IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

APPELLATE JURISDICTION

Civil Appeal No. 29 of 2013

BETWEEN:

DESMOND ROWLEY
Applicant/Appellant

-and-

1. **THE CHIEF OF STAFF, GUYANA DEFENCE FORCE**

2. **THE ATTORNEY GENERAL OF GUYANA**
Respondents

Coram:

Mm'e Justice Dawn Gregory	**– Justice of Appeal**
Mr. Justice Rishi Persaud	**– Justice of Appeal**
Mr. Justice Rafiq T. Khan	**– Justice of Appeal (ag)**

Appearances
Ms. M. Breedy for the Appellant.
Ms. Stewart for the Respondent.

Dates
16th March, 2018
10th April, 2018

DECISION of Khan JA (ag)

[1] The Guyana Defence Force, established under Section 4 of the Defence Act Cap 15:01, consists of:

(a) a Regular Force and

(b) a Reserve Force

[2] By virtue of Section 19 of the Act, a soldier enlisting in the Regular force shall serve a term not exceeding 12 years which can be extended in accordance with the provisions of the Act.

[3] Under Section 20 (1) a soldier of good character who has completed the 12 years period may, upon approval, re engage in the Regular Force or service in the Reserve. However, the sum total of his original period of service in the Regular Force and further service in the Regular Force shall not exceed 22 years from the date of his original enlistment.

[4] The Appellant enlisted in the Guyana Defence Force as a regular soldier on the 20/9/77. He was voluntarily discharged from the Regular Force on the 5/8/84 having served approximately 7 years.

[5] The Appellant was approximately 8 years thereafter employed by the Guyana Defence Force in a civilian capacity for a few months from the 21/1/92 to the 14/5/92.

[6] After that, he was engaged in the Reserve Force on the 15/5/92 until the 1/4/08, i.e approximately 16 years. After his initial engagement in the Regular Force which lasted for 7 years, the Appellant was never re engage in the Regular Force

[7] The Appellant's contention is that since he was employed in the force initially as a regular soldier for about 7 years and thereafter in the Reserve from 15/5/98 to the 1/4/08 for 16 years on a full time basis, (totaling approximately 23 years of service) he is entitled to receive a pension. He commenced proceedings in the High Court claiming payment of a pension. His claim was dismissed on the basis that as a member of the Reserve he was not entitled to a pension. The Appellant then appealed to this Court.

[8] Section 3 of the Defence (Pension and Gratuities) Regulations Act states that no person shall have an absolute right to compensation for past

services in the Force or pension, gratuity or other grant under the Regulations.

[9] Further Section 2 (2) of the Regulations provides that the officers and soldiers to which its provisions apply are only officers and soldiers in the Regular Force as defined by Section 4 (a) of Defence Act.

[10] The Appellant contends that he is entitled to a pension under article 149 B of the Constitution. But that article only guarantees a worker an enforceable right to a pension granted to him under the provisions of any law or collective agreement.

[11] It is clear that the Defence (Pensions and Gratuities) Regulations made under the Defence Act applies only to officers and soldiers in the Regular Force and not members of the Reserve. It is not ..... that the Defence Act makes no distinction between engagement in the Reserve and engagement in the Reserve on a full time basis. So there is no basis for categorizing the Appellant's engagement in the Reserve on a full time basis as anything more than an engagement in the Reserve as defined in Section (6) of the Defence Act.

[12] The Appellant as a member of the Reserve is therefore not entitled to compensation for past services in the Force as such or to any pension, gratuity or other grant under the Regulations and there is no law entitling him to such.

[13] The learned trial judge correctly so found and also correctly found that the Appellant was not entitled to constitutional relief for any perceived transgression of article 149 B for there was no law which entitled the Appellant to receive a pension as a member of the Reserve and we see no reason to disturb the trial judge's findings thereon.

[14] The Appellant's claim that he had a legitimate expectation to receive a pension, is misconceived.

[15] Whatever his expectations, they certainly were not legitimate as required by the doctrine. The Appellant cannot have a legitimate expectation to receive a pension from the force which by law he was not entitled to receive.

[16] As Wade & Forsyth stated in Administrative law 10th edition state at p. 449:

> **"It is not enough that the expectation should exist, it must in addition be legitimate" [as] "an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law"**

[17] In **Rainbow Co. Ltd v. Financial Services Commission et al** [2015] UK PC 18 Lord Hodge stated at paragraph 52:

> **"the Court will enforce an expectation only if it is legitimate. There is an established line of authority that nobody can have a legitimate expectation that he will be entitled to an ultra vires relaxation of statutory requirements"**

[18] A grant of pension to the Appellant as a member of the Reserve would be ultra vires to the Defence (Pension and Gratuities) Regulations.

[19] Accordingly the appeal is without merit and is dismissed. The decision of Insanally J. dated 11th April, 2013 in Action No. 6 of 2010 is affirmed.

[20] There will be no order as to costs.

Dated the 23rd day of April, 2018

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Rafiq T. Khan
Justice of Appeal (ag)

COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE