

Authority to Act

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IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

REGULAR JURISDICTION

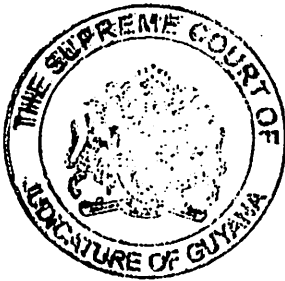
2018-HC-DEM-CIV-FDA-1131

BETWEEN:

MOTIE DOOKIE

Applicant

and



1. DAVID RAMNARINE, DEPUTY COMMISSIONER (ADMINISTRATION) GUYANA POLICE FORCE
2. THE ATTORNEY GENERAL

Respondent

Appearances:-

Mr. Mohabir Nandlall for the Applicant  
Mrs Beverly Bishop-Cheddie for the Respondents

2018: August 14,31

- [1] **CORBIN-LINCOLN, J.:** Mr. Motie Dookie , a deputy Superintendent of Police, seeks a writ of certiorari quashing the decision of Mr. David Ramnarine, Deputy Commissioner of Police (" **the Deputy Commissioner**") to send him on special leave.
- [2] Mr. Dookie's evidence is that by letter dated and received on 21<sup>st</sup> May 2018 he was informed by the Deputy Commissioner that a decision was taken to for him to proceed on "*Special Leave in the Public Interest, with immediate effect.*" He states that prior to the receipt of the letter he was not offered an opportunity to provide an explanation or to show cause why he should not be sent on special leave.

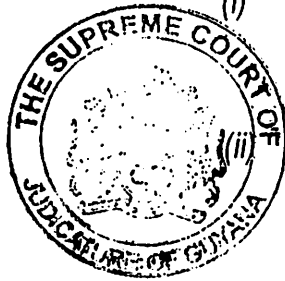
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## The Respondent's Response

[3] The Deputy Commissioner's evidence is that:

(1) Prior to 21<sup>st</sup> May 2018 Mr. Dookie was the Officer in Charge of the Special Weapons and Tactics Unit (S.W.A.T).

(2) Following an incident "*which occurred on the 30<sup>th</sup> December 2017 and which was investigated and which information would be passed to the Police Service Commission when properly constituted it is alleged that the Applicant was:*



(i) "*Insubordinate by act contrary to Section 4 (a) of Chapter 17:01;...*

*Guilty of an act to the prejudice of discipline including breach of orders made by the Commissioner contrary to Section 4 (z) of Cap 17:01...*

(iii) "*The investigation into the alleged possession of unaccustomed goods to wit ...357 bottles of Johnny Walker Whiskey found in the possession of Leslie Packwood discovered on the 30<sup>th</sup> December 2017 whist the Applicant was a passenger in the vehicle ..."*

(3) The letter was issued in accordance with the provisions of Rule H 33 of the Public Service Rules 1987 revised.

(4) The Applicant submitted a statement and there was no infringement of the rules of natural justice

(5) No disciplinary control was exercised over the Applicant and he was not removed from office.

(6) He has suffered no prejudice since the issuance of the letter.

(7) Presently the Police Service Commission ("**the PSC**") is not properly constituted and the Applicant was sent on special leave in the public

interest in view of the fact that the Applicant is a public servant engaged in the interests of the public.

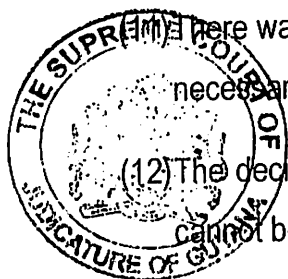
(8) The act of sending the Applicant on special leave in the public interest was an administrative action premised on the Applicant's actions contrary to Cap 17:01.

(9) The administrative action was in recognition of the fact that presently the PSC is the proper authority to exercise disciplinary action.

(10) The issuance of the letter was an administrative action and was of necessity since it was not in the interest of the Guyana Police Force to have the Applicant working after the revelations of the investigation.

(11) There was a need for prompt action pending a formal investigation and was necessary to safeguard the public interest.

(12) The decision to send the Applicant on special leave in the public interest cannot be seen as any form of disciplinary control or act of termination.



### The Constitutional Framework

[4] The Police Service Commission ("the PSC") is established by Section 137 of the **Constitution of the Co-operative Republic of Guyana Act Cap 1:01** ("The Constitution")

[5] Section 212 of the **Constitution** states:

"(1) Subject to the provisions of article 211 (1), the power to make appointments to any offices in the Police Force of or the above the rank of Inspector, **the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Police Service Commission.**

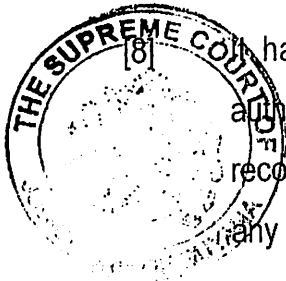
(2) The Police Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under the preceding paragraph to any one or more of the members of the

Commission or to the Commissioner of Police or, in the case of the power to exercise disciplinary control, to any other member of the Police Force.”  
(*emphasis mine*)

- [6] **The Constitution** therefore vests the power to exercise disciplinary control over persons at or above the rank of Inspector in the PSC.

### Discussion

- [7] The issue before the court is not the merits of the allegations of misconduct against Mr. Dookie detailed in the evidence of the Deputy Commissioner. The only issue is whether the Deputy Commissioner is vested with the power by **the Constitution** or by Rule H 33 of the **Public Service Rules 1987** Revised Edition (**“the Rules”**) to send Mr. Dookie on special leave.



- [8] It has not been disputed by the Respondents that the PSC is the proper authority to take “disciplinary action” against the Applicant.<sup>1</sup> This is a clear recognition that **the Constitution** does not vest the Deputy Commissioner with any disciplinary control over police officers of or above the rank of Inspector.

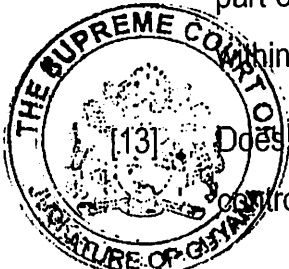
- [9] What the Respondents contend is that the Deputy Commissioner’s act of sending the Applicant on special leave in the public interest was an “*administrative action*” made in accordance with Rule H 33 of the **Rules**.

- [10] Rule H33 states:

*“Special leave with full pay on the ground of public interest may, with the approval of the Permanent Secretary, Public Service Ministry, be granted to a Public Servant upon the recommendation of the Permanent Secretary/Head of Department/Regional Executive Officer.”*

- [11] The evidence of the Deputy Commissioner is that he did not exercise disciplinary control over Mr. Dookie by sending him on special leave but rather it was an *administrative action*. I do not accept this purported distinction.

[12] The evidence of the Deputy Commissioner is that his decision to send Mr. Dookie on special leave was as a result of his "*insubordinate act ...and the fact that the Applicant was guilty of an act to the prejudice of discipline including breach of orders made by the Commissioner...*"<sup>2</sup> The act of sending Mr. Dookie on special leave was therefore as a direct result of the findings of misconduct made after an investigation and with a view taking some action since "*it was not in the interest of the Guyana Police Force to have the Applicant remain working after the revelations of the investigations.*"<sup>3</sup> While leave with pay is not usually considered to be a disciplinary sanction<sup>4</sup> it is still part of a disciplinary process. I find that the act of suspending Mr. Dookie falls within the scope of exercising disciplinary control.



[13] Does Rule H33 give the Deputy Commissioner power to exercise disciplinary control over Mr. Dookie *to wit* send him on special leave?

[14] Counsel for the Applicant submits that a literal reading of Rule H33 disqualifies its application to the Guyana Police Force altogether since no Permanent Secretary has any responsibility over Police Officers.

[15] Assuming but not accepting that Rule H33 applies to the Guyana Police Force there is no evidence that the procedure set out in that rule was followed. Rule H33 clearly contemplates a public servant being sent on special leave upon a recommendation by specified officers and with the approval of the Permanent Secretary of the Public Service Ministry. There is no evidence of a recommendation being made by the relevant person and approval being given

<sup>2</sup> Paragraph 11 of the affidavit of David Ramnarine

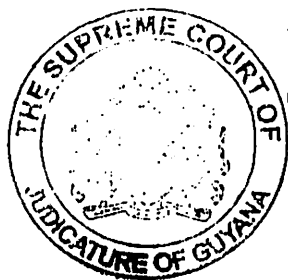
<sup>3</sup> Paragraph 13 of the affidavit of David Ramnarine

<sup>4</sup> There are a few cases where a suspension with pay has been found to be unfair and not a neutral act. See *Mezey v South West London and St George's Mental Health NHS Trust* [2007] EWCA Civ 106; [2007] IRLR 244 where the Court of Appeal granted an injunction preventing a suspension and noted "*at least in relation to the employment of a qualified professional in a function which is as much a vocation as a job. Suspension changes the status quo from work to no work, and it inevitably casts a shadow over the employee's competence. Of course this does not mean it cannot be done, but it is not a neutral act.*"

by the Permanent Secretary of the Public Service Ministry under Rule H33 to send the Applicant on special leave.

[16] More importantly, Rule H33 does not vest in the Deputy Commissioner the unilateral power to send the Applicant or anyone for that matter on special leave in the public interest. Consequently, assuming but not accepting that Rule H33 applies to the Police Force the Deputy Commissioner has no unilateral power under that rule to send the Applicant on special leave.

[17] The fact that the PSC was not properly constituted is most unfortunate given its important function. However, neither **the Constitution** nor Rule H33 provide that in the absence of a duly constituted PSC and/or due to the perceived exigency of a situation the Deputy Commissioner could exercise the powers he sought to exercise. If it was the intention of Parliament for some other person or body other than the PSC to exercise disciplinary control over Police Officers of or above the rank of Inspector in the absence of a duly constituted PSC or in specified circumstances they would have stated so expressly. No such legislative provision was submitted by the Respondents.



[18] Section 212 (2) of **the Constitution** enables the PSC by directions in writing to delegate its powers with respect to exercising disciplinary control to the Commissioner of Police or any other member of the Police Force. There is no evidence that the PSC delegated its power to exercise disciplinary control over Police Officers of or above the rank of Inspector to anyone.

[19] The Respondents have therefore failed to satisfy me that the Deputy Commissioner had any legal authority to send Mr. Dookie on special leave in the public interest.

[20] It is therefore ordered as follows:

(1) A writ of certiorari is granted quashing the decision of the 1<sup>st</sup> respondent made on 21<sup>st</sup> May 2018 to send the Applicant on special leave in the public interest on the grounds that the said decision is unconstitutional unlawful void and of no legal effect.

(2) The Respondents shall pay costs of \$100,000.00 to the Applicant within 21 days.

Fidela Corbin-Lincoln  
High Court Judge

