

[2008] CCJ 11 (AJ)

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF THE CO-OPERATIVE REPUBLIC
OF GUYANA**

**CCJ Appeal No CV 4 of 2007
GY Civil Appeal No 98 of 2004**

BETWEEN

JOHN SEALEY

APPELLANT

AND

**THE ATTORNEY GENERAL OF GUYANA
THE POLICE SERVICE COMMISSION**

RESPONDENTS

**Before The Right Honourable
And the Honourables**

**Mr Justice Michael A. de la Bastide, President
Mr Justice Nelson
Mr Justice Pollard
Mr Justice Wit
Mr Justice Hayton**

Appearances

**Mr Roopnarine Satram, Mr Chandraprakesh Satram and Mr Mahendra Satram for the
Appellant**

Mr Vashist Maharaj and Ms Sueanna David for the Respondents

JUDGMENT

of

The President and Justices Nelson, Pollard, Wit and Hayton

delivered jointly by

The Honourable Mr Justice Rolston Nelson

and

The Honourable Mr Justice David Hayton

on the 16th day of December, 2008

Introduction

- [1] The Appellant joined the Police Service on 16 June, 1960. He had attained the rank of Senior Superintendent when the Police Service Commission by a letter dated 12 November 1984 purported to terminate his services “in the public interest with immediate effect”, though providing no specific reason for such termination.
- [2] On 12 October 1987 from a Georgetown, Guyana address the Appellant petitioned the President of the Republic of Guyana “to re-open this matter” of his dismissal and compensate him for his years of service, no gratuity or pension having been given to him. There was no response.
- [3] On 22 January 2001 the Appellant wrote from another Georgetown address to the Chairman of the Police Service Commission, enclosing a copy of the petition to the President and requesting the Chairman to enquire into what was happening in respect of the petition. There was no response.
- [4] On 20 February 2001 the Appellant filed a motion in the Matter of Articles 142, 214 and 215 of the Constitution of Guyana and of an Application by John Sealey. He sought
- (a) a declaration that his “removal from the Police Force was unconstitutional, null and void, and wrong in law and a breach of a personal right guaranteed by the Constitution”;
 - (b) a declaration that he “was compulsorily retired from the Police Force and is entitled to his salary and superannuation benefits”;
 - (c) an order directing the payment of such sums due and owing to him as compensation for his service in the Police Force; and
 - (d) costs.
- [5] In view of the delay from 12 November 1984 to 20 February 2001 Roy J dismissed the motion as an abuse of the court’s process, treating it as a constitutional motion seeking

redress under Article 153 of the Constitution. The Court of Appeal dismissed the appeal, Kissoon JA on its behalf stating,

“It is unjust to give a remedy to the appellant due to his neglect in filing his proceedings in a timely manner. His undue delay without any explanation has rendered the proceedings an abuse of the Court’s process which will undermine the integrity of the judicial system.”

- [6] The Court of Appeal subsequently granted the Appellant leave to appeal to the Caribbean Court of Justice (“CCJ”), without specifying any particular ground for granting leave to appeal. Later, the Appellant’s then counsel wrote to the CCJ advising that the leave related to section 6 (d) of the Caribbean Court of Justice Act, No 16 of 2004. This provides for an appeal as of right “in any proceedings that are concerned with the exercise of the jurisdiction conferred upon the High Court relating to redress for the contravention of the provisions of the Constitution for the protection of fundamental rights.” This is the jurisdiction conferred by Article 153 for breaches of Articles 138 to 151 inclusive.
- [7] Having heard the appeal, we endorse the above remarks of Kissoon JA.

The Appellant’s claims in this appeal

- [8] Counsel for the Appellant abandoned the null and void claim in (a) of his motion (see [4] above), so that it also followed that the claim in (b) for salary under a subsisting contract could not be pursued. He also accepted that claim (b) should refer not to the Appellant being “compulsorily retired” within section 8 (c) of the Pensions Act, Cap. 27:02 but to “termination of his employment in the public interest” within section 8(e). Thus from the time of such termination the Appellant was entitled to the superannuation benefits provided for in section 9 of that Act and made mandatory by Article 214 of the Constitution.

[9] Under section 9

“the Minister *may*, if he thinks fit, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he had retired from the public service in the circumstances described in paragraph (b) or (c) of the last preceding section.”

[10] Article 214 (1) converts the Minister’s “may” into “shall,” unless the appropriate Commission concurs in a refusal to grant the benefits or a decision to withhold or reduce them. Article 214 (2) requires the formerly discretionary amount of the benefits to be granted to the officer, to be “the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.” But for these provisions the Appellant would have had no enforceable right to superannuation benefits as the holder of a pensionable office in the public service, so that that right can be regarded as arising by virtue of the Constitution. However, the right to a specific sum of money made payable to a person by a provision in the Constitution, but not falling within the protection afforded by Articles 138-151, has nothing to do with any breach of fundamental rights or freedoms. It is in essence a simple action to recover a debt.

[11] Counsel therefore submitted that, as alleged in paragraph 8 of the Appellant’s affidavit in support of his Notice of Motion and referred to therein, the Appellant’s right to superannuation benefits under Article 214 was a fundamental right guaranteed by Article 142 of the Constitution. It was thus enforceable under Article 153 and no limitation period applies to Article 153 claims as none exists under the Fundamental Rights (Practice and Procedure) Act, Cap 3:03 or under Article 40(2) of the Constitution bringing into effect Articles 138-151.

The impact of the Appellant's delay in invoking Article 153

- [12] While no specific limitation period applies to claims under Article 153, a claimant cannot wait for as long as he likes before bringing a claim. Kisoona JA held the Appellant's "undue delay without any explanation ... rendered the proceedings an abuse of the Court's process", while Roy J held such delay to be "a misuse of the court's constitutional jurisdiction". The Appellant's counsel could only speculate as to what excuse, if any, there might have been for the undue delay.
- [13] We fully agree with Kisoona JA and Roy J in the light of the inordinate delay of over sixteen years from the time of the Appellant's dismissal and of over thirteen years from the petition to the President. We note that in *Durity v Attorney General of Trinidad and Tobago*¹ the Privy Council considered that undue delay without a cogent explanation in taking legal proceedings for redress for contravention of Constitutional fundamental rights and freedoms could amount to an abuse of the court's constitutional jurisdiction. It then considered that the lapse of five years in seeking such redress amounted to inordinate delay in the absence of any cogent explanation. It is in the public interest that claims do not become stale, the courts assisting those who are vigilant to enforce their claims, but not those who sleep on them. Legal disputes need to be resolved in a timely and efficient manner: see *Edwards v Attorney General of Guyana and The Public Service Commission*².

¹ (2002) 60 WIR 448, [2003] 1 AC 405 at [36]

² CCJ Appeal No 3 of 2007

Conclusion

[14] Without the need to examine whether or not there was a breach of Article 142, the appeal is dismissed, the Appellant to pay the Respondents' costs of this appeal.

-----/s/ M. A. de la Bastide-----

Mr. Justice Michael A. de la Bastide (President)

-----/s/ R.F. Nelson-----

Mr. Justice R. Nelson

-----/s/ D. Pollard-----

Mr. Justice D. Pollard

-----/s/ J. Wit-----

Mr. Justice J. Wit

-----/s/ D. Hayton-----

Mr. Justice D. Hayton