

**IN THE COURT OF APPEAL OF THE SUPREME COURT OF
JUDICATURE**

APPELLATE JURISDICTION

CIVIL APPEAL NO. 66/2000

BETWEEN:

WESLEY MC DONALD

Appellant/Plaintiff

- and -

**ATTORNEY GENERAL OF GUYANA
THE COMMISSIONER OF POLICE**

Respondents/Defendants

BEFORE:

The Hon. Madame Desiree Bernard	-	Chancellor
The Hon. Madame Claudette Singh	-	Justice of Appeal
The Hon. Mr. Ian Chang	-	Justice of Appeal

Mr. B. Gibson and Mr. A. Satram for Appellant.

Mr. D. Ramdhani, Mr. G. Persaud, Ms. P. Sewnarine and Ms. V. Jagnandan
for Respondents.

2001: November, 2
December, 19

J U D G M E N T

BERNARD, C.:

My brother **Chang, J.A.** in his commendable judgment which I have had the good fortune to read beforehand expounded admirably on the legal effects of the discharge of a person holding public office from that office, and I have nothing more to add except a few comments on the issue of reinstatement and mitigation of loss.

Once again this Court is called upon to decide whether a person holding public office who was found to have been wrongly dismissed therefrom is entitled to an order for reinstatement. This arose in the case of **Clement Johnson v. Attorney General of Guyana (C.A. No. 21/1992)** and later in an **Application by Edgar Aaron (C.A. No. 41/1997)**. In both cases this Court declined to make such orders. In Clement Johnson in delivering the judgment of the Court I expressed the view that an order for reinstatement of the appellant who was a special constable and who came under the general command and superintendence of the Commissioner of Police would be a usurpation of the Commissioner's powers and place a fetter on his power to terminate the full-time service of a special constable. My conclusion was based on an analysis of the case of **Chief Constable of North Wales Police v. Evans (1982) 3 AER, 141** whose position of a probationer constable was not dissimilar from that of the appellant Johnson, and where the House of Lords held that although an order for reinstatement was the only satisfactory remedy in consequence of the unlawful acts of the chief constable in dismissing the appellant without a hearing it would be impractical as it might border on a usurpation by the court of the powers of the chief constable. The same reasoning informed the thinking of **Kennard, C** in **Edgar Aaron (supra)**.

In both **Evans** and **Johnson** the appellants held offices which came under the control of persons who were vested with discretionary powers of discipline. The Chief Constable in the case of **Evans** under **Reg. 16(1) of the Police Regulations 1971** could discharge a probationer constable if he considered that he was not fitted to perform the duties of his office or that he was not likely to become an efficient or well conducted constable. In the case of **Johnson** under **Section 72 of the Police Act, Cap. 16:01** the general

command and superintendence of the Special Constabulary was placed under the Commissioner of Police, and members called out on a full-time basis by the Commissioner were subject to discipline under the **Police (Discipline) Act, Cap. 17:01.**

The Appellant in the instant appeal held the rank of lance corporal in the Police Force, and came under the control of the Commissioner of Police. As such his position was akin to those of **Evans** and **Johnson**; were the Court to order reinstatement it would be a challenge to the authority and power of the Commissioner of Police, and undermine his effectiveness in exercising control over members of the Force below the rank of Inspector; in fact in his letter of discharge to the Appellant dated 22nd September, 1992 the Commissioner had intimated that the Appellant would not be re-enlisted. Whether one is the holder of a statutory office or a personal one of master and servant it is impractical to force an employer to interact with an employee in whom he no longer has any faith or trust. Similar sentiments were expressed by **Lord Bridge of Harwich** in **Evans** to the effect that if the North Wales Police Force had the respondent forced on them by order of the Court there would be an obvious danger that an undercurrent of ill-feeling would affect his future relations with his superiors in the Force.

Having regard to all that I have said earlier I find that the learned trial judge was quite correct in not making an order for re-instatement of the Appellant.

With regard to the question of damages I endorse the reasoning of my brother Chang, and wish to comment on the question of mitigation of loss. In this regard I reiterate what I said in **Johnson** (supra) and wonder why in relation to the computation of damages someone employed by a public statutory body which acted wrongly in dismissing him should be treated

differently from an employee in an ordinary case of master and servant, and be entitled to loss of salary for the entire period he was awaiting determination of his claim without taking into account earnings from any employment he might have secured while waiting and without mitigating his loss.

In Ridge v. Baldwin (1963) 2 AER, 66 Lord Devlin expressed obiter dicta which seems to suggest that the Chief Constable who was wrongly dismissed would have been legally in office during all of the time that it took to decide his matter and so would have been entitled to be paid his salary even if he had been in profitable employment. Of course, in that case the Appellant did not seek re-instatement, and Lord Devlin felt that instead of being dismissed he could have been compelled to retire, and so save his pension rights. I do not understand the learned Law Lord to mean that the appellant would be entitled to be paid all of his salary from the time of his dismissal to the time he would have retired regardless of the length of such period. I understand him to mean that the appellant was legally in office during the time the case was being heard as his dismissal was found to have been unlawful, and he was so legally in office up to when the matter was finally determined. He did not go on to express a view, and may be it did not arise in that case, as to whether the appellant ought to continue to be paid his salary until retirement however far distant in the future this may be. He, however, made the point that the appellant was likely to reap a substantial benefit arising out of the pardonable error of the watch committee which dismissed him.

In "Wade & Forsythe's Administrative Law, 8th Edition", the learned authors at page 503 stated that "the remedies most used in natural justice cases-certiorari, prohibition, mandamus, injunction, declaration – are

discretionary, so that the court has power to withhold them if it thinks fit, reiterating a long-standing axiom of administrative law. However, as pointed out by the authors judicial discretion in withholding remedies is usually carefully exercised, and regard must be had to the prevailing circumstances of each case. I venture to suggest that this also applies to the award of compensation where there has been a breach of the principles of natural justice.

My brother **Chang** has suggested compensation to the appellant of salary for 18 months instead of 6 months awarded by the learned trial judge and I agree with his award. I also agree with his reasoning concerning payment of benefits. Accordingly I agree that the appeal be allowed.

Dated the 19th day of December, 2001.


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Desiree P. Bernard
Chancellor of the Judiciary.