

IN THE GRAND COURT OF THE CAYMAN ISLAND



IN THE MATTER OF SECTION 28 OF THE PUBLIC SERVICE COMMISSION REGULATIONS, 1985

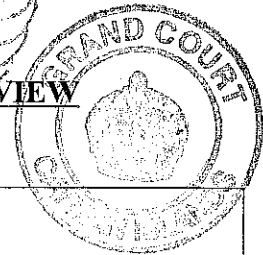
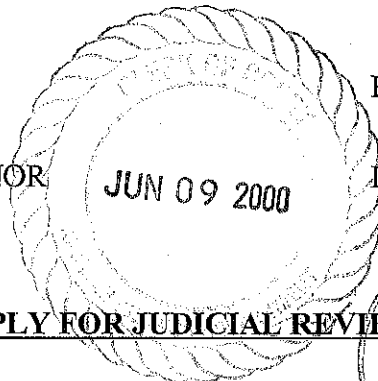
CAUSE NO. 489 OF 2000

BETWEEN DR. ASTLEY McLAUGHLIN

PLAINTIFF

AND HIS EXCELLENCY THE GOVERNOR OF THE CAYMAN ISLANDS

DEFENDANT



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant(s)	Dr. Astley McLaughlin, P.O. Box 1896 GT Grand Cayman, Cayman Islands
Judgment, order, decision or other proceeding in respect of which relief is sought	Decision of the Defendant made on or about 21 <sup>st</sup> December 1998, said to be effective on 1 <sup>st</sup> April 1999
<u>Relief Sought</u>	
A declaration that the Decision was void, reinstatement or, in the alternative, damages representing full compensation for all amounts lost from the dismissal and from actionable misrepresentations	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	ORREN MERREN & COMPANY P.O. BOX 481 GT. GRAND CAYMAN, CAYMAN ISLANDS (PAUL SIMON - 949-7299 EXT. 204)
Signed: <i>Orren Merren &amp; Company</i>	Dated: <i>08 June 2000</i>

**GROUND ON WHICH RELIEF IS SOUGHT**  
(If there has been any delay, include reasons here)

Note - Grounds must be supported by an affidavit, which verified the facts relied on.

**GROUND ON WHICH RELIEF IS SOUGHT**

- 1.(a) The decision of the Defendant was made pursuant to section 28 of the Public Service Commission Regulations, 1985, (as amended) (hereinafter the "PSC Regulations"). That section deals with dismissal and states the following:
- " 28. Where an office which is one of a number of such offices has been abolished but one or more offices remain, the Head of Department shall make a report through the Chief Secretary recommending with reasons, which substantive holder of such office should have his appointment terminated. The Chief Secretary shall forward such report to the secretary with his own recommendations and the Commission shall give its advice thereon to the Governor."
- (b). Section 28 requires the existence of three facts (collateral facts) which are conditions precedent to the existence of jurisdiction to make the decision to dismiss:
- (i) that the office held is one of a number of such (like) offices in the department;
  - (ii) the office held has been abolished; and
  - (iii) one or more such (like) offices remain
- None of these collateral facts was present; therefore, the Governor's decision was void.
2. Even if the collateral facts on which jurisdiction was assumed existed, which is denied, section 28 of the PSC Regulations is invalid and of no effect because it contravened, in December 1998, and contravenes sections 54 and 55 of the Cayman Islands (Constitution) Order 1972, sections 4, 6, and 7 of the Public Service Commission Law (1976 Revision) and sections 3(a) and Part 6 of the Labour Law (1996 Revision).
3. Even if the Plaintiff's office had been abolished, which is denied, the Defendant owed the Plaintiff, or assumed, a duty to provide the Plaintiff with suitable alternative employment which was available. The suitable alternative employment was the position of Assistant Director of the Mosquito Research and Control Unit, a position which the Plaintiff previously held. Other suitable positions became available before the effective date of the dismissal. Persons reporting to the Defendant made actionable misrepresentations about the availability of suitable alternative employment.
4. The Plaintiff Claims:
- (1) a declaration that the decision to dismiss him and the dismissal were void;
  - (2) 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;
  - (3) in the alternative, damages, for the Defendant's illegal conduct and breach of duty, consisting of full pay and benefits, including all entitlements based on seniority, from 21<sup>st</sup> December 1998 to the date of the order granting the same and beyond;
  - (4) attorney's fees and disbursements on a full indemnity basis, and
  - (5) such further and other relief as to this Honourable Court may seem just.