THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL
(CHAMBER COURT)

Civil Appeal No. P133 of 2023

Claim No. CV2019-04407

IN THE MATTER OF THE JUDICIAL REVIEW ACT CHAPTER 7:08 OF THE LAWS OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF THE DECISIONS TAKEN BY THE PUBLIC SERVICE COMMISSION AGAINST PAULA DRAKES AS CONTAINED IN LETTERS DATED 9TH AUGUST 2019, 26TH SEPTEMBER 2019 AND 17TH OCTOBER 2019

BETWEEN

THE PUBLIC SERVICE COMMISSION

Appellant

AND

PAULA DRAKES

Respondent

BEFORE THE HONOURABLE MR. JUSTICE VASHEIST KOKARAM, J.A.

Appearances:

Mr. Russell Martineau S.C. leads Mr. Coreen Findley instructed by Ms. Savitri Maharaj for the Appellant.

Mr. Keith C. Scotland instructed by Ms. Jacqueline Chang for the Respondent.

Date of Decision: Thursday 13 July 2023

JUDGMENT

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1. The Appellant, the Public Service Commission ("the Commission") was in the

process of disciplining the Respondent, Ms. Paula Drakes when the charges laid by the Commission against her and her period of suspension on interdictment were quashed by the learned trial judge below. The trial judge also made several orders effectively bringing the disciplinary proceedings to an end. The Commission now seeks a stay of those orders. They do so against a backdrop of what Ms. Drakes alleged were a series of unusual features of the Commission's attempt to discipline her which was set out in the trial judge's decision and is summarised briefly below.

2. On 5th March 2018, Ms. Drakes received a letter dated 28th February 2018 from the Ag. Director Personnel Administration ("Ag. DPA") on behalf of the Commission informing her of allegations of misconduct made against her. By letter dated 9th March 2018, Ms. Drakes denied the allegations. On 18th May 2018, the Ag. DPA wrote to Ms. Drakes informing her that no further action would be taken by the Commission with respect to those allegations and her order of suspension was lifted.

3. Soon after, on 9th July 2018, Ms. Drakes received a letter dated 5th June 2018 detailing six new allegations of misconduct against her and directed to cease reporting for duty pursuant to regulation 88 of the Public Service Commission Regulations. Ms. Drakes denied the charges and by letter dated 16th July 2018, she provided a defence to the six allegations made against her.

4. On 28th December 2018, after receiving the report from the Investigating Officer, the Commission decided to proceed with six charges of misconduct against Ms. Drakes. However, by letter dated 6th August 2019, the Commission wrote to Ms. Drakes informing her of its decision to withdraw the six pending charges and to prefer six new charges against her instead which Ms. Drakes denied. These new charges were:

"**CHARGE 1**

STATEMENT OF CHARGE

'MISCONDUCT' contrary to REGULATION 149(2) (g) of the Civil Service (Amendment) Regulations, 1996.

PARTICULARS OF CHARGE

That you, PAULA DRAKES, Commissioner of State Lands, Ministry of agriculture, Land and Fisheries without reasonable excuse exercised your authority unreasonably when on the 28th December 2017 you executed a tenancy agreement between yourself and the Reformed Bible Churches of Trinidad and Tobago, thereby varying the parcel of land allocated by Cabinet to the Ministry of Health without the necessary Cabinet approval.

CHARGE 2

STATEMENT OF CHARGE

'MISCONDUCT' contrary to Regulation 149(2) (g) of the Civil Service (Amendment) Regulations, 1996.

PARTICULARS OF CHARGE

That you PAULA DRAKES, Commissioner of State Lands, Ministry of Agriculture, Land and Fisheries without reasonable excuse exercised your authority unreasonably when on 29th December, 2017 you executed a tenancy agreement between yourself and the RAIDERS SPORTS, thereby varying the parcel of land allocated by Cabinet to the Ministry of Health without necessary Cabinet approval.

CHARGE 3

STATEMENT OF CHARGE

'MISCONDUCT' contrary to Regulation 149(1) (d) of the Civil Service (Amendment) Regulations, 1996.

PARTICULARS OF CHARGE

That you, Paula Drakes, Commissioner of State Lands, Ministry of Agriculture, Land and Fisheries without reasonable excuse exhibited conduct prejudicial to the efficient conduct of the Service when on 29th December 2017, you executed a tenancy agreement between yourself and the RAIDERS SPORTS, a club which you were affiliated, without informing the Permanent Secretary of your affiliation to said club.

CHARGE 4

STATEMENT OF CHARGE

'MISCONDUCT' contrary to Regulation 149(1) (d) of the Civil Service (Amendment) Regulations, 1996.

PARTICULARS OF CHARGE

That you PAULA DRAKES, Commissioner of State Lands, Ministry of Agriculture, Land and Fisheries without reasonable excuse exhibited conduct prejudicial to the efficient conduct of the Service when, without Cabinet approval, on 5th January, 2018, you executed a tenancy agreement in favour of Carlene Boodoo, an employee in the Surveys and Mapping Division of the Ministry of Agriculture and Fisheries.

CHARGE 5

STATEMENT OF CHARGE

'MISCONDUCT' contrary to Regulation 149(2) (f) of the Civil Service (Amendment) Regulations 1996

PARTCULARS OF CHARGE

That you, PAULA DRAKES, Commissioner of State Lands, Ministry of Agriculture Land and Fisheries on 5th January, 2018 without reasonable excuse performed your performed your required duties in a negligent manner when, without attempting to contact the registered lessee or descendants of the deed of lease registered as No. 1517 of 1920, a parcel of State Land situated at and known as Lots Nos. 79 & 80 Niles Street, Auzonville Tunapuna you executed a tenancy agreement in favour of Carlene Boodoo for said parcel of land.

CHARGE 6

STATEMENT OF CHARGE

'MISCONDUCT' contrary to Regulation 149(2) (f) of the Civil Service (Amendment) Regulations, 1996.

PARTICULARS OF CHARGE

That you, Paula Drakes, Commissioner of State Lands, Ministry of Agriculture, Land and Fisheries without reasonable excuse performed your duties in a negligent manner when you took into consideration a field report from Alana Huggins, an employee of the Land Management Division, Ministry of Agriculture, Land and Fisheries regarding a parcel of state lands situated at Lot No. 115 Five Rivers Arouca. By letter dated 15th September, 2017, you then indicated to Ms. Haynes that you were prepared to grant her a license to occupy the said land, which was later found to be registered to Mr. Shivanand Gobin."

5. As a result of those latest charges she was suspended and half her pay interdicted. She was informed of this decision by letter dated 26th September 2019 from the Commission.

6. In her claim, Ms. Drakes complained that the decision to withdraw six charges of misconduct and contemporaneously prefer the same charges was contrary to regulations 149 (1) (d) and 149 (2) (g) and (f) of the Civil Service Amendment Regulations 1996. She complained that the failure to provide reasons for this decision by the Commission amounted to an irregular exercise of the Commission's discretion. She also challenged the decision to interdict her with one half (½) pay as unreasonable and disproportionate.

7. The trial judge held that the Commission had no jurisdiction to discipline Ms. Drakes as even though she was a public officer, her office as Commissioner of State Lands did not fall within the schedule of public officers in the Civil Service Act Chapter 23:01. She further held that there could be no implied term of Ms. Drakes' contract to incorporate the provisions of the Civil Service Act by her letter of appointment, as the Commission has no power to lay down terms of service for officers. See **Endell Thomas v Attorney General of Trinidad and Tobago** [1982] AC 113. With respect to her interdictment and withholding one half (½) of her salary, the trial judge relied on her reasoning in **Caramchand Sammy v Public Service Commission** CV2021-02017 in which she declared regulation 89 (3) of the Public Service Commission Regulations[1] to be unconstitutional by reason of section 129 (4) of the Constitution of Trinidad and Tobago. With respect to the relaying of the new charges, the trial judge was critical of the delay that this would have engendered, that there was no good reason provided by the Commission for the withdrawal of the charges

[1] Regulation 89(3) of the Public Service Commission Regulations states:

> "(3) An officer so interdicted shall, subject to the provisions of regulation 114, be permitted to receive such proportion of the pay of his office, not being less than one-half, as the Commission may determine, after taking into consideration the amounts being deducted per month from the pay of the officer."

and relaying of the new charges and that the charges were already illegal. She noted at paragraphs 32 and 51:

> "32. The decision to withdraw and refile was peculiar, and one in support of which there appeared to be no statutory authority. Indeed it would be accepted subsequently that it was unprecedented. The mere fact of a withdrawal and subsequent preferment of new though similar charges against the background of this case gave rise to an inference of abuse of power and bad faith. The absence of reasons understandably fuelled suspicions of both. The absence of an explanation rendered the decision arbitrary and irrational. Further the offhand manner in which the decision was communicated demonstrated a lack of sensitivity and I daresay a lack of respect for the office of the COSL and for the Claimant, who at all times even before she managed to secure legal assistance, had been complying with all directions to defend her reputation in a timely manner.
>
> ……
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> 51. I find the decision to withdraw and re-lay to be unlawful and unreasonable for the following additional reasons. At the specific point in time of the withdrawal of the charges which were a nullity, it would seem to me that the disciplinary process in relation to those charges (the culmination) must have come to a dead stop. If as Counsel for the Respondent conceded the PSC had no jurisdiction to amend, then it seems to me upon the withdrawal there was nothing subsisting on the basis of which new charges could be preferred. The entire process had to be restarted. This is more so since, for the first time the new charges included the words "without reasonable excuse". This introduced a new element which was not previously raised in the charges. It was not open to the PSC to simply pick up the process mid-stream as to do so would in effect be to allow an amendment which Counsel says is not provided for in the

regulations."

8. The full terms of the trial judge's order were as follows:

   i. "A declaration that the Claimant is not an officer in the Civil Service and is therefore not subject to the Code of Conduct established under Section 149(2) of the Civil Service Act;

   ii. A declaration that the PSC has no jurisdiction to invoke disciplinary proceedings against the Claimant pursuant to Regulation 88 of the PSCR;

   iii. A declaration that the decision of the Respondent to withdraw six (6) disciplinary charges preferred against the Claimant and contemporaneously prefer the same or similar said charges contrary to Regulations 149(2) (g) & (f) of the Civil Service (Amendment) Regulations, 1996, as outlined in letter dated 9th August 2019, written under the hand of the Director on behalf of the Respondent was irrational, is an abuse of process and in breach of natural justice;

   iv. A declaration that the failure and/or refusal of the Respondent to provide reasons for the withdrawal of the six (6) disciplinary charges and the contemporaneous preferment of six (6) identical or similar disciplinary charges as contained in letter dated 9th August 2019, written under the hand of the Director of Personnel Administration (Ag), Service Commissions Department on behalf of the Respondents and amounts to an irregular/and/or improper exercise of the Respondent's discretion;

   v. A declaration that the decision of the Respondent to prohibit the Claimant from attending the Royal Institute of Chartered Surveyors Conference in Bahamas between the period 29th October to 5th November 2019, as contained in letter dated 26th September 2019 was

illegal;

vi. A declaration that the decision of the Respondent to interdict the Claimant from duty and withhold one-half (1/2) of her salary in accordance with the provisions of Regulation 93 of the Public Service Commission Regulations, as stated in letter dated 26th September, 2019 was illegal;

vii. A declaration that the decision of the Respondent to appoint a Disciplinary Tribunal to hear the evidence and find the facts with respect to the said six (6) disciplinary charges preferred against the Claimant which said hearing is fixed for Monday 4th November, 2019 at 9am at the Service Commissions Department, as stated in letter dated 7th October, 2019, written under the hand of the Director of Personnel Administration (Ag), Service Commissions Department on behalf of the Respondent was unreasonable;

viii. An order of certiorari is hereby granted to remove into the High Court the decision of the Respondent as contained in letter dated 9th August 2019, to prosecute and/or prefer against the Claimant the six (6) new disciplinary charges in Appendix 'B' thereto and the decision is quashed;

ix. An order of certiorari to remove into the High Court and quash the decision of the Respondent as stated in letter dated 26th September 2019, to interdict the Applicant/Intended Claimant from duty and withhold one-half (1/2) salary;

x. An order of certiorari to remove into the Honourable Court and quash the decision of the Respondent/the Intended Defendant to conduct the hearing of the six (6) disciplinary charges which is fixed for hearing before a Disciplinary Tribunal on Monday 4th November 2019, at 9am, at the Service Commissions Department;

xi. An order of mandamus that the suspension of the Claimant be lifted and that she be reinstated to her substantive post forthwith;

xii. An order that the said decisions to suspend and interdict the Claimant be expunged from her employment record;

xiii. Damages; as well as aggravated and exemplary Damages emanating from the conduct of the Respondent to be assessed by this Court on 20 July, 2023 at 11:00am via Virtual Hearing;

xiv. Interest; and

xv. The Respondent will pay the costs of these proceedings to be assessed by the Registrar on a date to be fixed."

9. The application before this Court is for a stay of execution of the trial judge's orders and an order expediting the appeal. The parties agree that the appeal should be expedited. The only contentious issue on this application for a stay of execution of the trial judge's orders is whether the Court should now grant a stay of the orders that her period of suspension be lifted and the decision to interdict her from duty and withhold one half (½) of her salary. As events have unfolded, by the time this application came on for hearing for a stay of those orders, Ms. Drakes had resumed working and became entitled to her full pay in the normal course of things.

10. One of the effects of granting a stay will in effect result in a further stutter in Ms. Drakes' employment as she will once again have to revert on suspension at one half (½) pay after having resumed duties in May 2023. If the stay is refused, she continues in her position as Commissioner of State Lands until the hearing of the appeal and for all intents and purposes, the Commission cannot pursue the charges against her until the determination of the appeal, unless of course fresh charges are brought for any subsequent infraction of duty.

11. Where does the greater risk of injustice lie? In other words, adopting a flexible

approach to the question, what state of affairs will be just in all of the circumstances having regard to Ms. Drakes' entitlement to the fruits of her judgment balanced with the relative risks of greater injustice to either party if the stay is granted or refused. Adopting a flexible approach requires an acute sensitivity to realities and practical implications of staying the enforcement of this judgment on the lives of the respective disputants in this case and the wider department.

12. There is no question that the appeal does not operate as a stay of the order of the trial judge[2] and that Ms. Drakes is entitled to the fruits of her judgment.

13. The Commission has contended that there are good prospects of success on the appeal. More importantly, that the greater risk of injustice lies in not granting a stay as if Ms. Drakes resumes duty that decision "cannot be undone" in the event that the Commission succeeds in the appeal. The charges will have to be re-initiated. The Commission has further contended that if the appeal is unsuccessful, any further period of suspension while the appeal is pending will be reflected in an award of damages.

14. The Respondent has quite candidly conceded that there is no objection to the grant of a stay for the pecuniary aspect of the order, which is the order for damages. In his oral submissions it was made clear by counsel for Ms. Drakes, as emphasised in his written submissions, that the real objection to any grant of a stay was the deprivation of Ms. Drakes' right to be reinstated and to continue performing her duties receiving her full salary.

15. In exercising a discretion to grant a stay of execution, the Court must adopt a practical approach. It must balance the Respondent's entitlement to its fruits of judgment with special features of the case which may warrant a further delay on the Respondent enjoying the spoils of victory from the judgment. In

[2] See rule 64.16(a) of the Civil Proceeding Rules 1998 as amended ("CPR")

this case it is pellucid that the only objection taken by the Respondent to the grant of a stay of execution is to a state of affairs which will deprive Ms. Drakes of the personal satisfaction and dignity of returning to her duties after her long hard battle at first instance. Conversely, the Commission's application for a stay is to preserve a state of affairs by which the Commission, if successful in the appeal, can continue with the present charges instituted against Ms. Drakes.

16. While the parties were at odds in their oral submissions for and against the grant of a stay of execution, there is some common ground. Provided the appeal is not frivolous and is arguable, it is practical to hold the disciplinary process at bay frozen in time on the 18th September 2019 when the charges were laid and the decision taken to move to convene a disciplinary tribunal. Until a final determination is made, there could be no step taken to prosecute those charges. There is no demonstrable prejudice or risk to Ms. Drakes if those charges are not expunged at this time. Conversely there is no prejudice nor risk of injustice demonstrated to the Commission for Ms. Drakes to continue performing her duties until the appeal is resolved.

17. A resolution of this application which gives effect to the overriding objective will be to grant a partial stay of the orders of the trial judge pending the hearing and determination of the appeal, that is, orders 1, 2, 3, 4, 5, 7, 8, 10, 13, 14, 15 which is explained in this judgment. The upshot of this decision is that the orders that the period of suspension be lifted and that she be entitled to her full salary remain in effect. All other orders in relation to the disciplinary process are stayed pending the determination of this appeal.

The test for a stay of execution

18. Pursuant to rule 64.16(a) CPR, an appeal does not operate as stay of execution of the proceedings. A successful litigant should not generally be deprived of

the fruits of her litigation pending appeal unless there is a good reason for this course. The onus is on the applicant to make out a case for a stay. The Court in exercising its discretion whether to grant a stay or not must consider whether the appeal has a good prospect of success; whether there is a risk of injustice if the stay is granted or refused and whether there are special circumstances which would justify the grant of a stay.[3]

19. At the heart of this exercise is the exercise of a discretion taking into account the overriding objective where proportionality is a helpful compass in balancing the rights of the parties. In **A&A Mechanical Contractors and Company Limited v Petroleum Company of Trinidad and Tobago Limited** Civil Appeal No. S168 of 2014 it was noted:

> "25. The starting point is the established principle that a successful litigant should not generally be deprived of the fruits of his litigation pending appeal unless there is a good reason for this course. In short the normal rule is that there is no stay. …The onus, therefore, is firmly put on the applicant to make out its case for a stay…
>
> 26. The essential question in determining whether it is just to grant a stay of execution is whether in all the circumstances there is a risk of injustice to one or the other party if a stay is or is not imposed. See **Rodrigues** paragraph 22. The relevant factors to guide the Court of Appeal in exercising this discretion culled from these authorities are as follows:
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> a) Whether the applicant has demonstrated that the appeal has

[3] See **National Stadium (Grenada) Ltd v NH International (Caribbean) Limited And Others** Civ App No 48 of 2011, **Andre Baptiste v Investment Managers Ltd** Civil Appeal No 181 of 2012, **Robert Gormandy and Shaun Sammy v The Trinidad and Tobago Housing Development Corporation** Civ. Appeal No. S375 of 2018, **Water and Sewerage Authority of Trinidad and Tobago v Trinidad and Tobago Security Services Limited** Civil Appeal No. P029 of 2020, **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] All ER (D) 258 (Dec), **Rodrigues Architects Limited v New Building Society Limited** [2018] CCJ 09 (AJ) and **A&A Mechanical Contractors and Company Limited v Petroleum Company of Trinidad and Tobago Limited** Civil Appeal No. S168 of 2014.

good prospects of success. It is not simply a matter for the applicant to baldly state that there are good prospects of success of an appeal. The applicant must demonstrate its chances of success based upon the material before the Court. "In other words, however exceptional the circumstances may be otherwise justifying a stay of execution, if the court is not convinced that there exists arguable grounds of appeal no stay will be granted... Only where strong grounds of appeal or a strong likelihood of success is shown should a stay be considered." In most cases demonstrating a good prospect of success is to be treated as a threshold question. Judges should be alert to applications for a stay being filed to achieve a tactical delay to avoid paying the judgment debt or simply seeking extra time to comply with the Court's order.

b) Whether there are any special circumstances which would justify exceptionally the grant of a stay.

c) Whether there is a risk of injustice if the stay is granted or refused.

d) In determining the relative risks of injustice, the following issues arise for consideration:

(i) Has the applicant demonstrated that if a stay is refused, it would be ruined or the appeal stifled?

(ii) Has the applicant established that if the judgment sum is paid, there would be no reasonable prospect of its repayment in the event of a successful appeal?

(iii) What are the risks that the respondent will be unable to enforce the judgment if the stay is granted and the appeal

fails?

(iv) If a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks to the applicant?

e) J. Jones JA in **National Stadium** observed that these principles are consistent with the duty of the Court to deal with cases justly under the CPR, that is, giving effect to the overriding objective."

20. While **A&A Mechanical Contractors** dealt with the question of a stay of execution pending an appeal to the Privy Council, the principles are equally relevant save that the instant case does not involve a money judgment. The type of judgment under consideration here is one which declares the rights of a party and orders a party to take certain steps or actions. One important distinguishing feature of note in considering the factors in this type of case is that, whether the appeal has any prospects of success is not a threshold question. See **Robert Gormandy and Shaun Sammy v Trinidad and Tobago Housing Development Corporation** Civ App Nos. 375/2018, 376/2018, where Mendonça J.A. held, in granting interim relief, that where there is a risk that an appeal would be rendered nugatory, that is not something the Court could turn a blind eye to as an appeal being rendered nugatory creates a serious risk of injustice. A measure of flexibility is required in determining the main question that must be answered which is, whether, in all the circumstances, there is a risk of injustice to either of the parties if the stay is granted or refused. The importance of assessing the risk of injustice was usefully explained in the authorities referred to the Court by the parties in **Phillip Maynard v Christopher George Everett and ors** Civil Appeal No. P247/2021 and **Bhagwantee Singh-Weekes v SWRHA** Civil Appeal No. P271/2020.

Good prospects of success

21. It is not for this Court at this stage to determine the appeals themselves but to sift the rivalling arguments on the merits of the issues to be articulated at the appeal identified above to determine whether there is any prospect of success in them. I must express a value judgment. "Prospect of success" is not an inflexible rule inscribed in rule 64.18(1)(b) CPR. It is a principle developed in our case law where the term "good prospect of success" was used interchangeably with "good arguable appeal" in **Rodrigues** and "an appeal with merit" in **National Stadium**. **Wenden Engineering Service Co. Ltd v Lee Shing Yue Construction Co. Ltd** [2002] HKCU 846 demonstrates that the existence of a strong appeal or a strong likelihood that the appeal would succeed, will usually by itself enable a stay to be granted because this would constitute a good reason for a stay. However, in most cases, the Court may not be dealing with those extremes on either end of the spectrum but indeed faced with simply an arguable appeal. In those cases the Court must still carry out its balancing exercise to determine where the risks of injustice lie.

22. This question is contextual. As Mendonça J.A recently explained in **Water and Sewerage Authority of Trinidad and Tobago v Trinidad and Tobago Security Services Limited** Civil Appeal No. P029 of 2020:

> "8. As to whether the appeal has a good prospect of success, it must be borne in mind that an application for a stay of execution is an interlocutory application. It is expected that the hearing of the application will not be protracted but will be relatively quick. The court in hearing that application is not embarking upon the hearing of the appeal and cannot be expected to come to a determination of the merits of the appeal or the likely outcome of the appeal, except perhaps in the simplest of cases. In **Rodrigues Architects Ltd** (supra) the Caribbean Court of Justice (CCJ) likened an appeal with a good prospect of success to a good arguable appeal. I believe, with respect, that is correct. In other words, the task of

the court is to determine whether the appeal is one with substance."

23. In my view there are arguable points raised by the Commission on the appeal that deserve investigation by a full panel. Some of these issues are (a) whether the terms and conditions of Ms. Drakes' letter of appointment/contract can by implication incorporate the disciplinary process set out in the Public Service Regulations (b) whether the six charges against Ms. Drakes were lawfully laid and (c) whether the Commission can lawfully interdict and withhold pay, not as a penalty, but as an inherent or practical feature of their disciplinary process. Ultimately, is such a decision constitutional. It is to be noted that the constitutionality of such a decision is a matter being fully investigated by the Court of Appeal in **The Public Service Commission and The Attorney General v Caramchand Sammy** CA P118/2023 which is scheduled for hearing on 31st January 2024.

24. These grounds are by no means clearly winnable. It is not my task at this stage to thoroughly determine them on their merits. They are at best deserving of investigation.

Relative risks of injustice

25. There is no evidence of any risk to the Commission that it will be ruined if Ms. Drakes continues her employment. In fact, there is no demonstrable prejudice to the Commission if Ms. Drakes fulfils her duty as Commissioner of State Lands. Indeed there is a greater ignominy to Ms. Drakes if she is now told yet again after reporting to work to return to a period of suspension. There is no reasonable probability nor evidence of any risk to the Commission that Ms. Drakes will be unable to repay any extra monies received while on full employment during the hearing of the appeal if the appeal succeeds.

26. There is no evidence of any risk that Ms. Drakes will act detrimentally to the interests of the Commission. Indeed, her history shows that she was at one

time suspended, that suspension was lifted and she returned to work.

27. The decision to "suspend" and interdict are separate powers. The governing process are regulations 88 and 89 of the Public Service Commission Regulations. However, it does not automatically follow that where there is an allegation of misconduct and formulations of charges that either suspension or interdictment must follow. It is a discretion to be exercised only where:

    (a) **the public interest or repute of the public service requires it** (suspension) (See regulation 88(1) of the Public Service Commission Regulations) or;

    (b) where disciplinary proceedings or criminal proceedings have been or about to be instituted against an officer and the **Commission is of opinion that the public interest requires that that officer should forthwith cease** to perform the functions of his office, the Commission shall interdict him from such performance. (see regulation 89 (1) of the Public Service Commission Regulations)

28. It is for the Commission to demonstrate what public interest factors dictate or weigh in favour of Ms. Drakes' suspension or interdictment. They have not done so on this application. Moreover, the charges were all comprehensively responded to by Ms. Drakes. Simply saying that the Commission must have had serious reservations and these are serious charges is not enough to deprive a litigant of the fruits of her litigation.

29. However, on the other hand, Ms. Drakes has not demonstrated any prejudice to herself or any injustice to her for the charges to remain pending until the determination of this appeal. The Commission, while the appeal is pending, can take it nowhere. It remains in cold storage. However, it serves a practical purpose in the event the appeal is successful, for the Commission to continue the process of discipline without having to restart or prefer fresh charges

against Ms. Drakes.

30. A discretion on these applications ultimately must always be exercised within the tripartite pillars of the overriding objective, of economy, equality, and proportionality. A practical middle course is preferable in this case having regard to the many considerations taken into account set out in this judgment in the main: the relative arguability of the appeal, the absence of any prejudice to either party for Ms. Drakes to continue working on full pay and her charges remaining in stasis.

31. A fair and proportionate order to give effect to the overriding objective in these circumstances would be to grant a limited stay of execution of the following orders pending the hearing and determination of the appeal:

> "i. A declaration that the Claimant is not an officer in the Civil Service and is therefore not subject to the Code of Conduct established under Section 149(2) of the Civil Service Act;
>
> ii. A declaration that the PSC has no jurisdiction to invoke disciplinary proceedings against the Claimant pursuant to Regulation 88 of the PSCR;
>
> iii. A declaration that the decision of the Respondent to withdraw six (6) disciplinary charges preferred against the Claimant and contemporaneously prefer the same or similar said charges contrary to Regulations 149(2) (g) & (f) of the Civil Service (Amendment) Regulations, 1996, as outlined in letter dated 9th August 2019, written under the hand of the Director on behalf of the Respondent was irrational, is an abuse of process and in breach of natural justice;
>
> iv. A declaration that the failure and/or refusal of the Respondent to provide reasons for the withdrawal of the six (6) disciplinary charges and the contemporaneous preferment of six (6) identical or similar disciplinary charges as contained in letter dated 9th August 2019, written under the

hand of the Director of Personnel Administration (Ag), Service Commissions Department on behalf of the Respondents and amounts to an irregular/and/or improper exercise of the Respondent's discretion;

v. A declaration that the decision of the Respondent to prohibit the Claimant from attending the Royal Institute of Chartered Surveyors Conference in Bahamas between the period 29th October to 5th November 2019, as contained in letter dated 26th September 2019 was illegal;

vii. A declaration that the decision of the Respondent to appoint a Disciplinary Tribunal to hear the evidence and find the facts with respect to the said six (6) disciplinary charges preferred against the Claimant which said hearing is fixed for Monday 4th November, 2019 at 9am at the Service Commissions Department, as stated in letter dated 7th October, 2019, written under the hand of the Director of Personnel Administration (Ag), Service Commissions Department on behalf of the Respondent was unreasonable;

viii. An order of certiorari is hereby granted to remove into the High Court the decision of the Respondent as contained in letter dated 9th August 2019, to prosecute and/or prefer against the Claimant the six (6) new disciplinary charges in Appendix 'B' thereto and the decision is quashed;

x. An order of certiorari to remove into the Honourable Court and quash the decision of the Respondent/the Intended Defendant to conduct the hearing of the six (6) disciplinary charges which is fixed for hearing before a Disciplinary Tribunal on Monday 4th November 2019, at 9am, at the Service Commissions Department;

xiii. Damages; as well as aggravated and exemplary Damages emanating from the conduct of the Respondent to be assessed by this Court on 20 July, 2023 at 11:00am via Virtual Hearing;

xiv. Interest; and

xv. The Respondent will pay the costs of these proceedings to be assessed by the Registrar on a date to be fixed."

32. For the sake of clarity the following orders have not been stayed:

"vi. A declaration that the decision of the Respondent to interdict the Claimant from duty and withhold one-half (1/2) of her salary in accordance with the provisions of Regulation 93 of the Public Service Commission Regulations, as stated in letter dated 26th September, 2019 was illegal;

ix. An order of certiorari to remove into the High Court and quash the decision of the Respondent as stated in letter dated 26th September 2019, to interdict the Applicant/Intended Claimant from duty and withhold one-half (1/2) salary;

xi. An order of mandamus that the suspension of the Claimant be lifted and that she be reinstated to her substantive post forthwith;

xii. An order that the said decisions to suspend and interdict the Claimant be expunged from her employment record."

Expedited hearing

33. At the hearing of this application I made an order that this appeal be expedited and fixed to a date in October 2023. This was done without regard to the status of the **Caramchand Sammy** appeal which did not come to my attention on the date of hearing. While reference was made to it in the supplemental affidavit of Radha Sookdeo[4] it was only filed on the morning of the hearing of the application. In **Caramchand Sammy** the Appellant is the same as in this appeal. The Respondent is represented by different attorneys. In that appeal there are

[4] Filed 27th June 2023

two significant matters. First that it concerns the same issue in this appeal whether the decision by the Commission to interdict a public officer on one half (½) salary is constitutional. Second, the parties consented to an expedited hearing of that appeal to 31st January 2024.

34. The Commission in this case expressed great anxiety over the lawfulness of its decision to interdict generally and wanted clarity with respect to the exercise of this power. For one panel to give a ruling in October 2023 with the possibility of an inconsistent decision being made by another panel considering the submissions of the parties in the **Caramchand Sammy** matter would be counterproductive to good administration.

35. As a matter of proper case management, it is a matter of fairness and logic for one panel to hear all the arguments in relation to the interdictment issue and deliver its judgment. Accordingly as the **Caramchand Sammy** appeal is already fixed for 31st January 2024, I will order that this matter will be heard by the same panel on the same day. The matters will not be consolidated as this present appeal raises far more issues than the **Caramchand Sammy** appeal, however, they will be heard one after the other. This approach, however, will change if the **Caramchand Sammy** is withdrawn by the Commission.

36. An Appeal Management Conference will therefore be convened on 27th September 2023 to determine the status and management of both appeals, that is, the **Caramchand Sammy** appeal and this appeal. In the interim, deadlines will be adjusted for the filing and service of written submissions in this appeal if the parties so require.

Conclusion

37. For the reasons set out above there will be a partial stay of execution of paragraphs 1, 2, 3, 4, 5, 7, 8, 10, 13, 14, 15 of trial judge's order dated 10th May 2023.

38. Costs reserved.

Vasheist Kokaram
Justice of Appeal