

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No. 2467 of 2002

**IN THE MATTER OF AN
APPLICATION FOR JUDICIAL
REVIEW PURSUANT TO THE
ADMINISTRATIVE JUSTICE ACT,
CHAPTER 109B AND THE JUDICIAL
REVIEW (APPLICATION) Rules, 1983.**

BETWEEN

O'NEAL LAYNE

APPLICANT

AND

**THE COMMISSIONER OF POLICE
THE ATTORNEY-GENERAL**

**FIRST RESPONDENT
SECOND RESPONDENT**

Before The Hon. Mr. Justice William Chandler, Judge of the High Court

Date of Decision: 2015 November 6th

Ms. Alicia Archer Attorney-at-Law for the Applicant

Ms. Donna Brathwaite Attorney-at-Law for the Respondents

DECISION

Introduction

- [1] This is an application for judicial review under the *Administrative Justice Act Cap 109B* (“*the AJA*”) in which the Applicant seeks relief from the decision of the First Respondent, the Commissioner of Police (COP), dismissing him as a special constable from the Royal Barbados Police Force (RBPF) effective 1 October 2001 on the grounds of misconduct. Namely his failure to attend a religious ceremony observed by a religion other than his was, in contravention of his fundamental rights and freedoms guaranteed under **sections 11 and 19** of the **Constitution**.
- [2] The Applicant also alleges that the First Respondent denied him the opportunity to make submissions before the disciplinary Tribunal.

BACKGROUND

- [3] The Applicant’s Affidavit filed 8 January 2003 provides the background to this application. In it, he deposed that, on Friday 10 August 2001 he was preparing to leave the premises of the Regional Police Training Centre (RPTC), having completed the special constabulary examination course, when he was detained by Duty Sergeant Caley.

[4] The Duty Sergeant enquired whether he would be attending the church service the following Sunday. It is the ensuing conversation and the consequent proceedings which give rise to this action. The relevant paragraphs of the Applicant's Affidavit are reproduced below:

“8. On the said Friday the 10th day of August, 2001, I was dressed and ready to leave the School's compound when I was detained by Duty Sergeant Caley who indicated to me that he did not know if I had permission to leave because one of the students having the surname Layne was not to do so having not passed the weekly examination.

9. I indicated to Duty Sergeant Caley that I understood that it was not I, Special Constable 372 O'Neal Layne, but rather Special Constable 373 Roland Layne who had not passed the examination in question.

10. He said that he was not sure if I could leave the compound either so he would find out from Station Sergeant Christine Holder.

11. I indicated to Duty Sergeant Caley that I had spoken to Station Sergeant Best and nothing was left by the Chief Instructor or the Commandant to indicate that I was not free to leave and he responded that he would still wait to see Station Sergeant Holder even though there were no outstanding charges against me.

12. During this time I received a call from Station Sergeant Caley to proceed to the Instructor's Office and on arrival there he informed me that Station Sergeant Holder said that “I ain gine nowhere and I ain getting permission to leave” to which I inquired if there were any charges against me to which he replied “No, but that is what I say and that is what it is”.

14. Station Sergeant Stephen then entered the office while Sergeant Caley was enquiring as to whether or not I would be attending the Church service on the following Sunday because Sergeant Best had mentioned to him that I would not be going.

15 I told Station Sergeant Caley that I was a member of the religious denomination known as the Jehovah's Witnesses and that one of the principles of that denomination is that we do not attend the places of worship of other denominations.

16. He then enquired about other doctrines of the Jehovah's Witnesses such as the issue of not accepting blood transfusions and I was explaining these doctrines when Station Sergeant Stephen was entering the office and Station Sergeant Caley said to him I would not be attending the Church service because of my religious convictions.

17. Station Sergeant Stephen then said, "Oh, so you is one of them people who does come to my house on Saturday morning and wake me up when I sleeping. Man you gine church even if I got to drag you in there."

18. I then said to him "Sir, I have no problem going with the group for moral effect but I can't enter the building to participate in the worship as my conscience would not allow it."

19. He then repeated his statement to the effect of "You gine church even if I got to tek you up and cah you in the church" to which I replied "With all due respect Sir, when you put me down I will walk out."

20. He said "Look man I charging you" and proceeded to take up the phone and dialed a number which he said was that of the Commandant and proceeded to have a conversation with the person on the other end.

21. The other person appeared to ask which Layne because he looked up and enquired whether I was Special Constable 372 or 373 and if we were related. I responded and he then relayed the information to the other person and he continued to tell them that he was charging me because I said I was not going to church and then he terminated the conversation. He then said to me, "Sunday morning you gine church, you understand what I tell you?"

22. I said "Sir, we just did an exam on the freedoms of the citizen and isn't it my constitutional right to determine my religion?" to which he responded?"You ain got no rights up here."

23. I said to him “Sir, if that is how the Royal Barbados Force feels about the matter I would tender my resignation with immediate effect,” to which he replied “Go long and write it. You shouldn’t be in here. Look the foolscap paper”.

24. I then went on to one of the adjoining rooms and wrote my letter of resignation and when I came back Station Sergeant Stephens was sitting at his desk.

25. I attempted to hand the letter to Station Sergeant Stephen who declined to take it saying “Don’t give me that shit, put it on Caley’s desk.” I then turned and went to Station Sergeant Caley’s desk and placed the letter on it and then in turn placed an object to act as a paperweight on the letter.

36. I then left the office and went to the barracks, changed my clothing and left the compound.”

The charges

[5] The Applicant was charged under the Standing Orders and Discipline Regulations of the Regional Police Training Centre for the following:

Disobedience to Order

- i. That the Applicant on Friday the 10th day of August 2001 contravened Regulation 51.1 (H) of the Standing Orders and Discipline Regulations of the Regional Police Training Centre in that you disobeyed an order by failing to write in the Students’ Leave Register an address and telephone number where you can be contacted;
- ii. That the Applicant on Friday the 10th day of August 2001 contravened Regulation 51.1 (H) of the Standing Orders and Discipline Regulations of the Regional Police Training Centre in that you disobeyed an order by leaving the compound without obtaining permission from the duty officer;

Insubordination

- iii. That the Applicant on Friday the 10th day of August 2001 contravened Regulation 51.1 (K) of the Standing Orders and Discipline Regulations of the Regional Police Training Centre in that when S/Sgt. Stephen spoke to you about going to church on Sunday August 12, 2001, you replied, “*I aint gine to church, you’ll have to drag me there, you’ll got to charge me*”. These words were said in an aggressive manner.
- iv. That the Applicant on Friday the 10th day of August 2001 contravened Regulation 51.1 (K) of the Standing Orders and Discipline Regulations of the Regional Police Training Centre in that when S/Sgt Holder spoke to you about writing over a statement you replied, “*I am not writing anymore*” in a manner which could be deemed insubordinate.

Absent Without Leave

- v. That the Applicant between 20:25 hrs on Friday the 10th day of August 2001 and 22:10 hrs on Saturday the 11th day of August, did contravene Regulation 51.1(A) of the Standing Orders and Discipline Regulations of the Regional Police Training Centre in that you were absent from the centre without permission, thereby making you absent without leave.

[6] By letter dated 7 September 2001 (the Gabriel letter) the acting Assistant Commissioner, George Gabriel, informed the Applicant as follows:

“Insubordinate Conduct

The Commandant, Regional Police Training Centre in his report shows that on 12 August 2001 you were insubordinate to Station Sergeant Stephen.

May I inform that incidents of this nature have the propensity to discredit the Royal Barbados Police Force.

The [COP], without prejudice, hereby request that you submit in writing within fourteen (14) days of receipt of this letter reasons

why you should not be released from being engaged as a Special Constable.” (emphasis mine)

[7] By letter dated 20 September 2001, under the caption “*Insubordinate Conduct 2001-09-07*”, the Applicant submitted his reasons. The Applicant wrote:

“I respectfully submit for your information reasons why I should not be released from being engaged as a Special Constable.

Firstly, I love my job and have worked hard to meet the requirements of the job.

Secondly, the Commandant of the Regional Police Training Centre in his report shows that on 2001-08-12, I was insubordinate to Station Sergeant Stephens. However, the incident referred to would have occurred on 2001-08-11. The fact of the matter is that Station Sergeant Stephens wanted me to attend a church service at St. Bartholomew’s Church contrary to my religious beliefs and convictions, which happens to be that of the Jehovah Witnesses. At this revelation Station Sergeant Stephens became rather upset, accusing me of being one of those people who come to his house on Saturday mornings and wake him up. However, he was adamant that I would be attending church on Sunday 2001-08-12. I tried to inform the Sergeant that it was against Jehovah Witnesses religious doctrines and principles to enter church facilities and engage in any worshipful activities of another religious denomination. I was not disrespectful at any time. However the Station Sergeant was peeved and very vocal about my explanation and did proceed to level charges against me, which I believe to be unjustified.

Last but not least, I believe having been educated through the very Regional Police Training Centre on the rights to freedom of every citizen guaranteed under the constitution which includes freedom of worship, I believe that my rights in this matter should not be usurp (sic) by anyone or organization.” (Emphasis mine)

[8] However, on 25 November 2001 the First Respondent informed the Applicant of his release from the constabulary. It reads:

“Notice of Release

This correspondence serves to inform you that in Accordance with the Police Act Cap. 167 Section 74(3), you will be released from engagement as a Special Constable for reason of misconduct on 2001-08-12, hence your unsuitability.

Termination of service takes effect from 2001-10-01”. (emphasis mine)

THE APPLICATION

[9] On 15 November 2002 the Applicant filed an Originating Motion and a Statement pursuant to Rule 2(a) of the Judicial Review (Application) Rules 1983 (the 1983 Rules) seeking the following relief:

1. An Order of Certiorari quashing the Order of the First Respondent, the Commissioner of Police made on the 1 October 2001 dismissing the Applicant from the RBPF;
2. A Declaration that the decision of the first Respondent to dismiss the Applicant from the RBPF on the grounds that the Applicant was guilty of misconduct is irregular and contrary to law;
3. A Declaration that the actions of the First Respondent were in contravention of the Applicant’s fundamental right to freedom of conscience guaranteed under sections 11 and 19 of the Constitution of Barbados.
4. All such further orders as may be appropriate to enforce and/or compensate the Applicant’s rights.

[10] The grounds of the Application are that:

1. The decision of the First Respondent to terminate the tenure of the Applicant with the RBPF on grounds of misconduct for his failure to attend a religious ceremony observed by a religion other than his own was in contravention of his fundamental rights and freedoms under sections 11 and 19 of the Constitution of Barbados and is therefore irregular and contrary to law.
2. The refusal of the First Respondent, the Commission of Police to grant the Applicant the opportunity to present or to adequately present his case before the Tribunal, that is, the opportunity to make submissions to the Tribunal is in contravention of the Applicant's rights to a fair trial and to proper and fair determination of his case.

ISSUES

[11] The primary issue before the Court is whether the Applicant's application for judicial review should succeed? The Court is therefore required to consider:

- i. Whether the First Respondent's dismissal of the Applicant as a special constable from the RBPF was in contravention of the Applicant's fundamental right of freedom of conscience guaranteed under sections 11 and 13 of the Constitution? This requires a consideration of whether the Applicant was dismissed as a special constable from the RBPF for his failure to attend a religious ceremony? and

- ii. Whether the First Respondent refused to grant the Applicant an opportunity to present/adequately present his case before the disciplinary Tribunal in contravention of the Applicant's rights to a fair trial and to proper and fair determination of his case? and
- iii. Whether the First Respondent's dismissal of the Applicant as a special constable from the RBPF was irregular and contrary to law?

THE EVIDENCE

The Applicant's Case

- [12] As outlined above, the Applicant's Affidavit filed 8 January 2003 in support of the Application for judicial review provides the background to the incident.
- [13] The Applicant asserted at paragraph 11 of his Affidavit in Response filed 9 November 2006 that he pleaded guilty to the charge of being absent without leave (for having arrived after 10:00 pm) but disputed that he had pleaded guilty to all the other charges; namely insubordination to Station Sgt Stephens and failing to write in the student's register.

[14] The Court observes first, that this charge to which the Applicant purportedly pleaded guilty was not exhibited nor were any particulars supplied in the evidence before the Court. Second, at paragraph 7 of the affidavit, the Applicant states, "I especially dispute the charge of being absent without leave". This raises the question of whether one can simultaneously dispute a charge and yet admit to having pleaded guilty to it. Additionally, neither party to these proceedings furnished the Court with any evidence as to what charge(s) the Applicant had accepted and what if any disciplinary action was instituted in relation to the corresponding charge(s).

The Respondents' Case

[15] By Affidavit dated 6 October 2006, the Assistant Commissioner of the RBPF and Commandant of the RPTC, Oral Williams deposed that disciplinary proceedings were conducted on 25 and 27 August 2001 in respect of the charges brought against the Applicant who had been afforded an opportunity to answer the charges and call witnesses at the proceedings. He also referred to the Applicant's letter of 20 September 2001 in which he made representation as to why he should not be released as a special constable.

- [16] He stated that the Applicant admitted his guilt to the said charges (see: paragraph 17). Moreover, he deposed that attendance at the Special Constables Courses' Annual Church Service is not mandatory and that a person may be exempted from attendance if permission is sought and a reasonable explanation provided: (see: paragraphs 18 and 19).
- [17] In his Supplemental Affidavit filed 4 December 2006, the Commandant also deposed that the Applicant was not released from being engaged as a special constable on the grounds of misconduct for his failure to attend a religious ceremony. The Applicant's religion is stated as "NIL" in the service record of the RBPF. He also pointed out that the special constables' course includes weekly devotions conducted by priests, pastors and reverends from other denominations. These devotions are attended by participants of the special constable courses and he was unaware of any objections to attending these devotions by the Applicant.
- [18] Further, it was the First Respondent's contention that there was no contravention of the Applicant's constitutional rights since the Applicant had carried out diarist duties on 12 August 2001 at the RPTC commencing at 6 am instead of attending a church service.

[19] The evidence of Station Sergeant Dale Stephens, an instructor at the RPTC, was contained in his Affidavit filed 29 November 2006. He contended that he never made the statements attributed to him by the Applicant and deposed to the following:

“8. That the Applicant’s refusal to attend a church service during his Special Constable’s Training Course was not the reason for charges being brought against him as is suggested at paragraph 21 of the said Affidavit.

9. That the charges and the reasons for the charges brought against the Applicant as a result of an incident which took place on the 10th day of August 2001 ...

11. That the Applicant brought a letter of resignation to me and I informed him to place it on the desk of the duty officer at the time.

12 That I have never mistaken the Applicant for another recruit namely Special Constable Roland Layne during the time when both individuals attended a Special Constable’s Training Course at the Regional Police Training Centre.

17. That I do not have a grouse against members of the Jehovah Witness faith neither do I have a lack of love for Jehovah Witnesses.”

[20] Christine Stanford nee Holder in her affidavit of 28 November 2006 did not admit to the statements attributed to her or the occurrence of the events deposed to by the Applicant. She stated that the Applicant had a distinctive scar on his face whilst special constable 373 Roland Layne did not.

THE LAW

The Provisions of AJA

[21] Judicial review is the mechanism by which courts are able to review decisions of public officers or bodies and an aggrieved individual may challenge that decision. Under the *AJA*:

“2. ‘act’ includes any decision, determination, advice or recommendation made under a power or duty conferred or imposed by the Constitution or by any enactment;

‘administrative act or omission’ means an act or omission of a Minister, public official, tribunal, board, committee or other authority of the Government of Barbados exercising, purporting to exercise or failing to exercise any power or duty conferred or imposed by the Constitution or by any enactment.

3. (1) An application to the Court for relief against an administrative act or omission may be made by way of an application for judicial review in accordance with this Act and with rules of court.

4. The grounds upon which the Court may grant relief by way of the remedies mentioned in this Act include the following:

(a) that an administrative act or omission was in any way unauthorised or contrary to law.”

[22] In the text, *Principles of Judicial Review (1999, Sweet & Maxwell)*

by *De Smith, Woolf and Jowell*, at page 3, the learned authors opine:

“In all developed legal systems there has been recognition of a fundamental requirement for principles to govern the exercise

by public authorities of their powers. These principles provide a basic protection for individuals and prevent those exercising public functions from abusing their powers to the disadvantage of the public... Judicial review provides just one of a number of legal controls of administrative action.”

- [23] In *Narsham Insurance (B'dos) Ltd. v The Supervisor of Insurance et al*
Civil Appeal No. 6 of 1996 (unreported decision of 26 January 1999)

Williams CJ stated that:

“The Administrative Justice Act enables an application for judicial review to be made to the High Court for relief against an administrative act or omission which expression is defined to include an act or omission of a public official or other authority of the Government of Barbados exercising or purporting to exercise any power or duty conferred or imposed by any enactment...”

The Constitution

- [24] Chapter III of the Constitution makes provisions for the “protection of fundamental rights and freedoms of the individual”. **Section 11 (d)** provides:

“Whereas every person in Barbados is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely - freedom of conscience.”

- [25] **Section 19** states as follows:

“(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom,

either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) ...

(3) ...

(4) Except with his own consent (or, if he is a person who has not attained the age of twenty-one years, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion which is not his own.”

[26] The relevant provisions of **the Police Act Cap 167** are as follows:

“2. ‘Commissioner’ means Commissioner of Police;

3. The Force established in and for Barbados and in respect of which provision was made under the *Police Act, 1908*, shall continue to be maintained under this Act and shall be designated as the Royal Barbados Police Force.

...

6. The Force shall consist of a Commissioner, a deputy Commissioner and such number of Assistant Commissioners, Superintendents, Inspectors, subordinate police officers and constables respectively as does not exceed the number provided by any order made under section 2 of the *Civil Establishment Act*: but the members of the Force at 16th October, 1961, shall continue to be members of the Force and shall be subject to this Act.

...

71. There shall be constituted a permanent Special Constabulary to be known as the Barbados Special Constabulary.

...

72. The Special Constabulary shall be under the command of the Commissioner and shall consist of so many officers, subordinate officers and special constables and shall be divided into such divisions of so many officers, subordinate officers and special constables as may be prescribed by the minister.

...

74(d) Every special constable of the Special Constabulary shall be engaged for a period of three years from the date of his enrolment as a special constable provided that *the Commissioner shall have*

power to release a special constable from his engagement or to determine such engagement at any time if any special constable does not perform the duties which he undertakes or is for any other reason considered unsuitable.” (emphasis mine)

[27] The Standing Orders and Discipline Regulations of the RPTC (the regulations) are also relevant and will be quoted later in this decision.

DISCUSSION

The First Issue

[28] Did the First Respondent dismiss the Applicant as a special constable from the RBPF for his failure to attend a religious ceremony and in contravention of the Applicant’s fundamental right of freedom of conscience guaranteed under **sections 11 and 13** of the **Constitution**?

[29] The Commissioner of Police (the Commissioner) is tasked with the superintendence of the RBPF. That is to say, the Commissioner has a statutory duty to control and command the RBPF and is responsible for its efficient administration and governance. In short, the Commissioner of Police is a public officer and the dismissal of a special constable or his release from his engagement by the Commissioner is an administrative act within the meaning of the *AJA*.

[30] I make the following important observations with respect to the charges laid against the Applicant. The only date mentioned in the charges referred to above is *Friday 10 August 2001*. On the other hand, the letter of 7 September 2001 specifically refers to subordinate conduct on *12 August 2001*. So too, the Notice of Release refers to misconduct on *12 August 2001*. This therefore begs the question, precisely what, if any, charge or charges of misconduct were laid against the Applicant in relation to Sunday 12 August 2001?

[31] The evidence on behalf of the Applicant specifically relates to charges stemming from events which occurred on Friday 10 August 2001 and not on 12 August 2001. The Applicant was released from engagement as a special constable for misconduct which allegedly occurred on Sunday 12 August 2001.

[32] This further begs the question; if the Applicant was dismissed from the RBPF for charges other than not attending a church service, as argued on behalf of the Respondents, why are these charges and their corresponding dates not referred to in the Notice of Release?

- [33] The Applicant indicated in his letter of 20 September 2001 that the incident leading to the insubordination charge occurred on 11 August 2001 and not on Sunday 12 August 2001 as erroneously stated.
- [34] However, the evidence before the Court, which is acknowledged by both parties, shows that the incident relative to the attendance at the religious service occurred on Friday 10 August 2001.
- [35] The Court observes that no charges were brought against the Applicant for failing to attend a religious ceremony either on Sunday 12 August 2001 or otherwise.
- [36] In addition, there is no evidence that the disciplinary proceedings instituted against the Applicant addressed charges relating to misconduct on the ground that the Applicant failed to attend a religious ceremony.
- [37] Further, the Court is satisfied that there is a policy within the RPTC that attendance at church services is not mandatory and that persons who do not wish to attend may be exempted. See also: paragraph 15 of the Applicant's Affidavit of 09 November 2006 where the Applicant deposed *inter alia* that, "the other recruit who was a member of the Seventh Day Adventist Church was exempted from the Service but Station Sergeant Stephens insisted that I

attend based on the fact that he had some particular grouse against the Jehovah's Witnesses for waking him up on Saturday mornings".

[38] Moreover, the evidence before the Court shows that the Applicant took up diarist duties on Sunday 12 August 2001 instead of attending the church service. It is unclear from the evidence when the Applicant was informed of his diarist duties for Sunday 12 August 2001.

[39] At paragraph 28 of his 8 January 2003 Affidavit the applicant deposed that:

"I was then allowed fifteen (15) minutes to change my clothing and then take up diarist duties so that the diarist could attend the Church service. The Diarist's book would reflect that I took over these duties at approximately 5 o'clock in the morning."

[40] There is some measure of confusion in the evidence of the Applicant as to what transpired between 10th August 2001 and 12 August 2001. In his affidavit of 8th January 2003, he deposed, *inter alia*, that he wrote his letter of resignation on 10th August 2001 and gave it to Station Sergeant Stephen who declined to accept it. He then placed it on Station Sergeant Caley's desk. This resignation was prompted by the fact that he considered that he was being forced to attend a religious service in breach of his religious beliefs and a violation of his freedom of conscience under the Constitution of Barbados.

- [41] On 12th August 2001, the date of the Church service, he took up diarist duties at 5 o'clock in the morning so that the diarist could attend the church service. He was therefore not obliged to attend the service in violation of the tenets of his faith.
- [42] It is trite law that under the adversarial principle of the Common Law, the onus is on the applicant to prove his case. The standard of proof is the normal civil standard of a balance of probabilities. The question is, has the Applicant proven his case to this standard?
- [43] The Applicant's affidavit evidence speaks to what occurred on 10th August 2001. It speaks to a threat by Station Sergeant Stephen's that he would have to attend church even if the Station Sergeant had to take him up and carry him to the Church. At its zenith this must be construed as a threat to violate his freedom of conscience not an actual violation. The Applicant responded to that threat that when he (Station Sergeant Stephen) should have put him down (on the Sunday) he would walk out.
- [44] The ground of his application is a violation of his constitutional right under **ss. 11 and 19** of the **Constitution** not a threatened violation. His evidence in his first affidavit must be viewed also in the light of his affidavit evidence of 8th January 2003 which speaks to the actual occurrences on the 12th August

2001 namely, that he was assigned diarist duties and his rights were accordingly not violated.

[45] The only reasonable inference that the Court can draw for this evidence is that the Applicant's assignment to diarist duties on that date was done in order to accommodate his previous request to be exempted from attendance at the church service. In the circumstances there was no violation of the principles of the Applicant's religious denomination and therefore no contravention of the Applicant's constitutional right to freedom of conscience guaranteed under the Constitution.

[46] The Court accepts as credible the Applicant's evidence as to the nature of the conversation on Friday 10 August 2001. The Court accepts that Sgt. Stephens engaged in a provocative, taunting and incendiary conversation with the Applicant as to his religious beliefs which resulted in the Applicant tendering his resignation. (See: paragraphs 23-26 of the Applicant's Affidavit of 8 January 2003); see also, paragraph 11 of Sgt Stephens' Affidavit where he stated, "That the Applicant brought a letter of resignation to me and I informed him to place it on the desk of the duty officer at the time".

[47] The only evidence which makes sense and would substantiate the Applicant's writing a letter of resignation is that of the applicant himself in the light of the "rough and tumble" of a regional centre for police recruits where actions must be judged accordingly to the standard of men and not angels.

[48] The resignation letter was not put into evidence. We do not know if the applicant's resignation was with immediate effect or at a date later than 10th August 2001.

[49] It appears that the Applicant's resignation letter was rescinded in light of the fact that he subsequently took up diarist duties on Sunday 12 August 2001 and was allowed to continue his training and receive the requisite certification from the RPTC. The Applicant stated at paragraph 12 of his Affidavit in response filed 09 November 2006 that:

"The Commandant accepted the charges and fined me. I paid the fine. I was then allowed to return to the barracks and continue my training and I received my certification at the end of the training course. The certificate is the same I received one which is conferred upon all Special Constables who complete the course of training. On leaving the Training Centre, I was assigned to Bridgetown." (emphasis mine)

[50] The Court requested both counsel to address on whether the letter of resignation had been accepted by the Commissioner. Neither party could shed any light on this matter.

[51] Notwithstanding, the provocative conduct and words attributed to Sgt. Stephens which consequently led to the parties becoming embroiled in an incendiary conversation, the Court is of the view that the First Respondent's decision to terminate the Applicant's tenure with the RBPF was not for his failure to attend a religious ceremony. Therefore, the Court finds that the First Respondent did not violate the Applicant's fundamental rights afforded under the Constitution.

Issue 2 - whether the First Respondent's dismissal of the Applicant as a special constable from the RBPF was irregular and contrary to law?

[52] Counsel for the First Respondent submitted that the decision to release the Applicant from his engagement as a Special Constable was not on the ground that the Applicant was guilty of misconduct because of his failure to attend a religious ceremony; but rather because of the incident where the Applicant spoke to Sergeant Stephens in an aggressive manner, such behaviour from a recruit towards a senior officer being contrary to Regulation 51.1K of the Standing Orders and Discipline Regulations.

[53] There is no regulation 51.1K of the regulations which are only 37 in number.

R43. 1.1 provides that:

“Absent without leave or being late for duty/class/parade

1.1 Without reasonable excuse, be absent without leave from the Training Centre, parade, class or any other duty.

1.2 Without reasonable excuse, be late for parade, class or any other duty.

7 Discreditable Conduct

Act in a disorderly manner or in any manner prejudicial to discipline or act in a manner that is reasonably likely to bring discredit to the reputation of the Training Centre or/or police force.

8 Disobedience to Orders

Disobey or without good and sufficient cause, omit or neglect to carry out a lawful order, written or oral/otherwise.

12 Insubordination

Disobedient, rebellious, or rude by actions or words.”

Did the First Respondent act contrary to the law when it dismissed the Applicant for insubordination?

- [54] **Section 74(d)** of the **Police Act** clearly states that the Commissioner of Police is empowered to release a special constable from his engagement at any time if that constable is for any reason considered unsuitable.
- [55] The First Respondent submitted that the Applicant's conduct/aggressive behaviour demonstrated towards Sgt. Stephens deemed him insubordinate in breach of the Standing Orders and Regulations of the RPTC whilst the Applicant maintained that he was respectful during the exchange between himself and Sgt Stephens.
- [56] The Gabriel letter informed the Applicant that he had been released for insubordination to Station Sergeant Stephen on 12th August 2001. As previously noted there is confusion in the Applicant's evidence about the actual dates of the occurrences whether the 10th August 2001 as contained in the Applicant's affidavits or 11th August 2001 as referred to in his reasons outlined in his letter of 20th September 2001.
- [57] In considering the charge of insubordination, it is necessary to examine the evidence of Mr. Oral Williams. He filed an affidavit on 6 October 2006 in which he deposed that, during the period 16th day of July 2001 to the 24th

August 2001, disciplinary proceedings pursuant to the Standing Orders and Discipline Regulations of the Regional Police Training Centre were instituted against the Applicant. The Applicant was found guilty of neglect of duty, (being) absent without leave, improper dress, being late for duty, disobeying orders and being late for class.

[58] He further deposed that the charges referred to as Exhibit “OL1” in the Applicant’s affidavit were other charges brought against the Applicant during the said period and that disciplinary proceedings in respect of those charges were conducted on the 25th and 27th days of August 2001, in the presence of Chief Instructor Rawle Agard, when the Applicant appeared before Mr. Williams, as Commandant, to answer the charges.

[59] It was, he deposed, the usual practice to give the person charged an opportunity to answer the charges and call witnesses if he desired and that the Applicant was afforded that opportunity. At the hearing, the Applicant admitted his guilt to the charges.

[60] The charges relative to insubordination have already been outlined in para [5] of this decision. However, Exhibit “OL1” contains a charge of Insubordination contrary to Regulation 51.1 (K) of the Standing Orders and alleges that the Applicant contravened that regulation in that “...when S/Sgt

Holder spoke to you about writing over a statement you replied, “I am not writing anymore” in a manner which could be deemed rebellious.”

[61] The evidence of the Commandant does not partake of the same inexactitude as the Applicant. I saw and heard the Commandant give his evidence and he appeared to me to be a witness of truth and I accept his evidence as true. On the state of the evidence, I hold that there is no confusion in the date of the charge of insubordination in the Respondents’ case and I accept that the Applicant pleaded guilty to the charge.

[62] Ultimately, the First Respondent was of the view, subsequent to the disciplinary proceedings, that the Applicant’s conduct rendered him unsuitable to be a member of the special constabulary and that he should be dismissed. Upon a consideration of the facts and the law, I hold that the First Respondent’s dismissal of the Applicant was not irregular or contrary to law.

[63] Ground 2 of the application alleges that the refusal of the First Respondent, the Commissioner of Police to grant the Applicant the opportunity to present or to adequately present his case before the Tribunal, that is, the opportunity to make submissions to the Tribunal is in contravention of the Applicant’s rights to a fair trial and to proper and fair determination of his case.

[64] The Applicant's evidence is that he received the Gabriel letter which requested him to submit in writing within 14 days of its receipt reasons why he should not be released from his engagement as a Special Constable. In response, he submitted his reasons by letter of 20th September 2001 in which he even sought to correct the date of the alleged incidents.

[65] He deposed that he pleaded guilty to the charge of being absent without leave but also disputed the charge of being absent without leave. He either pleaded guilty or he did not. That knowledge is with him. The Court ought not to be left to guess on this matter. The Applicant must prove his case to the standard required by law.

[66] It is clear that if he did plead guilty, he would have only done so if he appeared before the tribunal to have the charges against him read. It is also totally unhelpful for the First Respondent not to have filed a record of the proceedings of the hearing even though the burden of proof was not on him.

[67] The Applicant's evidence at para 12 of his said affidavit filed 09 November 2006 is to the effect that the "...Commissioner accepted the charges and fined me." Not that he accepted the charge (being absent without leave.)

[68] I saw and heard the Assistant Commissioner of Police give his evidence in chief and under Cross-examination. He appeared unshaken and credible

and I accept his evidence as true that the Applicant pleaded guilty to all the charges. On the state of evidence, and, given the uncertainty in the Applicant's evidence, I am satisfied, on a balance of probabilities, that the Applicant did plead guilty to the charges. In consequence I am unable to find that the Applicant was not accorded due process of law.

Issue 3 - Did the First Respondent refuse to grant the Applicant an opportunity to present/adequately present his case before the disciplinary Tribunal?

[69] The Applicant did not dispute (as was contended on behalf of the First Respondent that) he was: (1) notified of the charges laid against him; (2) given an opportunity to be respond to the charges by requesting that he provide reasons, which reasons he supplied to the COP by letter dated 20 September 2001; and (3) given an opportunity to be heard and to call witnesses at the disciplinary proceedings.

[70] The Applicant posited his case upon the Constitutional guarantee of religious freedom which I have held was not violated. Having regard to my findings with respect to the charge of insubordination, I also find that he was accorded due process.

Disposal

[71] In the circumstances, the Application is dismissed and the Applicant is ordered to pay the First Respondent's costs of the application to be assessed if not agreed.

William Chandler
Judge of the High Court