

2014

No. 93 - M

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF
JUDICATURE
CIVIL JURISDICTION

In the matter of an application
for Writs of Certiorari and
Mandamus.



-and-

In the matter of an application
by **GREGORY MENTORE**

BEFORE:

HON. MR. JUSTICE IAN CHANG - CHIEF JUSTICE (ag.)

Mr. Nigel Hughes with Miss Donna Bailey for the Applicant.

Mr Ashton Chase C.S for the Respondent.

DECISION

On the 30th July 2014, the applicant Gregory Mentore, by way of Notice of Motion, applied to the Court for the following prerogative relief:

- (a) An Order or Rule nisi of Certiorari directed to Jaigobin Jaisingh, Secretary of the Public Service Commission, to show cause why his decision to*

issue the applicant with a letter of dismissal dated the 23rd June 2014 on the basis of the applicant's "deemed absence" should not be quashed as a decision which is ultra vires, null, void and an abuse of power on the basis that the applicant was never absent from work on the dates alleged or at all."

In his Affidavit in support of Motion, the applicant deposed that he was a civil servant employed in the Ministry of Agriculture as Supply Expeditor 1 and that the conditions of his employment by the Government of Guyana were being governed by the Civil Service Rules. He asserted that the Public Service Commission was the body lawfully authorised to terminate or suspend his service. But, there was no extant Public Service Commission.

He deposed that, by a note dated 3rd April 2014, the Permanent Secretary of the Ministry of Agriculture issued a notice addressed to all Heads of Department on the subject of the use of a biometric time-keeping system within the said Ministry. The said note purported to inform the employees in the said Ministry that, with effect from the 1st May 2014, a biometric system would be installed at the security hut and that all staff would be required to submit their fingerprints and sign in by way of fingerprint recognition (exhibit A). He

informed the Public Service Union and sought their intervention. The President of that Union informed him that the Union wrote to the Permanent Secretary on the subject of the introduction of the biometric system and the Permanent Secretary undertook to get back to the Union but he never did.

He deposed that he declined to provide his fingerprints to the Ministry since his Attorney-at-Law had advised him that his right to privacy was guaranteed and protected by Article 154 A of the Constitution. By letter dated the 5th June 2014, the Permanent Secretary wrote to him referring to the above-mentioned note and advising him that, if he did not provide his fingerprint and participate in the new system, he would be “deemed absent from duty” and would not be allowed entry in the Ministry (Exhibit B). He again informed the Permanent Secretary of his concerns and his rights.

He further deposed that the Ministry continued to operate the manual recording system in which employees were required to sign in. He continued to attend work on time each day and frequently before time when he would sign in. At no time was he late for or absent from work. Yet, he deposed, by letter dated the 23rd June 2014, the Secretary to the Public Service Commission issued to him a letter in which he was informed that “Consequence on my unauthorised absence from duty from effect from 5th June 2014 pending ratification

from the Public Service Commission, approval has been given for you to be dismissed from the Public Service with effect from 10th June 2014” (Exhibit C).

He stated that, prior and subsequent to 5th June 2014, he attended work every day and on time and worked continuously for the Ministry and that, on the dates on which the Secretary of the Public Service Commission alleged that he was absent from work, he was at work and was assigned tasks by his employers.

He stated that his Attorney-at-Law had advised him that since the Secretary of the Public Service Commission was not authorised to act for or on behalf of the Commission in the absence of the Commission, no lawful approval could have been issued for the termination of his services. His Attorney-at-Law had further advised him that the secretary of the Public Service Commission had acted *ultra vires* and in abuse of his powers when he purported to deem him absent when he had attended work and had provided service to the Ministry and also when he purported to act for and on behalf of a non-existent Public Service Commission.

On the basis of the Affidavit in support of Motion, the court ordered that an Order or Rule nisi of Certiorari be issued to the Secretary of the Public Service Commission quashing his decision to issue a letter of dismissal to the applicant

unless cause was shown why the said Order or Rule nisi should not be made absolute.

In his Affidavit in Answer, the Secretary of the Public Service Commission, Jaigobin Jaisingh, deposed that new technology in the form of the Biological Clocking System was introduced to improve attendance and punctuality of employees in the Ministry of Agriculture. Limited financial resources had permitted only a few Government offices to introduce that system and several Government employees had been in compliance with the system. The applicant was the only employee who had refused to comply with the system. The system was being used internationally and operated by some private enterprises in Guyana. He contended that the employer's right to ensure due and prompt attendance gives rise to a duty of conformity in the employee.

He denied that the decision to terminate the services of the applicant was made by him and stated that that decision was made by the Ministry of Agriculture. He claimed that, at the request of the Permanent Secretary of the Ministry, he merely communicated the Ministry's decision to the applicant and made it abundantly clear that that decision was subject to ratification by the Public Service Commission. He informed the court that there was a recent appointment to the membership of the Public Service Commission which would deal with the

matter. He claimed that, in the past, when there was no Commission, the doctrine of necessity and prior circulars were applied and no legal challenge had never been made to adherence thereto.

He deposed that he was advised that, under the State Liability and Proceedings Act 1984, the Ministry of Agriculture and the Public Service Commission would be procedurally protected by the said legislation and that it was the Public Service Commission and not he which should be required to answer the various allegations made by the applicant. But the Public Service Commission was not named as a party to these proceedings.

In his Affidavit in Reply, the applicant deposed that Article 38G of the Constitution provides that no public officer shall be subject of sanctions of any kind without due process and that he was not afforded due process when the Secretary of the Public Service Commission informed him that approval had been given for his dismissal (from a unknown and unauthorised person). His Attorney-at-Law had advised him that the Public Service Commission was possessed of the power to terminate his services and therefore his termination was *ultra vires* the power of the person or persons who had purported to be acting on behalf of the Public Service Commission. His Attorney-at-Law had advised him that, since he was a civil servant, the Ministry of Agriculture was not

possessed of the power to terminate his services and that it was the Secretary of the non-existent Public Service Commission who purported to terminate his services pending a decision from the non-existent Public Service Commission and that the Secretary of the Public Service Commission was the proper respondent called upon to show cause in these proceedings.

It is clear that the Secretary Jaigobin Jaisingh was the Secretary of the Public Service Commission which, although not membered at the time of the issue of the letter of dismissal, was nevertheless in legal existence – having been created under the Constitution. The Public Service Commission as a legal entity created by the Constitution did not cease to legally exist for reason of not being membered or sufficiently membered. However, as Secretary of the Commission, Jaigobin Jaisingh could sign and issue correspondence only on behalf of or for the Commission and not on behalf of the Ministry of Agriculture in which he was holding no office.

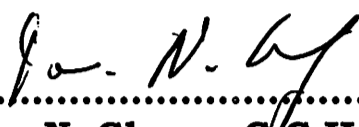
Since the applicant was a public officer in the public service, the question of his removal from office and the exercise of disciplinary control resided exclusively in the Public Service Commission and not in the Ministry of his employment. Therefore, not only did the Ministry of

Agriculture have no power to dismiss the applicant but, as Secretary of the Public Service Commission, Jaigobin Jaisingh, acted *ultra vires* his authority in signing, issuing or communicating by letter or otherwise any approval or purported approval by the Ministry of Agriculture of the dismissal of the applicant. It is not the legal function of the Ministry to dismiss public officers or to approve the dismissal of public officers. Nor is it the function of the Public Service Commission to ratify any approval of dismissal of public officers. The power to remove from office or to discipline a public officer lies exclusively within the Public Service Commission and it was certainly not the function of the Secretary of the Public Service Commission to collaborate in the unlawful usurpation of the constitutional powers of the Public Service Commission, by signing, issuing or communicating any termination or approval of termination of the service of any public officer by any Ministry on behalf of the Public Service Commission.

The issuance of the letter dated the 23rd June 2014 to the applicant purportedly on behalf of the Public Service Commission was clearly a nullity and is of no legal effect. The court therefore sees it fit to quash his decision to issue such a letter by Certiorari as a nullity which was of no legal effect. Accordingly, the Order or Rule nisi of Certiorari made on the 12th August 2014 is made absolute.

There will be costs to the applicant in the sum of \$50,000 against Jaigobin Jaisingh in his capacity as Secretary of the Public Service Commission.




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Ian N. Chang, O.C.H, S.C
Chief Justice (ag.)

Dated this 22nd day of January 2015