a detailed code and process in relation to disciplinary issues.

31. It appears to this Court that the object and purpose of the Act was to create mechanisms by which the terms and conditions of employment of civil servants could be negotiated, ventilated and reviewed but there was no intent to interfere with the constitutional established exclusivity of the PSC’s authority to appoint, transfer or promote civil servants or to delegate same to a public officer.

32. There is nothing which can suggest that the intent of Parliament was to grant to the Special Tribunal the power to hear matters in relation to the appointments, transfers or promotions of officers especially when it has no statutory authority over the PSC. It is inherently possible to conclude that the intent of Parliament was to empower the Special Tribunal to hear matters which fall within the ambit of the Act including all regulations and subsidiary legislation stemming from the Act.

33. In this Republic issues of equal access, discrimination and a regrettable degree of divisiveness along racial and political lines continue to plague us. Against the backdrop of this unfortunate reality, the Supreme Court has played a pivotal role in protecting the entrenched rights of citizens. The Court must with continued vigilance ensure that every

citizen who serves in the Public Service is treated with equality, reasonableness and procedural fairness. This supervisory jurisdiction is not one which it should arbitrarily remove from its exclusive remit. It must also be remembered that the members of the Special Tribunal are selected from among the members of the Industrial Court who do not enjoy security of tenure and their appointments are not insulated from executive influence. In addition, the review of disputes which involve matters of transfers, appointments or promotions may require the interpretation and application of complex administrative and constitutional law concepts and at times declaratory relief is warranted. The statutory framework which establishes the Special Tribunal does not specify that all selected members must be lawyers and persons who lack legal qualification and specialization should not be tasked with the mandate to adjudicate upon complicated legal issues.

34. The Special Tribunal is a creature of statute, its jurisdiction is confined to the statutory parameters established by the Act and there simply exists no statutory authorisation for the Special Tribunal to review decisions of the PSC with respect to appointments, transfers or promotions of civil servants. That responsibility must be discharged by Judges of the Supreme Court upon whom rests the obligation to fearlessly defend the Constitution and protect the entrenched rights of all citizens.
35. Consequently, the term “any grievance” could only be interpreted to mean any grievance of a civil servant which arises under the Act i.e. in relation to terms and conditions of employment or issues which may be incidental to matters provided for under the Act.
36. Accordingly, this Court holds the view that the entirety of section 14 of the Act must, as a matter of common sense, be read as a whole and the term “grievance” must be circumscribed by the remit of the authority to be exercised under the Act. Under the Act, matters which relate to the terms and conditions of civil servants are within the remit of the Personnel Department exclusively just as matters which relate to the appointments, transfers or promotions of civil servants fall within the exclusive remit of the PSC.

Summary:

37. The power exercised by the PSC to appoint, transfer or promote a civil servant is distinct and separate from the functions discharged by the Personnel Department to establish the terms and conditions of employment under the Act or from the authority of the Special Tribunal to determine the matters primarily in relation to the said terms and conditions of employment as set out under the Act. In addition the term “any grievance” has to be limited to the language and scope of Act and does not include all grievances of a civil servant and in particular does not include issues which relate to the appointment, transfer or promotion of a civil servant.

38. For the reasons outlined the interpretation proffered by the Claimant cannot stand and disputes with respect to the appointments, transfers or promotions of civil servants are not justiciable before the Special Tribunal.

39. The parties shall be heard on the issue of costs.

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FRANK SEEPERSAD

JUDGE