

[2008] CCJ 7 (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 5 of 2007
GY Civil Appeal No. 95 of 2004

BETWEEN

VIBERT GIBSON

APPELLANT

AND

THE ATTORNEY GENERAL OF GUYANA

RESPONDENT

Before The Rt. Honourable
And The Honourables

Mr Justice de la Bastide, President
Mr Justice Saunders
Madame Justice Bernard

On Written Submissions

Mr B E Gibson for the Appellant

The Attorney General and Ms Trishala Persaud for the Respondent

JUDGMENT
of
The President and Justices Saunders and Bernard
Delivered
on the 18th day of September 2008

JUDGMENT

- [1] The appellant was discharged from the Police Force by letter dated 30th June, 1989, with immediate effect on the ground that his discharge was desirable in the public interest. He filed suit the following month against the Attorney General alleging that his removal from the Force was unconstitutional null and void and claiming damages for loss of salary, pension and gratuity. The appellant appeared to take the view that he was entitled to the total compensatory package he would have earned had he remained in the Force until he reached the age of retirement and that further, the court should make no allowance for the possibility of his mitigating his loss. After a trial the court held that the appellant had been unlawfully dismissed. The appellant was awarded damages equivalent to 24 months' salary. The appellant appealed.
- [2] The Court of Appeal (Claudette Singh, Kissoon and Chang, JJA) upheld the judgment of the trial court but allowed the appeal to the extent of ordering the State to pay the appellant the pension to which he was entitled based on his 20 years service in the Force. The appellant was given leave to appeal as of right to this Court.
- [3] The facts of this case and the circumstances in which an appeal as of right was filed resemble very closely those in the case of *Mohamed Yasseen v. The Attorney General* [2008] CCJ 3 (AJ) in which this Court delivered a written judgment on 26th March, 2008. Adopting the same course we followed in *Yasseen*, we required counsel for the appellant to provide us with written submissions on the issue whether the appellant was entitled to appeal as of right. Those submissions were filed and having read them, we can see no reason to alter the view we took in *Yasseen* namely, that there is no right of appeal and that the appeal in any event lacks merit and should be dismissed.

[4] In order to found a right of appeal, the appellant had to establish that these proceedings were “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”. *See*: section 6(d) of the Caribbean Court of Justice Act, No 16 of 2004. Counsel suggested that his client’s claim to be entitled to salary, pension and superannuation benefits was a claim premised on the breach of a fundamental human right.

[5] This line of argument was given a fitting response in the court below by Claudette Singh J.A. who rightly noted that:

“...the action is one for unlawful dismissal and is not one in which the appellant was seeking constitutional redress for the infringement of a fundamental right. The Commissioner in discharging the appellant without a hearing has failed to observe the rules of natural justice in not affording him a hearing. Failure to observe the rules of natural justice would not amount to an infringement of a fundamental right”.

[6] In *Yasseen* we noted at [13] and [14] in a passage which is equally applicable to the instant case, that:

“[13] The fact is that the claim in this case was not presented as a breach of a fundamental right. Nor can it be seriously suggested that the appellant had a fundamental right to salary and pension as if he had continued in his post until his attainment of the relevant retirement age. The basic contention here was that his termination was wrongful because of the Police Commissioner’s disregard of the principles of natural justice. The right to institute the action on that ground existed independently of the Constitution and did not depend on, and was not concerned with, establishing the contravention of any provision of the Constitution for the protection of fundamental rights. The courts below proceeded on that footing.

[14] Even if the appellant were to allege - and we must not necessarily be taken as supporting either of these propositions - that his right to be heard constituted a fundamental right protected by the Constitution or that his job was property the enjoyment of which was protected by the Constitution, there is no principle of constitutional law which would have required the Court, in assessing compensation due to him for breach of either or both of those assumed rights, to treat his employment as notionally continuing until his retirement age and to ignore his capacity

to take up alternative employment and earn an income from it. Put another way, there is no basis in principle or in decided cases for treating the policy which the courts have traditionally followed of not ordering specific performance of contracts of service as inapplicable to a contract of service which has been terminated in breach of a fundamental right protected by the Constitution.”

[7] We consider that the identical reasoning applies to this case. Accordingly we strike out this appeal and for the same reason we declined to order costs in *Yasseen*, namely, that the respondent played no part in the striking out of the appeal, we would make no order as to costs here.

[8] Before concluding this judgment we feel obliged to comment on the fact that this case was originally filed in July, 1989. The High Court proceedings were not concluded until November, 2004, more than fifteen years after the case was filed. Undoubtedly there must have been reasons for this but we can think of none that could justify a delay of that order. If such delays are not eliminated, public confidence in the justice system in Guyana will surely be eroded.

/s/ M.A. de la Bastide

The Rt. Hon. Mr. Justice Michael A. de la Bastide (President)

/s/ A. Saunders

The Hon. Mr. Justice A. Saunders

/s/ D. Bernard

The Hon. Madame Justice D. Bernard