

IN THE HIGH COURT OF THE SUPREME COURT OF
JUDICATURE

CIVIL JURISDICTION

In the matter of an Application for Order and/or
Declarations pursuant to Articles 142, 149B, 153,
212(3) and 214 of the Constitution of Guyana.

-and-

In the matter of an application under Article 232
(1) of the Constitution of Guyana.

-and-

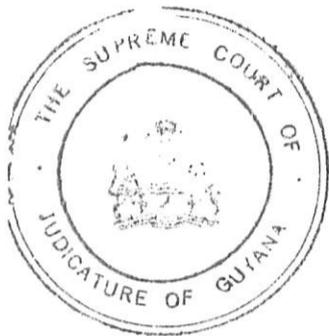
MOHAMED RASHEED YUSSUF, male of age.

(Plaintiff)

-and-

THE ATTORNEY-GENERAL OF GUYANA

(Defendant)



BEFORE:

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

Mr. Patrice Henry for the Plaintiff.

Miss Gooding for the Defendant.

DECISION

On the 12th May 2012, by way of generally indorsed writ, the plaintiff, Mohamed Rasheed brought this action against the State claiming a number of reliefs.

In his Statement of Claim, the plaintiff stated that he was born on the 21st October 1972 and, at the age of 22, he was enlisted in the Guyana Police Force (GPF) as a constable on the 5th March 1995. He was issued with



regulation number 16759. Two years later, he was made a regular or permanent member of the G.P.F.

He stated that, in December 2007, he was charged with Simple Larceny of a bicycle and Unlawful possession of a bicycle. On the 10th December 2007, an interdiction letter signed by the Commissioner of Police was issued to him that he was interdicted with immediate effect. He was consequently put on half pay pending the hearing and determination of that charges. On the 7th April 2008, the Director of Public Prosecution discontinued the charges. But, he continued receiving half pay per month and was not issued with any letter for resumption of duties.

On the 18th June 2008, he was summoned to attend the Georgetown Magistrate's Court 1 to answer two criminal charges of (1) Conspiracy to commit a felony and (2) Uttering a forged document. On the 18th June 2009, no case submissions were upheld by Magistrate Hawke on both charges. On the 23rd June 2008, the plaintiff's attorney-at-law wrote to the Commissioner of Police seeking the plaintiff's reinstatement. He received an letter of acknowledgement of receipt of letter. But he was not re-instated.

In January 2009, a rank of Blairmont Police Station informed him that he was required to visit the Deputy Commandant "B" Division at Central Police Station. He did so. the Deputy Commandant told him that he should show cause why he should not be dismissed and, on the 13th January 2010, he did so. on the 1st April 2010, he was summoned to Central Police Station where he was issued with a letter of discharge dated 2nd February 2010 and signed by Commission of Police, Henry Greene.

He further stated that, without being charged for any disciplinary offence and without being afforded an opportunity to respond to any allegation made against him, he was discharged. The discharge letter was dated the 2nd February 2010. But he received it on the 1st April 2010.

Before his discharge, he was stationed at Impact, Brickdam Police Station and was willing, ready and able to resume duties. He had worked for over 10 years and eligible to receive superannuation benefits. He received no benefit for the G.P.F after his discharge.

In his Defence, it is claimed that the plaintiff's career in the G.P.F was punctuated with numerous convictions for disciplinary offences for which he was appropriately penalized and that the plaintiff was engaged in conduct not befitting a member of the Force resulting in several criminal charges being instituted against him and such state of affairs culminated in his discharge from the Force.

It was stated that the plaintiff was interdicted on half pay with effect from the 3rd December 2007 pending the determination of the charges of Simple Larceny and Unlawful Possession. Those charges were discontinued by the D.P.P on the 7th April 2008 for reasons unconnected with guilt or innocence. The other two criminal charges of Conspiracy to commit a felony and Uttering a forged document were dismissed on 18th June 2009 for reasons unrelated to guilt or innocence. Additionally, in 2004, the plaintiff was charged with the offence of Murder and interdicted from duties. Following the dismissal of that charge, he was re-instated. The plaintiff was

finally asked to show cause why he should be discharged from the G.P.F by letter dated the 16th October 2009 and he responded by letter dated the 12th January 2010. The plaintiff was discharged from the G.P.F in the public interest with effect from the 29th January 2010 by the Commissioner of Police acting under section 35 of the Police Act by way of letter dated 2nd February 2010. At the time of his discharge, the gross salary of the plaintiff was \$42,574.

At the hearing, the plaintiff testified that at the age of 22, he joined the G.P.F as a constable on the 5th March 1992. In 2004, he was charged with Murder and interdicted from duties (Exhibit B). He was discharged by the Magistrate and re-instated in the G.P.F (Exhibit C). He was later charged with Simple Larceny in the Berbice Magisterial District and later with Unlawful Possession in respect of the same subject matter. He was again interdicted from duties. The D.P.P entered a Nolle Prosequi in relation to both charges. But nevertheless he remained interdicted from duties. While still on interdiction, in June 2008. He was again charged criminally with Uttering a forged document and Conspiracy to defraud. Those charges were dismissed a year later on the 18th June 2009. His Attorney-at-law wrote to the Commissioner of Police requesting his reinstatement and receipt of that letter was acknowledged by the Commissioner. He was later asked by an officer at Central Police Station to show cause why he should not be discharged and he responded in writing in January 2010. In April 2010, he received a letter of discharge dated 2nd February 2010 (Exhibit N). Since his discharge he was not paid any superannuation benefit. He was on half pay for about two years from the time he was charged with Larceny to the time of his discharge in 2010.

Under cross-examination, he admitted that he did receive a letter to show cause why he should not be discharged. He maintained that he never received the withheld half pay. He admitted that three disciplinary proceedings were brought against him but stated that none was for being under the influence of alcohol while on duty. He later stated that he was not denying that he was so charged and found guilty.

But under re-examination, he said that he had no knowledge of being charged with Being under the influence of alcohol while on duty. He also stated that he received the letter to show cause after the charges were dismissed.

Superintendent of Police Richard Emptage who was attached to the Police Finance Office testified for the plaintiff. He stated that, as part of his duties, he computed the salary and pension of the plaintiff and signed a document of his computation (Exhibit R).

Under cross-examination, he stated that the plaintiff was paid half-pay while on interdiction until the time of his discharge. His monthly salary was \$50,693 per month. No further payment was made to him.

In the instant case, it is undisputed that, in 2004, the plaintiff was charged with the capital offence of Murder and interdicted from duties. In December 2007, he was charged with offences of Simple Larceny and Unlawful Possession of bicycle and again interdicted from duties. On the 7th April 2007, those charges were discontinued by the D.P.P but the plaintiff remained on interdiction. On the 18th June 2008, the plaintiff was again

charged with criminal offences viz - Conspiracy to commit a felony and Uttering a forged document. Those charges were dismissed on the 18th June 2009.

Apart from the aforesaid criminal charges, the plaintiff's career in the G.P.F was punctuated with 3 disciplinary charges of which the plaintiff did not deny that he was found guilty and punished.

But, it does appear that it was in the light of the institution the criminal charges, of which the plaintiff was absolved from criminal responsibility, that the Commissioner of Police saw it fit to exercise his statutory discretion under section 35 (1) of the Police Act to discharge the plaintiff from the G.P.F. In the letter of the Commissioner dated 16th October 2009 (Exhibit Q), it was stated:

"Having been charged criminally on 2004-04-20 with Murder, 2007-12-03 with Simple Larceny and 2008-06-18 with Forgery, you are required to show cause why you should not be discharged from the Guyana Police Force."

Under Section 35 (1) of the Police Act,

"The Commissioner may at any time discharge any subordinate officer or constable from the Force on the ground that, having regard to the conditions of the Force, the usefulness of the subordinate officer or constable thereto or any other relevant circumstance, such discharge is desirable in the public interest".

In the instant case, the court does not see it fit to interfere with the exercise of the statutory discretion of the Commissioner to discharge the plaintiff from

the Force in the public interest if he was of the view that public interest would not be served by the retention of the services of the plaintiff in the GPF. After all, it is always important that public confidence in the GPF be protected and fostered and such confidence would be eroded by the retention in the Force of a rank against whom the Force itself had seen it fit to institute criminal charges on three separate occasions while he was a member of the Force.

The letter of discharge was dated the 2nd February 2010 and was stated to take effect from the 29th January 2010. However, the plaintiff testified that he did not receive it until in April 2010. In the court's view, the discharge could have taken effect only from the time it was served on the plaintiff. Therefore the plaintiff would be entitled to receive the retained half of his monthly salary from December 2007 to 29th January 2010. Since his discharge took effect from the time of service of the letter of discharge in April 2010, he would also be entitled to his full pay at least for the months of February and March 2010. The letter of discharge also stated that the plaintiff would be entitled to one month's pay in lieu of notice. He would not be entitled to any salary after discharge.

The proviso to section 35 (1) of the Police Act reads:

“Provided that any subordinate officer or constable discharged under section 32 or this section may be granted a pension, gratuity or other allowance which has accrued to him by virtue of any Act relating to pensions then in force save that the amount so awarded shall not exceed the amount for which a

public officer would be eligible if he retires from the public service in circumstances described in section 8 (d) of the Pensions Act.”

Under Article 214 (1) of the Constitution, the plaintiff would be entitled to the grant of his pension benefits unless the Police Service Commissioner had made a decision not to grant him such benefits. There is no evidence as to whether the Public Service Commission had made such a negative decision. As such, the court orders the State to pay to the plaintiff the pension benefits which had accrued to him at the time of his discharge provided that such a negative decision was not made by the Police Service Commission.

The court orders the State to pay to the plaintiff the one half of his monthly salary retained from the time of his interdiction in December 2007 to the 29th January 2010 along with two months' salary (after deduction of income taxes and N.I.S) - with interest thereon at the rate of 6% per annum from the date of the filing of this action on the 12th May 2012 until the date of this judgment and thereafter at the rate of 4% per annum until fully paid. The Court also orders the State to pay to the plaintiff all the superannuation benefits which had accrued to him up to 31st March 2010 (unless the Police Service Commission had decided to deny him the whole or a part of such benefits).

There will be costs to the plaintiff in the sum of \$25,000.


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

Dated this 26th day of July, 2013