

2008

No. 479 – W

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION



In the matter of the Constitution of the  
Co-operative Republic of Guyana.

- and -

In the matter of Articles 40, 144 and  
153 of the said Constitution.

BETWEEN:

DENIS JAIKARAN

(Plaintiff)

- and -

1. PUBLIC SERVICE COMMISSION

2. THE ATTORNEY – GENERAL OF

GUYANA

(Defendants)

HON. MR. JUSTICE IAN CHANG, S.C, C.C.H – CHIEF JUSTICE (ag.)

Mr. Randolph Kirton for the Plaintiff

Ms. Sam for the Defendant

HEARD ON:

2012

MARCH 13

MAY 3



237

## DECISION

On the 9<sup>th</sup> October 2008, by way of generally indorsed Writ of Summons, the plaintiff, Denis Jaikaran, brought this constitutional action against the defendants, the Public Service Commission and the Attorney-General, in which he claimed the following reliefs:

- (a) A declaration that the notice dated the 16<sup>th</sup> May 2008 addressed to the Plaintiff by the Public Service Commission is null, void and of no legal effect.*
- (b) A declaration that the Plaintiff was wrongfully dismissed from the Public Service.*
- (c) A declaration that the purported decision by the Public Service Commission was made in breach of the audi alteram partem rule, irrational, in breach of the rules of natural justice, null, void and of no legal effect.*
- (d) That the decision of the Public Service Commission to dismiss the plaintiff is a contravention of the Plaintiff's constitutional rights under Articles 40, 144 and 153 of the Constitution and his rights under the Public Service Commission Rules.*
- (e) A declaration that the Plaintiff is still a member of the Public Service.*
- (f) A n injunction restraining the Public Service Commission or any of its members or officers or servants or agents or other whomsoever, however from taking any step in furtherance*

***of carrying into effect the purported dismissal of the Plaintiff from the Public Service.***

***(g) A sum in excess of \$1,000,000 (one million dollars) as damages and exemplary damages and aggravated exemplary damages.***

***(h) Such further or other relief as may be just.***

***(i) Costs."***

In his Statement of Claim, the plaintiff stated that, all material times, he was employed as Regional Education Officer in the Education Department of the Ministry of Education and that he had served for over 30 years in that Department. He stated therein that the 1<sup>st</sup> named defendant is vested under Article 201 (1) of the Constitution to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices.

The plaintiff was examined by a registered medical practitioner, certified as being incapable of working between the 8<sup>th</sup> October 2007 and the 5<sup>th</sup> May 2008, and was issued with the following medical certificates for the following periods:

***(1) 8<sup>th</sup> October 2007 to 4<sup>th</sup> November 2007***

***(2) 5<sup>th</sup> November 2007 to 2<sup>nd</sup> December 2007***

***(3) 3<sup>rd</sup> December 2007 to 30<sup>th</sup> December 2007***

***(4) 31<sup>st</sup> December 2007 to 27<sup>th</sup> January 2008***

***(5) 28<sup>th</sup> January 2008 to 24<sup>th</sup> February 2008***

***(6) 25<sup>th</sup> February 2008 to 24<sup>th</sup> March 2008***

***(7) 25<sup>th</sup> March 2008 to 21<sup>st</sup> April 2008***

***(8) 22<sup>nd</sup> April 2008 to 5<sup>th</sup> May 2008***

On the 3<sup>rd</sup> April 2008, he received a letter dated the 26<sup>th</sup> March 2008 from Mr. Sunil Singh, Senior Personnel Officer, Region 2, requesting him to comply with the direction of the Secretary, Public Service Commission, to attend a Medical Board Examination at the Georgetown Hospital on the 3<sup>rd</sup> April 2008 at 11 AM. He visited the Georgetown Hospital on the 3<sup>rd</sup> April 2008 as instructed for a Medical Board examination. But, after waiting from 10:45 AM to 2:55 PM, no examination was conducted and he was told to return at a later date. After he was not medically examined by doctors at the P.H.G, he visited the Chairman of the Public Service Commission and explained his problems to him. But, the said Chairman merely referred him to the Permanent Secretary, Local Government and Regional Development, who informed him that another date would be fixed for his medical examination and that he would be informed in due course. But, he received no further information.

By letter dated the 3<sup>rd</sup> April 2008, being ill and frustrated, he tendered his resignation from the Public Service with effect from the 4<sup>th</sup> May 2008. But, on the 8<sup>th</sup> July 2008, he received a letter dated the 16<sup>th</sup> May 2008 from the Secretary of the Public Service Commission which informed him that the Public Service Commission had given approval for his dismissal from the Public Service effective from the 22<sup>nd</sup> April 2008 - even though he was on sick leave and was covered by a medical certificate which recommended sick

leave up to the 5<sup>th</sup> May 2008. That letter from the Public Service Commission dated the 16<sup>th</sup> May 2008 read:

***“Consequent upon your unauthorized absence from duty, please be informed that the Public Service Commission, after careful consideration of the matter, has decided that you should be, and you are hereby dismissed from the Public Service with effect from the 2008-04-22 inclusive, in accordance with the provisions of existing Rules. You are hereby required to acknowledge receipt of this letter by signing on the space provided and return same to the Secretary, Public Service Commission, through the Regional Executive Officer, Region 3.”***

On the Statement of Claim in this matter, it is clear that the plaintiff had tendered his registration with effect from the 4<sup>th</sup> May 2008 and had effectively terminated his own services by resignation when the Public Service Commission, by letter dated 16<sup>th</sup> May 2008, purported to retrospectively dismiss him from the public service with effect from the 22<sup>nd</sup> April 2008. The Public Service Commission has no power of retrospective dismissal and, indeed, the plaintiff's services had already been terminated by his own resignation effective from the 4<sup>th</sup> May 2008.

In this Court's view, the plaintiff is entitled to whatever salary was due to him up to the 3<sup>rd</sup> May 2008. Since salary is property within the meaning of Article 142 of the Constitution, the plaintiff's right to property was infringed by his purported retrospective dismissal by the Public Service Commission with effect to the 22<sup>nd</sup> April 2008.

The plaintiff has taken the position that his service was unlawfully terminated. But office is not property within the meaning of Article 142 of the Constitution. Moreover, the right to a fair hearing under Article 144 (8) of the Constitution does not apply to a body or entity such as the Public Service Commission which is not a tribunal prescribed by law for the determination of the existence or extent of any civil right or obligation (see Article 144 (8)).

Constitutional relief is simply not available for unlawful or wrongful dismissal. This constitutional action is therefore misconceived except to the extent that some salary is claimed as due and payable to the plaintiff of which the retrospective dismissal has sought to deprive him.

The plaintiff's right to salary up to the 3<sup>rd</sup> May 2008 is supported by the evidence. The court therefore orders that the State do pay to the plaintiff whatever salary is due and payable to him up to the 3<sup>rd</sup> May 2011 (with interest thereon at the rate of 6% per annum commencing from the 9<sup>th</sup> October 2008 (date of filing of action) to the date of this judgment and thereafter at the rate of 4% per annum until fully paid).

No order as to costs.





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

Dated this 20<sup>th</sup> day of July, 2012.