

BARBADOS

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION**

No. 712 of 2013

Between

STEVE IAN STRAUGHN

CLAIMANT

-AND-

THE CHIEF PERSONNEL OFFICER

DEFENDANT

**Before the Honourable Madam Justice Jacqueline A.R. Cornelius, Judge of
the High Court**

2014: March 13;

November 11;

Mr. David Commissiong for the Claimant

Ms. Marsha Lougheed Paige for the Defendant

DECISION

Introduction

- [1] Mr. Steve Straughn is an Attorney-at-Law. His substantive application seeks judicial review of the decision not to appoint him to the post of Senior Crown Counsel to which he had applied. In this interlocutory application, the claimant seeks to join the Attorney General and the Judicial and Legal Service Commission (JLSC) as parties, and the defendant makes a cross application to have the substantive application struck out as having no cause of action.
- [2] I ordered that the following two issues be heard as preliminary points; firstly whether the Chief Personnel Office (CPO) should have been joined in this matter; and secondly, whether the claimant should be permitted to join the JLSC and the Attorney General as parties in this action.

- [3] Substantively, the claimant seeks orders the effect of which would be to declare that the defendant wrongly terminated his employment within the public service and to quash that decision. He also seeks an award of damages and costs incidental to this application.

RELEVANT HISTORY

- [4] The nature of this matter requires that the court look at the events surrounding Mr. Straughn's employment. These are revealed in his affidavits as filed. The claimant was employed in a temporary capacity from 1st September 2006. He was appointed, initially, to the post of Crown Counsel in the Solicitor General's Chambers on a temporary basis at a monthly salary of \$4,519.33. This appointment ceased on 30th June 2012.
- [5] Whilst employed in the Solicitor General's Chambers, the claimant applied to fill the then vacant post of Deputy Solicitor General but was not successful in being appointed to the post after interview. He also applied for the post of Principal Crown Counsel/ Senior Crown Counsel but was again unsuccessful; the JLSC decided that none of the applicants were suitable and decided to re-advertise the posts. There is no evidence that the claimant applied for the post he was temporarily employed in, that is as Crown Counsel, and consequently all of the available posts were filled after interviews.
- [6] On 29th May 2012, the claimant met with the JLSC and was offered the post of Senior Legal Officer at the National Insurance Department. By letter dated 30th May 2012 to the JLSC, the claimant declined the offer on the basis that the post of Senior Legal Officer was at a salary scale below those of the posts for which he had previously been interviewed by the JLSC and 'for which (he) wished to be considered for appointment'. In his letter the claimant opined further that he had been 'entitled to promotion to the position of Senior Crown Counsel since 2008... having met all the prerequisites for such appointment...'.
- [7] The claimant stated further that he had been working at a level befitting a salary in the S4 and S3 scales for four years prior (instead of the S6 salary of Senior Crown Counsel) and that having been employed in the public service for almost seven years he was entitled to a permanent appointment.
- [8] By letter dated 11th June 2012, the Chief Personnel Officer, consequent upon instructions from the JLSC informed the claimant that he would be offered

the temporary post of Senior Legal Officer with the National Insurance Department with effect from 1st July 2012 until 31st December 2012 at a salary of \$7,348.54 per month. The letter informed the claimant that the offer did not confer any entitlement to a permanent appointment to the public service. The claimant assumed duties at the National Insurance Department on 1st July 2012, but shortly thereafter on 12th July 2012 proceeded onto certified sick leave until 24th July 2012 on the basis of an environmental issue and the effects that the physical environment had on him. In his absence, and on the basis of his complaints, his office had been industrially cleaned but when he returned to work on 24th July 2012 he had to seek medical attention again and consequently proceeded on a further period of sick leave until 7th August 2012. By letter dated 27th July 2012, the claimant requested a transfer to ‘another commensurate posting within the public service...’ citing the effect of the physical work environment on him.

- [9] Despite this letter, on 27th September 2012, the claimant attended an interview for the post of Senior Legal Officer with the National Insurance Department. He remained on sick leave for the rest of 2012 and submitted further sick certificates in January and March of 2013.
- [10] By the end of January 2013, the claimant appeared to be in limbo with respect to who would pay his Bar Fees and Legal Registration Fees as neither the National Insurance Department nor the Personnel Administration Department accepted responsibility for their payment.
- [11] Thus began a series of correspondence between the claimant and his representatives with respect to his employment status within the public service. On 3rd May 2012, the claimant, having failed to receive a response to his correspondence, commenced proceedings

Discussion

- [12] I turn first to whether the CPO is the correct defendant.
- [13] The duties of the CPO are set out in section 9 of the *Service Commissions (Public Service) Regulations 1978. (Cap 34)*. Section 9 Provides as follows
- “The Chief Personnel Officer shall
- (a) Submit matters for decision of the Commission;
 - (b) Attend meetings of the Commission when required to do so by the Commission;
 - (c) Give effect to the decisions of the Commission;

(d)Ensure that all documents and papers relating to any matter being or to be considered by the Commission are made available to the Commission.”

The *Service Commissions Act Cap. 34*, for which the above regulations are subsidiary, defines ‘commission’ as including the JLSC.

- [14] The court can rightly conclude that in the case of a legally qualified person, the CPO submits matter to the JLSC for their consideration in one respect and in another gives effect to the decisions of the JLSC. The CPO does not appoint candidates to any post in the public service and no evidence has been tendered to indicate otherwise. It is not a part of her duties. The CPO gives effect to decisions of the JLSC or the respective commission and in that way may be considered to be the commission’s ‘enforcer’.
- [15] It is undisputed that the claimant was employed as crown counsel and did not submit his application for permanent appointment to the post. Further, despite seeking transfer from the post of Senior Legal Officer with the National Insurance Department, the claimant applied for and was interviewed for the post; the court has no evidence before it to show that he was successful in his application.
- [16] In the circumstances, therefore, based on the fact that the claimant seeks declarations to compel the CPO to do what she legally cannot, this court cannot hold that the CPO was rightly joined in this matter. There simply is no evidence to show that there was any impropriety on the part of the CPO to sustain the present action.
- [17] The claimant seeks further to join the JLSC as a party to this action. Section 93 of the *Constitution* vests in the JLSC the power to appoint, remove and discipline public officers who possess legal qualifications as prescribed by Parliament with the exception of those who work in the office of the Director of Public Prosecutions.
- [18] The court has a wide discretion to permit parties to be joined in matters provided (1) that it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or (2) there is an issue involving the party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve the matter. (refer *Supreme Court Rules CPR 19.2 (3)*).

- [19] **CPR Rule 19.2 (2)** of the United Kingdom CPR is in like terms to our Supreme Court Rules 19.2 (3). In examining the English rules, the courts have determined that there must be a cause of action against the parties joined (refer *Douihech v Findlay* [1990] 1 WLR 269). Given the duties and powers of the JLSC, if the claimant has a legitimate grievance in relation to his appointment or lack thereof, then the JLSC is the proper defendant. I will return to the issue of whether the claimant has a legitimate grievance against the JLSC.
- [20] The claimant has shown that the JLSC interviewed him, that he was offered the post of Senior Legal Officer (acting) by the JLSC and that he was interviewed unsuccessfully for the posts of Solicitor General and Senior Crown Counsel. It is on this basis that he seeks to join them.
- [21] Do the facts disclose a legitimate grievance against the JLSC? Has there been some decision or recommendation made by the Commission in fulfillment of their constitutional duties against which the claimant is aggrieved?
- [22] Mr. Straughn's case is as follows: (1) he was not appointed to a position for which he did not apply despite acting in the post and applying for posts of a higher salary grade; (2) he was given a temporary six month appointment at NID; and (3) there was no recommendation from the JLSC which the relevant functionaries, namely the CPO, could legally act on to continue his temporary appointment.
- [23] On what basis in law does the claimant question the failure of the JLSC to recommend his appointment to the post of Crown Counsel, a post he did not apply for? Further on what basis in law does the claimant question the failure of the JLSC to appoint him to the post of Senior Crown Counsel, a post for which he was unsuccessfully interviewed? These are all issues which make it desirable to add the JLSC as a party to this matter and allow the claimant the opportunity to amend his application as requested so that the court can resolve all of the matters in dispute in these proceedings. (CPR r.19.2 applied)
- [24] In suits against the state, the Attorney General is the named defendant in accordance with the provisions of the *Crown Procedure Act Cap 197*. If the claim as commenced by the claimant shows a cause of action against the Attorney General, then the court must consider and deal with it justly. So

what is the claimant's contention? What is the cause of action for which the court should exercise its discretion in his favour?

- [25] This case centres around (1) the failure of the claimant to be appointed to a positions in the Solicitor General's Chambers; (2) the claimant being given a temporary six month appointment at the National Insurance Department and there being no evidence presented of extension of his temporary appointment; and (3) there being no evidence disclosed so far of any recommendation from the JLSC or any functionary that could legally be acted on to continue his temporary appointment.
- [26] The claimant has not shown at this point that adding the Attorney General will aid the court in its resolution of this matter and accordingly has failed to justify why the Attorney-General should be joined.

DISPOSAL

- [27] In all the circumstances of this matter, this court holds that the claimant has failed to show just cause why an action against the Chief Personnel Officer should be sustained. There is no evidence of the CPO either acting or refusing to act in accordance with her duties or of her carrying out her duties with any impropriety.
- [28] The only party against which the claimant could legitimately seek redress is the JLSC. It is the party that has responsibility for the appointment of persons like the claimant, with legal qualifications, to the public service. In the circumstances therefore, the claimant is allowed to join the JLSC and to amend his Statement of Case accordingly.
- [29] It is not desirable at this point to join the Attorney General and accordingly, the court refuses the application so to do.
- [30] Costs to be costs in the cause.

Jacqueline A.R. Cornelius
Judge of the High Court