

IN THE SUPREME COURT OF BELIZE, A.D. 2014

CONSOLIDATED CLAIMS NO: 650 of 2014 & 12 of 2015

CLAIM NO: 650 of 2014

BETWEEN

GLEN MYVETT

CLAIMANT

AND

ATTORNEY GENERAL OF BELIZE

MINISTER OF NATURAL RESOURCES

DEFENDANT

CLAIM NO: 12 of 2015

BETWEEN

ATTORNEY GENERAL OF BELIZE

CLAIMANT

AND

GLEN MYVETTE

DEFENDANT

Keywords: Section 6(1) of the Belize Constitution; Section 15(1) of the Belize Constitution; Constitutional Amendment No. 2 of 2001.

Regulation 25 of the Government (Open Vote) General Workers Regulations.

Disciplinary Proceedings for Misconduct by Civil Servants;
Dismissal and Reinstatement of worker in cases of Misconduct;

Procedure: Abuse of Process of Court in application for Constitutional Relief where there is an alternative Remedy;

Damages (including Aggravated Damages) in relation to claims for Constitutional Relief.

Before the Honourable Mr. Justice Courtney A. Abel

Hearing Dates: 13th January 2015
22nd January 2015
24th June 2015.

Appearances:

Mrs. Andria McSweeney Mckoy for Claimant/Defendant Glen Myvett

Mr. Nigel Hawke (Deputy Solicitor General) and Ms. Agassi Finnegan for the Defendants/Claimant the Attorney General of Belize and Minister of Natural Resources

JUDGMENT
Delivered on the 24th day of June 2015

Introduction

- [1] This case concerns the dismissal of a civil servant, the Claimant (“Mr. Myvett”) by the Chief Executive Officer (“CEO”) of the Ministry of Natural Resources (“the Ministry”) for misconduct; and his subsequent reinstatement on appeal by the Labour Commissioner while Mr. Myvett, had been employed by the Defendants, the Government of Belize, as a Draughtsman, Grade II, in the Survey & Mapping Section within the Ministry, and whose reinstatement has not been accepted by the Ministry.
- [2] It raises many involved and interlocking procedural and legal questions for determination, but principally one raised by Mr. Myvett: whether, by his dismissal, reinstatement and the position taken by the Ministry in not accepting him back to work, his constitutional rights (‘of equal protection under the law’ and his ‘right to work’) have been violated.
- [3] The central point in this case, in my view, concerns an interpretation of Regulation 25 of the Government (Open Vote) General Workers Regulations (“the Regulations”) being the Regulations under which Mr. Myvett was dismissed¹, and

¹ Regulation 25 of the Government (Open Vote) General Workers Regulations.

specifically who was the proper officer to effect a dismissal of Mr. Myvett, whether the Chief Executive Officer, or someone else (such as a Permanent Secretary) as the Administrative Head or Head of Department within the Ministry

Issues

- [4] Who was the proper officer to dismiss Mr. Myvett under Regulation 25 of the Regulation, the CEO, or someone else as the Head of Department Head of the relevant Ministry?
- [5] Is Mr. Myvett's application for constitutional relief an abuse of the jurisdiction of the court because there are available remedies both in private and public law which he should have first exhausted? Specifically under this issue arises the question for determination whether the constitutional rights which Mr. Myvett claims under section 6(1) and section 15(1) of the Belize Constitution (respectively the so-called right to equal protection of the law and the right to work), on the facts and circumstances of the present case, have been contravened or violated by the Defendants. If it has then the question will also arise whether Myvett is entitled to any Damages (including Aggravated Damages)
- [6] Is the Defendant's application by way of 'Case Stated' fatally flawed?
- [7] Is the Decision of the Labour Commissioner final?
- [8] Should the Claimant on the facts and circumstances of the present case, be reinstated by this court to his duties at the Ministry, and payed salaries withheld from him since May, 2013?

Background

- [9] Mr. Myvett was employed by the Government of Belize in the Ministry in 1991, and was permanently appointed by the Ministry to the post of Draughtsman in May, 1996.
- [10] The Ministry received an allegation dated 21st February 2013 that Mr. Myvett had improperly accepted \$1,355.00 from a person to facilitate the processing of land transactions at the Ministry. This allegation the Ministry decided to investigate.

- [11] There was indeed evidence, which has not been disputed by Mr. Myvett, that this sum had been deposited by 6 separate payments into his bank account.
- [12] By a letter dated 18th March 2013 the Ministry informed Mr. Myvett of such evidence and that it intended to proceed with disciplinary action against him for misconduct which the Ministry alleged was sufficient for dismissal. The Ministry then invited him to submit in writing by 20th March 2013, reasons why such a disciplinary action should not be taken for such misconduct.
- [13] At the request of Mr. Myvett, disciplinary proceedings were held on 30th April, 2013, at which Myvett was present and was heard. Mr. Myvett apparently admitted accepting the monies deposited into his account, but it was apparently found, or it is to be implied as a finding, that Mr. Myvett had improperly, or even fraudulently received the monies from the person making the allegation, for services he promised or actually rendered in connection with a land transaction (“by misleading them to believe that ...[he was] empowered to facilitate and expedite the processing of their land transactions” when he was not employed to conduct such activities for his personal gain).
- [14] By letter dated 10th May 2013, Mr. Myvett was informed by the CEO of the decision of the Ministry to dismiss him with effect from 11th May 2013, on the basis of the finding of misconduct in relation to him receiving the funds and for violation of Regulation 25(2)(a) of the Regulations.
- [15] Mr. Myvett was, in the letter of 18th March 2013, also informed of being dismissed for violation of the Code of Conduct for public officers contained in section 121 of the Belize Constitution, and informed of his right to appeal.
- [16] At the time of dismissal Mr. Myvett was on sick leave, but this aspect of the case was not pursued.
- [17] Mr. Myvett appealed the decision of the Ministry, at first by a somewhat odd letter dated 23rd May 2013 signed by Mr. Myvett but on the letter headed paper of Bradley & Co. (Attorneys at law) on the basis that he considered such decision “to be a

wrong decision” and that, he would: “suffer loss of my pension and gratuity benefits in addition to losing ...[his] job”.

- [18] This letter of the 20th June 2013 was followed by a letter dated 23rd May 2013 from Mr. Myvett to the CEO of the Ministry, Ms. Beverly Castillo, through the Commissioner of Lands & Surveys in which Mr. Myvett stated:

“This serves to acknowledge receipt of your letter POV/52/13 (98) 2013, through this medium I am appealing the Ministry’s decision to terminated my service also let me aver that in relation to paragraph two of the above referenced letter, monies were deposited to my account out of gratitude by Mr. Nigel Leon Martinez.

Let me record my chagrin, at the way the Ministry treated me with hostilities and ostracized me over the last three years and no consideration was given to that.”

- [19] It is accepted, by Counsel for Mr. Myvett, correctly in my view, that the appeal was only in relation to the penalty and not the finding of misconduct.
- [20] Mr. Myvett’s appeal was followed by various correspondences exchanged between himself, the Public Service Union (acting apparently as his representative), the Ministry and the Labour Commissioner of the Department of Labour.
- [21] Mr. Myvett’s position in these correspondences seems to be that the monies were deposited to his account out of gratitude, and that for various outlined reasons, he was victimized and being treated unfairly and harshly by his dismissal.
- [22] The Ministry’s position was that the decision was based on the merits and would stand.
- [23] The Union, by letter dated 16th September 2013, wrote to the Labour Commissioner, Ministry of Labour, contending that the Commissioner of Lands and Surveys should have been the authority to consider the dismissal and the Ministry, the place to lodge an appeal, and as a result the dismissal was unlawful. The Union requested a review of the process and decision of the Ministry and re-

examination of Mr. Myvett's case, with the imposition of a more appropriate penalty and re-instatement of Mr. Myvett.

- [24] Clearly the question of who was the authority to consider the dismissal may be a mixed question of law and fact for resolution, and because of such factual question for resolution, it may be a live question if the present constitutional proceedings, or indeed case stated, is the appropriate procedure to resolve such a question.
- [25] In any event by letter dated the 22nd November 2013 the Labour Commissioner wrote a letter to the Ministry advising that the Regulations make provisions for a dismissed worker: "*to appeal ...to the Labour Commissioner against dismissal...In any such appeal the decision of the Labour Commissioner shall be final and the Head of Department shall comply...*". Also that the Department of Labour intended to convene a hearing with an "*aim to determine whether Mr. Myvett was guilty of misconduct inconsistent with the terms and conditions of his employment*" and requesting that the Ministry refrain from filling the position now left vacant by Mr. Myvett's dismissal until the conclusion of a hearing.
- [26] The Labour Commissioner scheduled a hearing of the appeal for the 26th February 2014, but it is unclear if the parties were informed of the procedure, as it appears that neither Myvett nor the Ministry attended the hearing.
- [27] There was however a further hearing of the appeal by the Commissioner on the 9th April 2014, at which the Ministry was not present, and the Labour Commissioner granted Mr. Myvett his appeal and reversed his dismissal and decided to reinstate Mr. Myvett to his duties overturning the decision of the Chief Executive Officer of the Ministry.
- [28] The evidence of the actual appeal hearing is extremely skimpy and unclear and the record of the appeal is largely to be gleaned from the decision itself – which is, in my view, not entirely satisfactory.
- [29] A written decision of the appeal was given under cover of a letter dated 9th April 2014 in which it was found by the Labour Commissioner that "*A declaration is granted that the decision by the Chief Executive Officer, Ministry of Natural*

Resources and Agriculture to transfer and to dismiss the Appellant was wrought with procedural defects as the Chief Executive Officer, Ministry of Natural Resources and Agriculture did not have the substantive power to make such decisions”.

- [30] An order was also made by the Labour Commissioner quashing the dismissal and setting aside the decision of the CEO and ordering the immediate re-employment of Mr. Myvett to the public service without loss of service.
- [31] The Attorney General wrote to the Ministry by letter dated 2nd May 2014, advising that the decision could be challenged.
- [32] The Labour Commissioner wrote to the Ministry by Memorandum dated 11th August, 2014, advising that his decision stands except if legally challenged, and is to be implemented without delay.
- [33] By letter dated 19th August 2014 the Ministry advised Mr. Myvett that they were presenting to the court the Labour Commissioner’s decision for its direction and advice on how to proceed, and that in the interim the Ministry’s position still stands, and refused to allow Mr. Myvett to return to his duties despite Mr. Myvett having on the same day presented himself for duty.
- [34] The Ministry has failed or refused to comply with the decision of the Labour Commissioner and has refused Mr. Myvett access to his workplace, the opportunity to work within the Ministry, and all other incidents of his employment/reinstatement.
- [35] It is accepted that Mr. Myvett could have brought an action in private law for breach of contract with the Government of Belize as found by the Labour Commissioner. Alternatively, that Mr. Myvett could have commenced a public law claim under **Part 56 RSC 2005** by way of an application for an administrative order for judicial review, specifically ‘prohibition’ (to prohibit the Government from pursuing an unlawful act) or for ‘mandamus’ (requiring the Government as a public authority to perform their public duty to comply with the decision of the Labour Commissioner).

[36] But instead of any such claim, Mr. Myvett in claim No. 650 of 2014 brought a Fixed Dated Claim Form, supported by an Affidavit which he swore, both filed on the 12th November 2014, by which he applied for Relief under the Belize Constitution and in which he claimed the following reliefs and remedies:

- (1) A Declaration that the Claimant's rights guaranteed under section 6(1) of the Belize Constitution have been contravened by the Defendants;
- (2) A Declaration that the Claimant's rights guaranteed under the provisions of section 15(1) of the Belize Constitution have been contravened by the Defendants;
- (3) An Order directing the Defendants to reinstate the Claimant to his duties at the Ministry of natural Resources, and pay salaries withheld since May, 2013.
- (4) An Order of injunction restraining the Defendants, and or their servants or agents from any further contravention of the Claimant's constitutional rights;
- (5) Damages
- (6) Aggravated Damages
- (7) Interest
- (8) Costs
- (9) Such further or other orders as may be just.

[37] The Defendant answered Claim No. 650 of 2014 with an Affidavit of Sharon Ramclam.

[38] The Attorney General, on the 15th January 2015 filed a Fixed Dated Claim Form in Claim No. 12 of 2015 supported by a similar Affidavit of Sharon Ramclam in which the Attorney General sought an interpretation of the Regulations purportedly by way of case stated, which was on the 22nd January 2015 by consent of the parties consolidated with Claim No. 650 of 2014.

[39] The court has benefited from both written and oral submissions from Counsel representing the Parties.

Who was the proper officer to dismiss Mr. Myvett under Regulation 25 of the Regulations?

[40] Under Regulation 25 of the Regulations it is provided as follows:

“25. (1) The Head of Department may dismiss the worker and the worker may abandon service of the Department without giving notice and without any liability to make payment as provided in regulation 24 if there is good and sufficient cause for dismissal or abandonment of service.

(2) Good and sufficient cause for dismissal without notice shall include dismissal:

(a) when a worker is guilty of misconduct, whether in the course of his duties or not, inconsistent with the fulfillment of the expressed or implied conditions of his contract of service;

(b) for willful disobedience to lawful orders given by a Head of Department;

(c) for lack of skill which the worker expressly or by implication warrants himself to possess;

(d) for habitual or substantial neglect of his duties;

(e) for absence from work without permission of the Head of Department or without other reasonable excuse.

(3) A worker dismissed for any of the abovementioned reasons is entitled to payment of wages due up to the time of his dismissal; the worker may in the first instance appeal to the Permanent Secretary of the Ministry in which he was working, and then if necessary, to the Labour Commissioner against dismissal for any of those reasons.

In any such appeal the decision of the Labour Commissioner shall be final and the Head of Department shall comply with the ruling of the Labour Commissioner. In every appeal under this

Regulation, the Labour Commissioner shall give reasons for his decision.”

[41] A Head of Department is defined under the Regulations as:

“(i) an officer authorized by Treasury warrant to incur expenditure under the Estimates on the employment of any Government Workers; and (ii) any senior officer or foreman to whom a Head of Department as defined in (i) above may from time to time have delegated all or any of the powers under these Regulations.”

[42] Under this provision a ‘Head of Department’ may clearly be more than one person.

[43] Also, under this provision whether an officer is authorized by treasury warrant is a matter which may require evidence, and one on which, in the present case, there was an absence of evidential material. This clearly presents some difficulty in arriving on a definitive answer to this issue on the basis of the evidence in this case.

[44] Section 48 of the Constitution², however, provides that:

“Subject to the direction and control of the Minister pursuant to section 41(2) of this Constitution, every department of government shall be under the supervision of a public officer whose office is referred to in this Constitution as the office of a Chief Executive Officer:

Provided that two or more government departments may be placed under the supervision of one Chief Executive Officer.”

[45] The CEO therefore constitutionally and in terms of the Regulation 25, may qualify as a ‘Head of Department’.

[46] It follows from Section 48, which impliedly amended the Regulations, that the Labour Commissioner’s decision may have been, indeed, is wrong when he stated that: *“the decision by the Chief Executive Officer, Ministry of Natural Resources and Agriculture to transfer and to dismiss the Appellant was wrought with*

² As amended by The Constitutional Amendment No. 2 of 2001 which thereby impliedly amended the Government (Open Vote) General Workers Regulations for the CEO to be the head of Department..

procedural defects as the Chief Executive Officer, Ministry of Natural Resources and Agriculture did not have the substantive power to make such decisions”.

[47] I have determined that as Head of Department, the CEO, along with any other person who may be considered a ‘Head of Department’, on any interpretation of the Regulations, must have had the power to dismiss a worker such as Mr. Myvett, on the basis that it is possible that there may be others who, as Head of Department, may also dismiss; and that more than one person may therefore have the power to dismiss under Regulation 25.

[48] On the basis of the claim, the evidence and the submissions made before me, though I am not entirely happy with the evidence which has been presented to me, I am nevertheless satisfied for the purposes of the present case with the conclusion I have reached, even if it may not be absolutely definitive.

[49] Thus, based on what I have heard, it appears to me the decision of the Labour Commissioner is wrong on his interpretation of Section 25 of the Regulation; and it also appears to me that the decision is wrong as it does not appear to have been based on any ground of the appeal which Myvett had raised (being based on alleged “procedural defects” or irregularities whereas the ground of appeal was that it was “wrong” and the punishment excessive).

Is Mr. Myvett’s application for constitutional relief an abuse of the jurisdiction of the court because he did not first exhaust other available legal avenues?

[50] Section 6(1) of the Constitution provides:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”

[51] Section 15 of the Belize Constitution also provides:

“(1) No person shall be denied the opportunity to gain his living by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in a trade or business, or otherwise.

(2) It shall not be inconsistent with subsection (1) of this section to require, as a condition for embarking upon or continuing work, the payment of professional fees, trade or business licence fees, or similar charges, or the possession of appropriate licences or qualifications.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision-

(a) that is required in the interests of defence, public safety, public order, public morality; or public health;

(b) that is required for the purpose of protecting the rights or freedoms of other persons; or

(c) for the imposition of restrictions on the right to work of any person who is not a citizen of Belize.”

[52] Counsel for Mr. Myvett has argued, that the Ministry has not in any way challenged the decision of the Labour Commissioner on appeal, and neither did the Ministry seek to comply with the decision of the Labour Commissioner (by reinstating Mr. Myvett to his duties), but that the Defendant has simply failed, indeed refused, to give effect to this decision. Also, that the Second Defendant acted in an unlawful and arbitrary manner by physically removing Mr. Myvett from the Ministry when he reported back to work in pursuance of the decision of the Labour Commissioner, and have physically escorted Mr. Myvett from the premises and forbidden him to return; even though they have taken no step to challenge the decision of the Labour Commissioner; and that therefore the Defendants have breached Mr. Myvett’s constitutional right to the protection of the law and of his right to work under the Constitution.

[53] It has been argued on Mr. Myvett’s behalf that the particular circumstances of the present case, involves little or no dispute as to facts, and clearly engages

fundamental rights and freedoms under the Belize Constitution based on the use of the powers of the Defendant, which has resulted in unfair and unsatisfactory treatment of the Mr. Myvett, and which results in the present claim being amenable to constitutional redress, this being the most appropriate remedy for the resolution of Mr. Myvett's claim.

[54] Mr. Myvett, through his Counsel, relies on the case of **Darrel Smith et al v The Attorney General**³. This case concerned senior civil servants who were requested to proceed on early retirement by the Public Services Commission ("PSC") in the public interest under **Regulation 20 of The Services Commissions Regulation 2001** made pursuant to powers conferred by the Constitution. The applicants brought constitution motions for their denial of their right to work and deprivation for unlawful deprivation of property. There was no element of misconduct or wrongdoing alleged (although there was some suggestion of unspecified charges of criminal misconduct and an indication that the applicant's superiors had lost confidence in them for unspecified reasons without the opportunity to refute these allegations). The issue for determination by the court was whether the PSC was entitled, in the circumstances of the case, to retire the applicants in the public interest.

[55] In his judgment His Lordship the then Chief Justice Abdulai Conteh found that it was wrong for the PSC, under Regulation 20 to have sent the applicants on retirement as such regulation required some fault or cause, which is made known to the applicant and to which such applicant is given the opportunity to respond, in the context of disciplinary proceedings. Chief Justice Conteh found that this regulation was breached by the PSC as was the applicant's constitutional right to work, and stated at paragraphs 48 – 49 of his Judgment that:

"... All the applicants were career public officers who at the moment of their retirement gained their livelihood by work which they freely chose as customs officers. Exclusion from the performance of employment by being ordered to go on retirement

³ Belize Supreme Court Action No. 488 of 2003 the decision of CJ Abdulai Conteh.

before the mandatory age of retirement for public officers, in circumstances outside of disciplinary process, and for no reason given other than the nebulous loss of confidence by an officer's superior, without stating the reasons for such loss of confidence and without an opportunity to the officer to refute or explain, would in effect, be a removal from office, however it is described. This is what happened in the applicants' case. This, I find, denied them the opportunity to gain (or in their case continuing to gain) their livelihood by work as customs officers, contrary to section 15(1) of the Constitution”.

[56] Counsel for Mr. Myvett also relies on the case of **Maria Roches v Clement Wade**⁴ in which the applicant was a teacher in the Roman Catholic School, who received a letter from a Local manager of such school dismissing her summarily because she was an unmarried mother. The proceeding was brought under Section 16(2) of the Constitution for discrimination as male teachers who impregnate women are not dismissed, and also for denial of her right to work. Chief Justice Conteh found that in the circumstances of the case the applicant was discriminated against as a result of her pregnancy while unmarried. Also there were no disciplinary proceedings for violation of any code of conduct for its teachers. He also found that the dismissal violated the applicant's right to work by pursuing her occupation as a teacher. At paragraphs 58 and 62 Chief Justice Conteh found and held that:

“58. The dismissal of Ms. Roches by the respondent, I find therefore, violated her right to work by pursuing her occupation as a teacher, contrary to section 15(1) of the Constitution of Belize” and

“62. ... I declare as well that the refusal of the respondent to reinstate Ms. Roches after being so required to do so by the Chief Education Officer of Belize is not in keeping with the statutory duties of the respondent and constitute as well an infringement of

⁴ Belize Supreme Court Civil Appeal No. 5 of 2004.

Ms. Roches' right to work as provided for in section 15(1) of the Constitution."

- [57] Chief Justice Conteh declined, however to order reinstatement as it was a contract for personal service, but made an award of damages in the sum of \$150,000.00 for breach of her constitutional rights.
- [58] Even assuming that the facts complained of by or on behalf of Mr. Myvett are accepted, the question arises whether such breaches and complaints are such that they give Mr. Myvett the right to bring the present constitutional claims and entitles him to the constitutional remedies sought.
- [59] The law is well established that it is not every failure by an organ of government or a public authority or public officer to comply with the law that results in the contravention of some fundamental constitutional rights or freedom, which justifies invoking an application for constitutional relief.
- [60] It is also well established in law that where there may be alternative proceedings available, such as judicial control of administrative action, that such an application, as the present one, may be dismissed as frivolous or vexatious or an abuse of the process of the court if the application is solely for the purpose of avoiding the necessity of applying, in the normal way, for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any fundamental right or freedom⁵.
- [61] It is further clearly established that where the facts are not in dispute and questions of law only are in issue and there is a parallel remedy available which may be appropriate such right to apply for constitutional relief should be exercised only in exceptional circumstances. That in considering what are exceptional circumstances the applicant must (a) consider the true nature of the right allegedly contravened; (b) consider whether having regard to all the circumstances of the case some other procedure (either under the common law or pursuant to statute) might not more conveniently be invoked; and (c) if such procedure is available, resorting to the

⁵ Kemrajh Harrikisson v Attorney –General (1979) 31 WIR 348.

procedure by way of application for constitutional relief would be inappropriate and an abuse of the process to resort to it⁶ .

[62] It seems to me that the situations in which this court ought to exercise its discretion to entertain an application for constitutional relief is fact sensitive.

[63] I have carefully reviewed the facts and circumstances of the cases referred to me and relied on by Counsel for Mr. Myvett and have concluded that such facts and circumstances do not provide any useful assistance to me in deciding whether, on the facts and circumstances of the present case, I should entertain the present application for constitutional relief. The cases referred to me do not involve disciplinary proceedings where the evidence of misconduct was not seriously challenged and where there was an appeal only on the penalty.

[64] I agree with Counsel for the Defendant that Mr. Myvett cannot complain that his right has been violated as he has been given a fair opportunity to be heard and has not been denied any opportunity to come before the courts and vindicate his rights. Mr. Myvett has been completely unfettered in seeking out any available remedy which he might have before the courts.

[65] Mr. Myvett could have brought any manner of claim he wished including in private law (for breach of contract and appropriate remedies including for declarations) or public law (for certiorari, mandamus or declarations). The Defendant has in no way repressed or denied Mr. Myvett his right to bring any such claim and nor has it been seriously argued that he has been treated differently or in a discriminatory way. It cannot be plausibly said therefore that the Defendant has breached Mr. Myvett's constitutional right to the equal or any protection of the law.

[66] I also agree with the Defendant that the claimant's argument is fatally flawed in suggesting that he is denied the opportunity to earn his living, as there is neither legislation nor any act which takes away the Claimant's opportunity to earn a living.

[67] Mr. Myvett, as a professional draughtsman, has not had his licence taken away from him in any way such that his means of livelihood has been taken away. He

⁶ Thakur Persad Jaroo v Attorney –General (2002 59 WIR 519 , at 531-535.

presumably has still got his licence and his skill with which he can, through work, earn a living. It cannot be said that he has been denied the opportunity to gain his living by work which he may freely choose or accept; merely perhaps that he may not be employed by the Government in the capacity in which he previously worked in view of his proven misconduct.

- [68] Mr. Myvett does not have a constitutional right to work for the Government of Belize as a draftsman, despite in relation to which, he has been found to have been guilty of misconduct in circumstance which amount to a serious disciplinary offence. This proposition has merely to be stated in this way for its absurdity to be readily apparent. He may continue to pursue his profession or occupation as a draftsman or engage in the trade or business of drafting for which, presumably he has been trained.
- [69] There was, in my view, sufficient evidence that Mr. Myvett was properly found guilty of serious misconduct and that indeed he was given every opportunity to be heard, and was heard, and he never seriously challenged that he received the monies and was guilty of misconduct – he only seriously challenged the penalty of dismissal.
- [70] On the facts of the case it cannot seriously be said that the penalty was out of all proportion to the allegation for which he was found guilty
- [71] The Labour Commissioner, in my view, missed the point of the appeal and appeared to have addressed a point that was not specifically raised as a ground of appeal by Mr. Myvett (raised principally and forcibly by his Union) and made a clear error of law in finding that a CEO is not a Head of Department and that it was his ‘Head of Department’, someone other than the CEO, who could and should have dismissed him under the Regulation.
- [72] I have therefore concluded that it cannot be said, and Mr. Myvett has not satisfied me, that the constitutional right which he claims under section 15(1) of the Belize Constitution (the so-called right to work), on the facts and circumstances of the present case, has been contravened or violated by the Defendant.

- [73] In any event and quite apart from the error which, in my opinion, the Labour Commissioner made, all of these matters, could, and ought properly to have been raised by private law or judicial review proceedings and not by the present claim for constitutional relief, which I have already noted, does not arise.
- [74] The present claim which Mr. Myvett may have had, at its highest, is not a failure by the Ministry to comply with the law resulting in the contravention of some fundamental constitutional right of Mr. Myvett and justifying the invoking of the constitutional jurisdiction of the court and the seeking of constitutional relief instead of judicial control of administrative action. It is my view that the appropriate application, which could have been brought and exhausted, would have been the private or public law claims which I have mentioned and that the present claim for constitutional relief ought to be dismissed as frivolous or vexatious and/or an abuse of the process of the court..
- [75] The present claim has been brought, in my view, solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action, such as, certiorari or prohibition or even a declaration.
- [76] So far from the present application for constitutional relief disclosing any ground for this court to exercise its discretion on the basis of there being exceptional circumstances, which is required to bring such a claim for constitutional relief, I consider that there is a parallel and more appropriate remedy of which Mr. Myvett could have availed himself if he wanted to challenge or impugn the decision of the CEO and uphold the decision of the Labour Commissioner. This may have been available to Mr. Myvett on the basis of the undisputed facts of the case and on the basis of the questions of law which have been raised in the present proceedings – that no challenge has been made by the Defendant to the Labour Commissioner’s decision which cannot be done by way of case stated by the procedure brought by the Defendant.
- [77] Having regard to all the circumstances of the case some procedure, other than constitutional relief, such as at common law or pursuant to Part 56 of the SCR 2005,

might more conveniently have been available to Mr. Myvett. The present application is wholly inappropriate and therefore is an abuse of the process.

[78] Finally, and for completeness, based on the above determination which I have made, it follows that I have concluded that Mr. Myvett is not entitled to any Damages (including any Aggravated Damages) on the facts and circumstances of the present case.

Is the Defendant's application by way of 'Case Stated' fatally flawed?

[79] Mr. Myvett, through his Counsel contends that the Appeal of the Government of Belize, by way of case stated, is not properly before this Court and is an abuse of process for two reasons. First, there is no statutory basis, by which the Government can approach the Court in this way and that neither the Labour Act, nor the Regulation provide for an appeal by way of case stated. Secondly, the procedure has not been complied with as provided by Part 61 of CPR 2005.

[80] I will not belabour this point and can say that Counsel for the Government of Belize could point to no statutory basis to approach this court by way of case stated and further that in any event the procedure for such case stated has not been complied with. Specifically, in relation to the procedure, an application has first to be made to the court, and the tribunal or, the Labour Commissioner in the present case, who should have stated the case or been required to state the case for the determination of the court. None of this was done in the case of Claim No. 12 of 2015.

[81] I therefore accept the argument of Counsel for Myvett that Claim No. 12 of 2015 claim was irregularly filed on the basis of part 61 of the RSC 2005 and the Montserrat case of **Celeste O'Garro v Royal Bank of Canada**⁷ that such case may have been a nullity and was liable to be struck out; and as a result, strictly speaking, there was indeed no case stated for this court to hear and determine.

[82] Yet the parties agree that Claim No. 12 of 2015 is to be consolidated with claim No. 650 of 2014 and on this basis this court did make such an order for consolidation. In my view this order may have cured any defect in the procedure

⁷ LTAP 2007/003

and that by agreement the parties may have given this court the jurisdiction to consider to determine the case stated, and the questions, as contained in Claim No. 12 of 2015.

[83] In any event, this court would prefer not to go down this route as there is another way this matter can be dealt with. In my opinion the questions raised in the case stated necessarily, incidentally or collaterally arise for consideration in the issues raised in Claim No. 650 of 2014 by the decision of the Labour Commissioner and it is on this basis that this court has entertained such questions and considered them.

[84] The law appears to be well established that the words in Regulation 25, purporting to make final the decision of the Labour Commissioner on any appeal, may exclude an appeal, but may not exclude any application for an administrative order such as prohibition or mandamus⁸.

[85] This is the case, as the applicable principles of law require that the words in the Regulation be construed strictly and will not have the effect of ousting the power of the Supreme Court if the Labour Commissioner acted without jurisdiction or if he had done or failed to do something in the course of the appeal which is of such a nature that the decision is a nullity. But that where, however, the Labour Commissioner has merely made an error of law which does not affect his jurisdiction, and his decision is not a nullity, then the ouster will be effective⁹.

Is the Decision of the Labour Commissioner final?

[86] Counsel for Mr. Myvett argues that assuming that the case stated is properly brought, the decision of the Labour Commissioner cannot be challenged by the Government by way of appeal since an appeal from the said decision of the Labour Commissioner is excluded, or ousted by Regulation 25.

[87] In addition, Counsel for Mr. Myvett argues that the supervisory jurisdiction of the High Court over the decision of the Labour Commissioner has not been invoked by the Government by way of any claim for administrative orders, particularly

⁸ See Paragraph 40 above.

⁹ See *Anisminic Ltd. V Foreign Compensation Commission* [1969] 2 A. C. 147 and *South East Asia Fire Bricks Sdn. Bhd. V Non-Metallic Mineral Products Manufacturing Employees Union & Ors Privy*

certiorari and mandamus, and therefore even if the decision of the Labour Commissioner contained an error of law which affected its jurisdiction, a proper challenge to that decision has not been made by the Defendants.

[88] The Claimant argues that it is an abuse of the process of the Court for the Defendant to seek through the back door, in effect, a quashing order (akin to certiorari) in relation to the decision of the Labour Commissioner by way of case stated.

[89] The Government's argument is the alternative remedy point, that Mr. Myvett's application for constitutional relief is an abuse of the jurisdiction of the court because there are available remedies both in private and public law – this is where the procedural points compete – resulting in the battle of the procedural points.

[90] I have already made a determination on the procedural point raised by the Government and I have determined that Mr. Myvett ought not to have brought the present claim for constitutional relief and that his application is an abuse of the court's process and ought to be struck out. If I am wrong about this I will nevertheless consider the present question for completeness, whether the decision of the Labour Commissioner is final.

[91] Construing the words in Regulation 25¹⁰ strictly, I do not consider that such words (“*In any such appeal the decision of the Labour Commissioner shall be final*”) would have had the effect of ousting the power of this court if an appeal had been brought, which for the purpose of the present argument, I do not consider there has been such an appeal.

[92] If an appeal had been brought, which I consider has not happened, this court could have entertained such an appeal as in my view, on the facts and circumstances of the present case, the Labour Commissioner had acted without jurisdiction. The Labour Commissioner did not consider the appeal which was properly before him, (the penalty of dismissal), and considered the appeal on the basis of supposed procedural defects which was jurisdictional, and went to the root of the whole proceedings before the CEO under the Regulations. This was in my view the

¹⁰ See above at paragraph 99.

Labour Commissioner doing something in the course of the appeal which is of such a nature that renders the decision a nullity. This action by the Labour Commissioner is not, in my view, an act amounting to an error of law which does not affect his jurisdiction and which would not render his decision a nullity such that the ouster will be effective.

[93] But, I nevertheless agree with Counsel for the Claimant that such a decision of the Labour Commissioner is valid and stands until overturned by a court on appeal or judicial review – neither of which has happened.

[94] I appreciate that the determination which I have made may put, for the time being, the decision of the Labour Commissioner in something of a limbo state, but I do not consider that I have any other alternative, given the way in which the present proceedings have developed, resulting in the determinations which I feel obliged to make on the state of the law. It is therefore understandable that the Ministry has not reinstated Mr. Myvett. I consider, however, that it is regrettable that the Ministry has not acted with due dispatch, and in a proper way, in seeking to challenge the decision of the Labour Commissioner and that Mr. Myvett has been put to the inconvenience of bringing the present, albeit misconceived, constitutional proceedings in an attempt to give effect to the Labour Commissioner's decision.

[95] I hope, however, that I have provided the parties with some guidance as to the way this court may deal with matters if the present proceedings had proceeded differently – and that this is helpful.

Should Mr. Myvett be reinstated to his duties at the Ministry, and paid any withheld salaries?

[96] This aspect is the most troubling aspect of the case and I carefully considered whether Mr. Myvett should be paid any withheld salaries and if so how much.

[97] Because, however, I have concluded that there is no merit to Mr. Myvett's claim for constitutional relief, which is the chosen centre piece of his case, and not the binding nature of the Labour Commissioner's decision, which ought to have been, I have determined that Mr. Myvett should not be paid any of the withheld salaries.

Costs

[98] Given the determination which I have made and conclusions to which I have arrived, the conjoined effect is that neither party has succeeded, I will therefore make no order as to costs.

Disposition

[99] For the reasons given above, the orders of this court is:

- (1) The application is dismissed for a Declaration that Mr. Myvett's rights under section 6(1) of the Belize Constitution have been contravened by the Defendants;
- (2) The application is dismissed for a Declaration that Mr. Myvett's rights under section 15(1) of the Belize Constitution have been contravened by the Defendants;
- (3) An Order is refused directing the Defendant to reinstate Mr. Myvett to his duties at the Ministry of natural Resources, and to pay salaries withheld since May, 2013.
- (4) An Order is refused for an injunction restraining the Defendant, and or their servants or agents from any further contravention of Mr. Myvett's constitutional rights;
- (5) The application by Mr. Myvett is dismissed for Damages and Aggravated Damages.
- (6) No Order as to Costs.

The Hon Mr. Justice Courtney A. Abel