

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

Civil Suit No: CV 1383 of 2013

BETWEEN

MICHAEL HARRISON

CLAIMANT

AND

**CHIEF PERSONNEL OFFICER
PUBLIC SERVICE COMMISSION**

**FIRST DEFENDANT
SECOND DEFENDANT**

Before The Honourable Madam Justice Pamela Beckles, Judge of the High Court

2016: August 30

Appearances:

Ms. Vonda Pile, Attorney-at-law on behalf of the Claimant who is present

Mrs. Marsha Lougheed-Paige, Attorney-at-law on behalf of the First and Second Defendants

DECISION

Introduction

By Notice of Application filed on August 8, 2016 for a court order during the course of court proceedings and supported by an affidavit of the

same date made by the Claimant, Mr. Michael Harrison, the Claimant is seeking the following orders:

- “1. That the Defendants reinstate the Claimant’s salary
2. That the defendants do pay damages to the Claimant
3. That the Defendants do pay the Claimant’s cost in the matter, and
4. Such further or other relief as this Honourable court deems fit.”

Background

[2] By way of an urgent application filed on August 6, 2013 seeking a court order during the course of court proceedings pursuant to Rule 11.4(4) of the Supreme Court (Civil Procedure) Rules 2008 (CPR), the Claimant applied for judicial review pursuant to Part 56 of the CPR.

[3] The urgent application was for an injunction to restrain the Chief Personnel Officer and the Public Service Commission from filling the post of Executive Officer at the Sewage and Solid Waste Project Unit, Ministry of Health. The Claimant seeks to rely upon **section 13(11)** of the Public Service Act, Cap. 29 of the Laws of Barbados to support his contention that he was entitled to be appointed to the post of

- Executive Officer in the Public Service, given the number of years that he had spent acting in a similar post.
- [4] On August 16, 2013 an order was made by **Kentish, J** “restraining the Defendants from filling the position of Executive Officer at the Sewage and Solid Waste project Unit until the final determination of this matter...”
- [5] The Claimant contends that he joined the Public Service of Barbados in 1976. He was appointed to the post of Clerical Officer with effect from October 1, 1980 and subsequently appointed on promotion to the post of Senior Clerk with effect from January 1, 2001. On March 17, 2004 Mr. Harrison was transferred to the Sewage and Solid Waste Project Unit to act as Executive Officer and according to him remained there for nine years before he was informed on May 2013 by a Mr. John Broome that the post would be filled by another public officer and that he was to revert to his substantive post of senior clerk as of June, 2013 which was later revised to August 1, 2013.
- [6] It is against this background that the substantive application for judicial review was filed.
- [7] Mr. Harrison has refused to return to his substantive post of Senior Clerk and continues to turn up to the acting position of Executive Officer. Attempts have been made to discuss the assignment of the

Claimant with him but has failed with the Claimant indicating to the Defendants that “*a court order was in place*” and he “*was not moving until the matter was finally determined by the court.*”

- [8] The Defendant’s contention is that since Mr. Harrison, a public officer has failed to report to the office to which he was assigned since July 2013 then this amounts to unauthorized leave or absence from duty and it is for this reason that his salary is being withheld and will continue not to be paid until he reports for duty to the post to which he has been assigned.

Issue(s)

- [9] The issue for determination is given the facts outlined above whether the court should order the reinstating of the Claimant’s salary.

The Law

- [10] What cannot be disputed is that the Claimant has a lengthy service as a public officer in Barbados. As such he is subjected to the provisions of the Service Commissions (Public Service) Regulations 1978 (as amended from time to time) and to such other Regulations, Statutory Rules, General Orders and administrative directives as may be in force in the Public Service.

[11] By **section 2** of the Public Service Act, Cap 29 a public officer is defined as “...the holder of any public office and includes any person appointed to act in that office...” so that the Claimant has at all times been subject to the terms and conditions of the said Act and in particular the Claimant is subject to the Codes for the Public Service established at section 11(1) of the said Act as well as the Code of Conduct and Ethics as set out in the Second Schedule of the Act.

[12] It provides as a member of the Public Service one is expected at all time to “...serve the Government in accordance with the principles set out in this code recognizing

(a) The accountability of officers to the officer in charge of their department;

(b) The duty of all officers to discharge their functions reasonably and in accordance with the law;...”

[13] It must be noted that paragraph 15(1) states that “...officers who are absent from duty without permission, unless on the opinion of the Permanent Secretary or the Head of Department the absence is due to illness or other unavailable circumstances, are in breach of this code and their pay may be reduced appropriately by the Permanent Secretary or Head of Department to take account of such absence...”

- [14] It is the opinion of this court that even though the Claimant has the substantive issues of his judicial review application to be dealt with, it is not to be intertwined with his current application with respect to the reinstatement of his salary.
- [15] They are separate issues with separate considerations and should not be confused.
- [16] What also should not be confused is the order which was granted by **Kentish, J.** Whereas that order restrained the Defendants from filling the position of Executive Officer at the Sewage and Solid Waste Project Unit until the final determination of the matter, nowhere does it state that the status quo as it relates to the Claimant acting in that position should remain. So that unless and until it is established that the Defendants have filled the said post, then this order has not been breached and therefore any order and/or directive by the Defendants to the Claimant must be complied with.

Disposal

- [17] In light of the fact that the Claimant continues to disregard a lawful directive issued by the Defendants to revert to his substantive position and has instead chosen to turn up to work at a place where he is no longer assigned, then he continues to be absent from work without permission and as such is not entitled to be paid.

[18] The application for reinstating the Claimant's salary is dismissed with no order made as to costs. The Claimant is advised that if he wishes to receive a salary, then he should return to his substantive position with immediate effect.

PAMELA A. BECKLES
Judge of the High Court