IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

8/8/06

CICA No. 26 of 2005
(GC Cause 519 of 2000)

BETWEEN:

HIS EXCELLENCY THE GOVERNOR OF CAYMAN ISLANDS
APPELLANT (Defendant)

AND

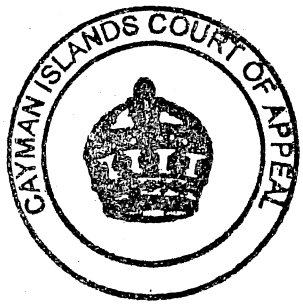
DR. ASTLEY McLAUGHLIN
RESPONDENT (Plaintiff)

Before: The Right Hon. E. Zacca, President
The Hon. M. Taylor, Justice of Appeal
The Hon. E. Mottley, Justice of Appeal

Date of Hearing April 10 & 11, 2006 Decision Given April 27, 2006

Reasons for Judgment Released: 8th August, 2006

Appearances: Adrian Lynch, QC and Suzanne Look Loy, Crown Counsel for the Appellant
Ramon Alberga, QC and Paul Simon of CS Gill for the Respondent



REASONS FOR JUDGMENT

MOTTLEY, J.A.

1. On 29 November 2002, in McLaughlin v. The Governor, reported at 2002 CILR at page 576, the present respondent Dr. McLaughlin, who was appellant in that appeal, obtained a declaration that the decision of the Governor to retire him and his dismissal from the office of Administrative Officer Grade 1 in the Ministry of Agriculture, Environment, Communications & Works, consequent upon attempts to abolish this office, were void. He sought an order that he be reinstated. The Court of Appeal, however, declined to make that order. Instead of the order for

reinstatement, the Court concluded that the remedy available to McLaughlin was damages. The matter was remitted to the Grand Court for damages to be assessed. The Court of Appeal declined to make a finding whether, having regard to all the circumstances, the office of Dr. McLaughlin could be abolished or not. Damages were subsequently assessed by the Grand Court at CI$409,624.31. In addition, the Governor was ordered to make payment to the Public Service Pension Fund in respect of the monthly contribution of 12% of Dr. McLaughlin's monthly salary. The Grand Court ordered that the Governor pay to Dr. McLaughlin his costs on the indemnity basis with respect to that part of the proceedings relating to the issue of liability for damages and on the standard basis with respect to the issue of damages. The costs were to be taxed. It is against these awards that this appeal has been launched.

BACKGROUND

2. The facts leading to the purported abolition of the office, and the subsequent retirement from the Public Service consequent upon the abolition of the office, are set out in the judgment of the court below and the earlier judgment of this Court. No useful purpose will be served by rehearsing them.

3. The assessment of damages took place over three days between 26 and 28 of July 2005. Dr. McLaughlin claimed unpaid salary and other loss. He alleged that, since the Court of Appeal had declared that his retirement was void, he remained a public officer and, as such, was entitled to be compensated by being paid his salary attached to his post. He contended that no question of reinstatement arose because the court's declaration that his dismissal was void meant that the decision to dismiss was of no effect. He asserted that he still continued to be employed in the Public Service and as such was entitled to his salary and all other payments which were attached to

his salary. Counsel for Dr. McLaughlin contended that when this Court declined to order reinstatement the Court meant reinstatement to the particular post that he held, not reinstatement to the Public Service. He argued that the effect of the declaration by the court that the decision was void meant that it was a nullity and of no legal effect and therefore Dr. McLaughlin continued to be employed in the Public Service.

4. Counsel for the Governor took issue before the Grand Court with the construction placed on the judgment of this court. In his Points of Defence, the Governor contended that, in declaring the decision to retire Dr. McLaughlin from the Public Service void, this Court was doing no more than holding that the decision was unlawful. Having so held, the Court, in granting the remedy to which Dr. McLaughlin was entitled, declined to make the order for reinstatement which he sought and instead ordered that the Governor pay him damages to be assessed by the Grand Court. Counsel for the Governor further contended that, by holding that reinstatement was not the appropriate remedy, this Court demonstrated that the contractual relationship had come to an end and could not have been practically revived. In these circumstances, the Governor was not under any obligation to the respondent in respect to his employment other than to pay the damages which the Court of Appeal ordered, and which were to be assessed by the Grand Court.

5. Before assessing the damages, the Grand Court concluded that it was necessary to resolve what it identified as an apparent tension between the provision of the decision of this Court declaring the decision to dismiss Dr. McLaughlin and his dismissal void and the provision by which reinstatement to his particular post was none the less refused and damages stated to be the remedy available to him instead. The Grand Court stated that it was settled law that a decision which is

declared to be void is a nullity and of no effect. Reference was made to **Ridge v. Baldwin [1964] A.C. 40** where Lord Reid said at p. 80:

> "Then there was considerable argument whether in the result the watch committee's decision is void or merely void able. Time and again in the cases I have cited it has been stated that a decision given without regard to the principles of natural justice is void, and that was expressly decided in **Wood v. Woad (L.R.9 Ex. 190)**."

6. Submissions were made to us, and various authorities citied, as to the effect of a court holding something to be void, and whether it has any effect. In the opinion of this Court, nothing can be gained in approaching this matter by seeking to define what is meant by the word void. The Court prefers to approach this matter from the basis that what this Court was declaring in its earlier judgment was that the decision to dismiss Dr. McLaughlin and his dismissal were unlawful.

7. This was the approach adopted by Lord Hailsham of St. Marylebone, Lord Chancellor, in **Chief Constable of North Wales Police v. Evans [1982] 1 W.L.R. 1155** when commenting on the declaration made by the House of Lords in Ridge v. Baldwin. His Lordship stated at page 1162:

> "In Ridge v. Baldwin [1964] A.C. 40, a majority of the House, in not dissimilar circumstances, granted a declaration that the decision of the chief constable was "void". This was the language adopted by the Court of Appeal in the instant case. Personally, I find difficulty in applying the language of "void" and "voidable" (appropriate enough in situations of contract or of alleged nullity of marriages) to administrative decisions which give rise to practical legal consequences which cannot be reversed."

8. In **Palacegate Properties Ltd. v. Camden London Borough Council [2000] 4 PLR 59** Laws LJ sitting in the Queen's Bench Divisional Court, in rejecting the concept of nullity, had this to say at p. 80:

> "It is, in my judgment, at once plain that, in this context, Mr. Spence's appeal to the concept of "nullity" is barren. A notice that is bad on Wednesbury grounds is as "null" as a notice that is bad on any other ground. "Nullity", as a name for a distinct genus of cases, is incapable of providing any objective touchstone for Mr. Spence's via media. Perhaps I should confess that once given the welcome extinction, following Anisminic, of any difference between legally bad decisions within and without the "jurisdiction" of the decision maker, I have great difficulty in seeing what "null" is to be taken to mean in our public law jurisprudence, if it does not simply mean "unlawful....."

9. In similar vein, Lord Browne-Wilkinson observed in **Reg. v. Hull University Visitor, Exparte Page [1993] A.C. 682 at p. 701**:

> "The fundamental principle (of judicial review) is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully.....
>
> If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is Wednesbury unreasonable, he is acting ultra vires his powers and therefore unlawfully."

He later reiterated this conclusion in **Boddington v. British Transport Police [1999] 2 AC 143** when he said at p. 164:

"I adhere to my view that the juristic basis of judicial review is the doctrine of ultra vires."

10. In my view, when this Court declared that the decision to dismiss Dr. McLaughlin and his dismissal were void it was saying no more than that the decision and his dismissal were unlawful. What therefore was the effect of this declaration? What remedy was Dr. McLaughlin entitled to have in this Court in the first appeal?

11. Dr. McLaughlin had been granted leave to apply for judicial review of the decision of the Governor on the ground that his retirement from the public service was unlawful because the purported abolition of his office had been reached by unfair means. The court below had dismissed the application. Dr. McLaughlin appealed to this Court which allowed the appeal. In delivering the judgment of this Court, Rowe J.A. said at p. 590:

"For the reasons contained herein, we are of the view that the judgment of the court below must be set aside and we make the declaration sought by the appellant that the decision to dismiss him and his dismissal were void.

The appellant has sought relief that he be reinstated in the office which he held at the time of his retirement. Mr. Hall-Jones submitted that courts in judicial review proceedings are loath to order the reinstatement of employees, as such an order borders on the usurpation of the powers of the decision maker, and because of the practical problems which such an order would present. For this proposition he relies on Lewis, Judicial Remedies in Public Law, 2nd ed, para. 11-021, (2000). The appellant has not been in the public service for approximately four years. We have no knowledge of the state of the requirements of the public service for personnel

and in what capacities, and, for no other reason, we did not consider reinstatement as an appropriate remedy.

The remedy available to the appellant lies in damages. We therefore remit the case to the Grand Court for the assessment of damages. The appellant is awarded his costs in this court and in the court below, to be taxed if not agreed."

12. It is clear that, having granted the declaration sought, this Court was faced with the decision of granting an appropriate remedy. The remedy sought was reinstatement. Rowe J. A. made it abundantly clear that, as Dr. McLaughlin had not been in the public service for approximately four years (at the date of that judgment), and without knowledge of the requirement of the service for personnel and in what capacities, but for no other reason, the Court would not order reinstatement as it would not be an appropriate remedy. It is significant that no declaration was sought that, because the decisions were unlawful, Dr. McLaughlin still remained a member of the public service. The decision not to reinstate was not challenged by further appeal. If Dr. McLaughlin considered that he was still a public officer it would not be unreasonable to expect that he would have sought a declaration to that effect or at any rate have challenged the decision not to reinstate him.

13. At the assessment hearing before the Grand Court, counsel for Dr. McLaughlin argued that the Court of Appeal only refused to reinstate him to his particular post, which might not have been in the interest of the Public Service, but left to the decision maker the issue whether Dr. McLaughlin should be reinstated to the Public Service, as opposed to being reinstated to the particular office he previously held. This proposition was accepted by the Grand Court.

14. The Grand Court concluded:

(i) the decision to dismiss the plaintiff and his dismissal were null and void and of no effect;

(ii) accordingly, while he was not to be ordered to be reinstated to his former particular post, he remained a public and pensionable officer subject in all respects to the statutory regulatory scheme governing his employment;

(iii) this meant that he continued to be entitled to salary so long as he continued to be available for service and for so long as no other steps were taken to determine his service;

(iv) the extraordinary and perhaps censurable result, is that this state of affairs has been allowed to persist for nearly seven years now and nearly three years after the Court of Appeal's decision. That state of affairs, however, is nothing to detract from the principle and, subject to further findings below to be expressed in relation to the question of repudiation and acceptance of repudiation since the date of the Court of Appeal's decision, will form the basis for the assessment of damages here;

(v) As to the measure of damages; I do not accept that the Court of Appeal had in mind any basis apart from salary and such pensionable entitlements as would arise in the event there was not to be reinstatement, and as would be commensurate with the plaintiff's position.

15. In concluding that, while Dr. McLaughlin was not ordered to be reinstated to his former particular post, he remained a public servant and pensionsable officer, the Grand Court, in my view, misunderstood what the Court of Appeal was saying. As stated earlier, no declaration was sought to the effect that, in view of the declaration that the decision to abolish his office was unlawful, Dr. McLaughlin remained a public and pensionable officer. That is understandable because by his

Originating Notice of Motion, Dr. McLaughlin had not claimed a declaration that he continued in office despite the Governor's decision, but claimed re-instatement and damages. This is reinforced by the fact that in his Notice of Appeal against the refusal to grant judicial review he only sought an order that he be reinstated or alternatively that he be awarded damages.

16. In **Malloch v. Aberdeen Corporation [1971] 2 All E.R. 1278** a case on which the Grand Court relied, it was argued that to order reinstatement of the appellant would in effect be to grant specific performance of the contract of employment, which is not permitted by law. In rejecting this argument Lord Reid said at p. 1284:

> "There would be no reinstatement. The result would be to hold that the appellant's contract of employment had never been terminated and it would be open to the respondents at any time here after to dismiss him if they chose to do so and did so in a lawful manner. Unless they chose to do that the appellant's contract of employment would continue.
>
> Then it was said that the proper remedy would be damages. But in my view if an employer fails to take the preliminary steps which the law regards as essential he has no power to dismiss and any purported dismissal is a nullity. We were not referred to any case where a dismissal after failure to afford a hearing which the law required to be afforded was to be held to be anything but null and void".

17. Lord Wilberforce at p. 1297 stated:

> "There remains only the question of procedure and remedy. I am supported by the opinion of my noble and learned friend, Lord Reid, that reduction is an appropriate procedural remedy in such a case as this, it was granted in **Palmer v. Inverness**

> **Hospital Boards**. I can see no public policy objection to reduction of the resolution for dismissal which has the effect of leaving the appellant as legally in his appointment with salary and pension consequence to date."

18. In Lord Wilberforce's view, the decision to ensure that the appellant retained his position is arrived at by way of an appropriate procedural remedy which he proposes – "reduction" of the resolution. He did not state, as Lord Reid did, that the no issue of reinstatement arose. In my view, had Lord Wilberforce been of the opinion that the unlawful dismissal meant that Malloch was still employed by the Corporation, there would have been no need to apply a procedural remedy to ensure that he was still employed as a teacher. His Lordship would not have been concerned with whether there was any public policy objection to the reduction of the resolution. Plainly Lord Wilberforce considered this remedy to be discretionary. It is not a remedy that would be granted without regard to the circumstances of the case.

19. Lord Simon of Glaisdale, who agreed with the majority, stated at p. 1298:

> "I therefore agree that this appeal should be allowed and the case should be remitted to the Court of Session with a direction to reduce the resolution for dismissal so far as it affects the appellant and the consequent letter of dismissal."

20. The Grand Court also relied on **Vine v. National Dock Labour Board [1956] 3 All E.R. 939**. The plaintiff was a registered dock worker employed in the reserve pool by the National Dock Labour Board under a statutory scheme established by the Dock Workers (Regulations of Employment) Order 1947. The plaintiff had been dismissed. He claimed damages for wrongful dismissal and a declaration that his purported dismissal was illegal, ultra vires, and invalid. The

plaintiff was granted damages and a declaration. The National Board appealed to the Court of Appeal which struck out the declaration. On further appeal to the House of Lords he was granted both damages and a declaration that the purported dismissal was a nullity.

21. Viscount Kilmuir, Lord Chancellor, at p. 944 said:

> "First, it follows from the fact that the plaintiff's dismissal was invalid that his name was never validly removed from the register and he continued in the employ of the National Board. This is an entirely different situation from the ordinary master and servant case.....Here, the removal of the plaintiff's name from the register being, in law, a nullity, he continued to have the right to be treated as a registered dock worker with all the benefits which, by statute, that status conferred on him."

22. In delivering his judgment, Lord Keith of Avonholm said at p. 948:

> "This is not a straight forward relationship of master and servant. Normally, and apart from the intervention of statute, there would never be a nullity in terminating an ordinary contract of master and servant. Dismissal might be in breach of contract and so unlawful but could only sound in damages. Here we are concerned with a statutory scheme of employment. One of its objects was to do away with the evils of casual employment at the docks.....
>
> No employer can engage labour at the docks unless he is registered under the scheme, and no dock worker can be employed at the docks unless he also is registered under the scheme."

23. Vine's case can be distinguished from the instant case. In order to work on the docks, the worker had to be registered under the statutory scheme. It may very well be that, for this reason, the House of Lords did not consider damages alone to be an adequate remedy. For Vine to have worked at the docks his name would have to be restored to the statutory scheme. Without such restoration he would not have been eligible to be considered for employment on the docks. It may very well be that these cases would have supported Dr. McLaughlin had he sought a declaration that because the decision to dismiss him and his dismissal unlawful, he still held his office. He sought instead an order for reinstatement, necessarily presupposing that he had been removed and this was refused for the reason stated by Rowe J. A. in the judgment of this Court.

24. What in law is the effect of the declaration that the decision to dismiss Dr. McLaughlin and his dismissal were unlawful? I propose to examine the case of **Chief Constable of North Wales Police v. Evans [1982] 1 W.L.R. 1155** and **Jhagroo v. Teaching Service Commission [2002] 61 W.I.R 510**. Before so doing I make the observation that while the decision of the Watch Committee in **Ridge's** case was held to be null and void, at no stage was it suggested that he remained employed as chief constable. At p. 82 of the judgment Lord Reid stated:

> "There appears to have been no discussion in the courts below as to remedies which may now be open to the appellant, and I do not think that this House should do more than declare that the dismissal of the appellant is null and void and remit the case to the Queen's Bench Division for further procedure. But it is right to put on record that the appellant does not seek to be reinstated as chief constable: his whole concern is to avoid the serious financial consequences involved in dismissal as against being required or allowed to resign."

This statement of the chief constable to be allowed to resign rather than be reinstated seems to carry acknowledgment that he could still be engaged as Chief Constable.

25. Lord Devlin later at p. 140 expressed his concern that the Chief Constable had not been "compelled to retire and thus saved some or all of his pension right". His Lordship went on the state obiter:

> "What is unfortunate about the result is that it means that during the whole time taken up in the elucidation of this difficult point of law, the appellant has legally been in office and entitled to the appropriate emoluments. That would be so, I suppose, even if he had been in profitable employment elsewhere, for his claim would be for salary and not for damages for wrongful dismissal."

It appears that the question of the appropriate remedy was not dealt with by the House of Lords. That these statements were obiter is to be deduced from the statement by Lord Reid, referred to above, that it appears that there was no discussion in the courts below as to the remedies open to the appellant Ridge.

26. In **Evan's** case the issue of what remedy was open to Evans was canvassed by their Lordhsips. Lord Hailsham of St. Marylebone, after stating that in his opinion Evans had been made to resign four years earlier under circumstances which he considered to be unfair, said at p. 1163:

> "I am inclined to think that his decision, though made under duress, to pursue the option of resignation did put an end to the tenure of his office as constable. If so, a declaration simply to declare void the decision of the appellant to offer the respondent a Hobson's choice between resignation and dismissal is a mere brutum fulmen without practical consequences."

27. The Lord Chancellor then went on to pose a series of quasi-rhetorical questions:

> "If the decision was "void," has the respondent been a constable in the police force in North Wales in the intervening four years and what has happened to the 10 months of uncompleted probationary service? Since the only decision removing him from office was the decision now impugned has he now become an established constable? Has he acquired pension rights? Is he entitled to back pay?.....Can we simply put the clock back as if nothing has taken place?"

He went on to point out that Evans stated that "he was not interested in money and simply wanted reinstatement what ever that might mean."

28. As regards the appropriate remedy Lord Hailsham stated at p. 1163:

> "My own belief is that this would have been pre-eminently a case which would have been dealt with most effectively either by re-engagement perhaps on a fresh term, which the appellant does not offer, or by substantial monetary compensation....."

29. Having posed the series of quasi-rhetorical questions based on the unlawful decision, including whether the respondent had been a constable during the intervening four years and whether he had become an established constable, it is significant that the Lord Chancellor did not seek to answer any of the questions posed. For sure he did not conclude that as a result of the decision being held unlawful Evans must be treated as though he was never dismissed. Later, the Lord Chancellor concluded that the preferred remedy would be re-engagement on a fresh term. This statement also recognized that the employment was brought to an end, albeit unlawfully. The Lord Chancellor went on to suggest that, in the absence of re-engagement, Evans would be entitled

to substantial damages. Lord Hailsham did not consider that Evans was still employed by North Wales Police.

30. Lord Brightman, who delivered the main judgment, and with whom the other Law Lords agreed on the question of the remedy to be granted, had this to say at p. 1175:

> "Whatever remedy may be granted by the court in this case, I think it is highly desirable that the North Wales Police and the respondent should be in no doubt, how, under the order, they will stand in relation to each other."

His Lordship continues:

> "The conclusion reached by the Divisional Court, the Court of Appeal and by this House, if your Lordships are in agreement with me, is that the chief constable acted unlawfully and in breach of his duty under regulation 16 in threatening to dispense with the respondent's services unless he resigned from the North Wales Police and in thus causing him to resign. That having been established, the respondent is, in my view, entitled at least to a declaration to that affect. But the matter cannot be satisfactorily left there. One must know what are the consequences that flow from the breach of duty."

31. Lord Brightman then went on to consider the remedies open to Evans. He considered that one remedy would be to add to the declaration that an order for mandamus issue to the Chief Constable requiring him to restore Evans to the office of probationer Constable which he held when he was forced to resign. Again it is significant that his Lordship considered ordering mandamus but not a declaration that Evans continued to be employed by the North Wales Police.

32 The fact that the House of Lords was considering whether or not to order mandamus, is an indication that their Lordships were of the view that Evans was no longer employed by the North Wales Police even though they had held that the Chief Constable had acted unlawfully. To order mandamus would, in the circumstances, be to order reinstatement. This was a matter for the exercise of their Lordships discretion

33. Lord Brightman identified the alternative remedy "a declaration affirming that by reason of such unlawfully induced resignation" Evans became entitled to the same rights and remedies, not including reinstatement, as he would have had if his services had been unlawfully dispensed with by the Chief Constable under regulation 16(1). Such a declaration would have allowed him to pursue all remedies open other than re-instatement e.g. damages. His Lordship was tempted to order mandamus, but considered that such an order would have been bordering on usurpation of the function of the Chief Constable. Lord Brightman indicated that it was open to Evans to apply in the ordinary way to rejoin the North Wales Police as a new entrant. This is a clear indication that he was no longer a member of the Police, even though the decision that caused him to resign was unlawful.

34. In **Jhagroo v. Teaching Service Commission [2002] 61 W.I.R 510** the Privy Council held that it was not open to the Teaching Service Commission of Trinidad and Tobago, "by a retrospective appointment letter to deprive the appellant of the protection under S 62 of the Education Act 1966". This section provided for modes of leaving the Teaching Service. The issue that arose was as to the appropriate order to be made in respect of an appellant who had not taught for a period of over eight years and who, in the interim, had suffered serious health problems which

led to the amputation of both legs. Counsel for the appellant had submitted that the appropriate remedy was a declaration that there never was a valid decision of the Commission bringing his tenure of office to an end. In addition to the declaration, the appellant asked for monetary compensation founded in debt, i.e. based on his salary rather than damages, relying on the decision of **Malloch v. Aberdeen Corporation [1971] 1 W.L.R. 1578** and a decision of the **Constitution Court of South Africa, Hoffmann v. South African Airways [2001] 2 L RC 277**

35. In rendering the opinion of the Privy, Council Lord Walker of Gestingthorpe stated that "it is a matter of judicial discretion whether a litigant who has been unlawfully dismissed (or compelled to resign) and has in fact ceased to perform any of the duties of the office, should be granted an order for reinstatement". In the exercise of that discretion, the Privy Council recognized that "there would be a high degree of unreality in a declaration that the appellant is still a member of the Teaching Service or in an order directing the TSC to re-appoint him to the Teaching Service." Lord Walker concluded:

> "44. In these circumstances the appropriate relief to be granted is a declaration that immediately before 6 January 1995, the appellant held office as an Assistant Teacher III, and held this office for an indeterminate period under S 58 of the Act; and the remission of the matter to the High Court for the assessment of damages on the footing that the appellant's position was held for an indeterminate period and could only be terminated in one of the ways set out in S 62 of the Act."

36. The Privy Council left open the issue of whether, because of the unlawful conduct of the Commission, the appellant's tenure .had not been properly brought to an end, and whether he remained in the Teaching Service. However, it rejected the submission by counsel for the appellant

that he was entitled to his salary, as a debt. This would be equivalent to determining that he was still employed as a teacher and therefore entitled to recover his salary. Instead, a remedy was fashioned which gave him damages to be assessed by the High Court for the wrongful termination of his office.

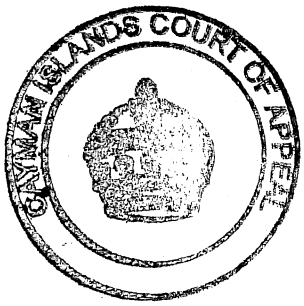
37. Support for the approach taken by this Court in the earlier appeal in awarding damages rather than ordering re-instatement may be found in Jhagroo's case where Lord Walker stated, at p. 523 of the judgment:

> "Even if the position is regarded in terms of a statutory office regulated by public law, it is a matter of judicial discretion whether a litigant who has been unlawfully dismissed (or compelled to resign), and has in fact ceased to perform any duties of the office, should be granted an order for reinstatement: see **Chief Constable of North Wales v. Evans [1982] 1 W.L.R 1155**).

38. If the intention is to challenge the exercise of this judicial discretion by this Court, it may only be done on appeal. If Dr. McLaughlin was dissatisfied with the refusal of the Court of Appeal to reinstate him, he ought to have appealed that order. He cannot seek to challenge the order that he be not reinstated but that he should recover damages by now claiming damages as if he had not been dismissed or had been reinstated. It would be wrong, in the view of the court, to permit Dr. McLaughlin to pursue a claim for salary when he has performed no work in the public service of the Cayman Islands since 1999. To accede to a claim for his salary would be to permit a claim in debt rather than for damages. In so doing, Dr. McLaughlin would in effect be re-litigating the issue of re-instatement which this Court had earlier rejected. Such an approach would be in breach of the fundamental doctrine that there must be finality to litigation.

39. In concluding as we have done, we do not find it necessary to consider the other submissions made by counsel. In the circumstances it is not necessary to consider Dr. McLaughlin's Cross Appeal.

40. It was for these reasons that this Court allowed the appeal and ordered that the matter be returned to the Grand Court for re-assessment of damages based on the original declaration made by this Court that the decision to dismiss Dr. McLaughlin and his dismissal were unlawful, and the cross appeal of Dr. McLaughlin is dismissed. The order for costs below is vacated and no order made as to costs below. Dr. McLaughlin is to pay the Governor the costs of this appeal to be taxed or agreed.



Mottley, J.A.

ZACCA, P.

41. I have had the opportunity of reading in draft the judgment of Mottley, J.A. I agree with his reasons and conclusion.

Zacca, P.

TAYLOR, J.A.

42. I am in complete agreement with the Reasons for Judgment of Mr. Justice Mottley, to which I wish only to add the following observations concerning the difficulties that have arisen in applying the earlier decision of this Court.

43. By his Notice of Originating Motion Dr. McLaughlin sought a "declaration that the Decision of the Defendant, His Excellency the Governor,... to dismiss the Plaintiff was void, reinstatement or, in the alternative, damages". In his statement of "Grounds on Which Relief is Sought" Dr. McLaughlin's claim for reinstatement is described as a claim for "reinstatement of the Plaintiff to the office which he held prior to the dismissal, or an alternative suitable office, with full back pay and benefits, including seniority for pension and other purposes". His alternative claim for damages is here stated to include "full pay and benefits, including all entitlements based on seniority, from 21st December 1998 to the date of the order granting the same and beyond". In his Notice of Appeal to this Court from dismissal of these claims Dr. McLaughlin sought only that he "be re-instated to the office which he held; alternatively, damages". Dr. McLaughlin did not seek a declaration that he remained in office, or that he remained a member of the public service. His claim for reinstatement necessarily involved acceptance that he had been removed from both. His position was that he had been wrongfully removed, and that he should be restored with full back pay and benefits or in the alternative should receive damages in the amount of what would have been his compensation had he remained in office.

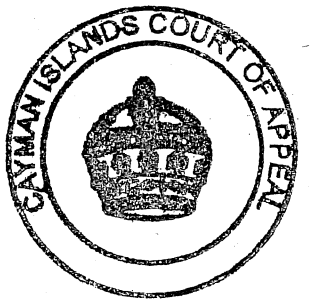
44. The authorities dealt with by Mr. Justice Mottley demonstrate that a decision to retire, or otherwise to remove, a member of the public service, if made by a person having authority in that

regard as is obviously here the case, can suffice in law effectively to remove the member from the service, even though the decision is invalid under the regulatory scheme governing the relationship between public employer and employee. Following the Governor's decision Dr. McLaughlin no longer held office and could no longer perform any governmental function. He sought an order that he be re-instated, that is to say 'put back' or restored, either to that position from which he had been removed or a similar position in the service.

45. When this Court in the earlier proceeding allowed Dr. McLaughlin's appeal from dismissal of his claim, and held his retirement to be unlawful, it declined to order re-instatement for reasons then given, and remitted the matter to the Grand Court for assessment of his damages. Dr. McLaughlin was entitled to compensation for having been unlawfully removed from office. This Court did not say that his damages should be as claimed, or suggest how the amount should be arrived at. That called for consideration of evidence not before this Court.

46. On the present hearing no cases were cited to us on assessment of damages for wrongful deprivation of employment terminable by regulation only in stipulated circumstances or according to a prescribed process, and it was not suggested to us that we should decide the principles to be applied in assessing damages in this case. As in any other area of the law, such principles emerge from consideration of the evidence given in individual cases. On the re-assessment much will turn on the trial judge's view of the consequences of wrongful termination on a person in Dr. McLaughlin's position.

47. If there is authority from other jurisdictions regarding assessment of damages for wrongful deprivation of similarly-protected employment, this may be of some assistance to the Grand Court judge conducting the re-assessment of damages.



Taylor, J.A.