

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2023/0221

BETWEEN:

PETRONA THOMAS

Claimant

and

THE PUBLIC SERVICE COMMISSION

First Defendant

DESHAI DORE, THE CHIEF PERSONNEL OFFICER

Second Defendant

Appearances:

Ms. Shari-Ann Walker with her Mrs. Rochelle John-Charles instructed by Mr. Terence V. Byron for the Claimant

Mrs. Simone Bullen Thompson, Solicitor-General, with her Mr. Christopher Forde, Crown Counsel, for the Defendants

2026: May 6;
July 30.

JUDGMENT

- [1] **GILL, J:** A public officer and overt supporter of a political party seeks relief as a result of a transfer/removal from her post after a change of government.
- [2] This is an application brought by way of fixed date claim by the claimant, Petrona Thomas, challenging a decision to transfer her from her appointed post of Supervisor of the Centralised Purchasing Unit (CPU).

- [3] The claimant contends that the transfer was effected without reasons, without affording her an opportunity to be heard, and in breach of the principles of natural justice.

Background

- [4] The claimant was appointed Supervisor of the CPU, Ministry of Finance, a substantive post within the public service with effect from January 1, 2019. This was a promotion from Administrative Officer of the said CPU.
- [5] On September 29, 2022, the claimant attended a meeting with the Head of the Civil Service and the Financial Secretary where she was told that she was required to proceed on leave as she had accumulated more than the allotted number of vacation leave days an employee should have. On the said date, the claimant filled out the Leave Form, applying for vacation leave for 143 days from October 3, 2022 to April 28, 2023.
- [6] The claimant returned to work on May 2, 2023, when she received a letter dated said May 2, 2023 from the Human Resource Management Department, Office of the Prime Minister and signed by one S. Warner as "Chief Personnel Officer (Sup.)". That letter directed the claimant, without reason, to remain on leave until May 31, 2023.
- [7] On June 1, 2023, the claimant again returned to work when she received a letter dated said June 1, 2023 signed by the second defendant, the Chief Personnel Officer (CPO) in the Human Resource Management Department. The letter stated:

"Re: Further Leave

Dear Ms. Thomas:

During your absence, the Central Purchasing Unit has undertaken much-needed restructuring. It is therefore recommended that you be transferred to another Ministry, however, that process is not yet finalized. Until the finalization of the transfer, you are to proceed on further leave not to be counted against any current or future vacation leave balance. You will be advised once the transfer is completed."

- [8] A Request for Transfer and Appointment dated July 6, 2023 from the Human Resource Management Department, signed by one J. Mills for the CPO, to the PSC requested that the

claimant be transferred from the post of Supervisor of the CPU to the post of Logistics Coordinator, Ministry of National Security/National Emergency Management Agency (NEMA).

- [9] A letter dated July 11, 2023, to the claimant from the CPO, stated:

“Dear Ms. Thomas,

The Public Service Commission on 6th July 2023 has approved that you be transferred to the post of Logistics Coordinator, National Emergency Management Agency, Ministry of National Security, Citizenship and Immigration with effect from 14th August, 2023.”

- [10] By Minute dated July 27, 2023, the Secretary of the PSC advised the CPO that the Governor-General had approved the recommendation of the PSC made at its meeting held on July 6, 2023, that the claimant be transferred and appointed to the post of Logistics Coordinator, NEMA.
- [11] A letter dated August 11, 2023, to the CPO from the claimant’s attorneys, demanded that she be heard on the issue of her purported transfer. Having received no response, the claimant’s attorneys sent another letter dated August 22, 2023 to the CPO giving notice that the claimant intended to institute legal proceedings.
- [12] Thereafter, the Secretary of the PSC, by letter dated August 31, 2023, to the claimant, invited her to a meeting scheduled for September 14, 2023 to discuss the details of her matter.
- [13] The claimant’s attorneys then wrote the PSC on September 12, 2023, indicating that they were willing to meet if they were assured that the purpose of the meeting was to consider a transfer to a similar position in status where the claimant heads a department and reports to a Permanent Secretary.
- [14] Without this assurance, the claimant and her attorneys did not attend the meeting.
- [15] The claimant did not assume the post of Logistics Coordinator, NEMA. However, she continues to receive her full salary to date.

The Claim

[16] On December 18, 2024, the claimant filed an amended fixed date claim on December 18, 2024 seeking the following relief:

1. A declaration that the decision of the Public Service Commission to transfer the claimant from her appointed position of Supervisor of the Centralised Purchasing Unit and Head of Government Procurement to Logistics Coordinator at the National Emergency Management Agency, Ministry of National Security, Citizenship and Immigration was wrongful, unlawful, irrational, procedurally irregular, unfair and a breach of natural justice principles and is void and of no effect.
2. A declaration that the decision to purportedly transfer the claimant from her said position was tantamount to a removal from office and was wrongful, unlawful, irrational, procedurally irregular, unfair and a breach of natural justice principles and is void and of no effect.
3. An Order that the decision to purportedly transfer the claimant was tantamount to a demotion in that the claimant's duties and responsibilities are a diminution in the standing that she held previously.
4. A declaration that Ms. Deshai Dore, Chief Personnel Officer acted for or purported to act for the Public Service Commission in breach of section 77 of the Constitution of Saint Kitts and Nevis.
5. A declaration that the Public Service Commission abdicated its responsibilities under the Constitution, Public Service Act and Public Service Regulations to Ms. Deshai Dore, Chief Personnel Officer who is not a member of the Public Service Commission in breach of section 77 and section 78 of the Constitution of Saint Kitts and Nevis, Public Service Act, and Public Service Regulations.
6. A declaration that the decision to remove the claimant from her position was vindictive, heavy handed and amounts to victimisation of the claimant.

7. An Order granting a permanent injunction to the claimant restraining the Public Service Commission from transferring the claimant from her position of Supervisor of the Centralised Purchasing Unit and Head of Government Procurement to a position which is of lesser equivalence in stature and standing, responsibilities and duties and remuneration without lawful excuse or justification.
8. An Order for exemplary damages or vindictory damages to the claimant.
9. An Order for damages amounting to the claimant's salary lost during the period in which she was transferred and/or removed from office and/or any benefits lawfully due to her in her position as Supervisor of the Centralised Purchasing Unit and Head of Government Procurement.
10. An Order awarding costs to the claimant.

Issues

- [17] The court must determine whether the decision of the to transfer the claimant is void and of no effect. In doing so, the court must resolve the following issues:
- 1) whether the Chief Personnel Officer acted for or purported to act for the Public Service Commission in breach of section 77 of the Constitution of St. Kitts and Nevis.
 - 2) whether the Public Service Commission abdicated its responsibilities to the Chief Personnel Officer who is not a member of the Public Service Commission.
 - 3) whether the Chief Personnel Officer possessed lawful authority to issue the leave letters to the claimant, or whether such act was ultra vires the Constitution.
 - 4) whether the transfer amounted to a demotion and a diminution in standing.

- 5) whether the decision to transfer the claimant was tantamount to a removal from office.
- 6) whether the claimant was denied procedural fairness by being transferred without notice, reasons, or an opportunity to be heard in breach of the principles of natural justice.
- 7) whether the decision was irrational or unreasonable.
- 8) whether the decision to remove the claimant from her position was vindictive, heavy handed and amounted to victimisation of the claimant.
- 9) if any of the above issues is resolved in favour of the claimant, what remedies are appropriate, including declarations, an injunction, damages, and costs.

Claimant's submissions

- [18] The claimant's case is that she was transferred and/or removed from her substantive post as Supervisor of the Centralised Purchasing Unit (CPU) without reasons, without statutory notice, and without any meaningful opportunity to be heard.
- [19] The claimant says the CPO's early correspondence, including the June 1, 2023 letter and the PSC Minutes of July 6, 2023, show that the CPO initiated the action and the PSC thereafter adopted or rubber-stamped that action without independent reasons or process. This resulted in an ultra vires transfer and breach of constitutional and statutory safeguards.
- [20] Sections 77 and 78 of the Constitution of St. Christopher and Nevis vest appointment, transfer, discipline and removal powers in the Governor-General acting in accordance with the recommendation of the Public Service Commission (PSC), and protect the PSC's independence (Section 77(11)). The claimant submits that these provisions are the primary legal constraints on how transfers may lawfully be effected.

[21] The claimant relies on Section 35 of the Public Service (Recruitment and Appointment of Officers) Code¹ which provides, among other things, for a public officer to be transferred to a post of equivalent grade and that a recommendation for transfer may be made with the knowledge of the public officer, and the Public Service Standing Orders² in relation to leave, including compulsory leave.

[22] The claimant invokes the tripartite grounds in **Council of Civil Service Unions v Minister for the Civil Service**³ — illegality, irrationality (Wednesbury), and procedural impropriety. The claimant cites the following authorities applying fairness in public-service contexts:

- i. **R v Secretary of State for the Home Department *Ex parte Doody***⁴ - fairness requires a person to be informed of the gist of the case he or she has to answer and be given an opportunity to respond.
- ii. **Ausbert Regis v Attorney General of Saint Lucia**⁵ - cited **Doody**.
- iii. **R v Chief Constable of Thames Valley Police, ex parte Cotton**⁶ - right to be heard is integral to fairness.
- iv. **Ramjohn v Permanent Secretary, Ministry of Foreign Affairs and Another, Kisoon v Manning and Another**,⁷ - fairness requires disclosure of allegations and an opportunity to meet them.

[23] The claimant cites the following cases from our Court on demotion and PSC independence:

¹ Statutory Rules and Orders No. 8 of 2014

² Statutory Rules and Orders No. 11 of 2014, sections 22, 23 and 27

³ [1985] AC 374 (HL) at 410-411

⁴ [1994] 1 AC 531 at 560 per Lord Mustill

⁵ SLUHCv2010/0497 at para. 70

⁶ [1990] IRLR 344 at 352

⁷ [2012] 2 LRC 362; [2011] UKPC 20 at para. 39

- i. **Otto Sam v Tyrone Burke and others**⁸ and **Tyrone Burke v Otto Sam**⁹ - CPO acted unlawfully; PSC alone has transfer power; duty of candour applies; decision to transfer was irrational.
- ii. **Claude Gerald v The Governor of Montserrat and others**¹⁰ - demotion without cause held “Wednesbury irrational”.
- iii. **Ausbert Regis** – PSC must act independently, free from executive influence.
- iv. **Endell Thomas v Attorney General of Trinidad and Tobago**¹¹ - PSC may delegate only with proper authority.
- v. **Leon Natta-Nelson v The Attorney General of Saint Christopher and Nevis**¹² - Public Service Code rules restricting political activity declared unconstitutional.

[24] The claimant’s case focuses on the following sequence/chronology:

- i. March 14, 2019 – the now Governor-General made statements at a political rally (prior to her appointment as Governor-General) to the effect that the claimant should be disciplined by Human Resources and sent home for her involvement in politics as a civil servant.
- ii. August 5, 2022 – the Opposition party won the general elections.
- iii. September 29, 2022 – claimant required to proceed on leave for 143 days.
- iv. Claimant expected to return April 2023 but told to remain on leave – May 2, 2023 letter with no reasons.

⁸ High Court Civil Claim No. 399 of 2010, delivered January 30, 2012

⁹ SVGHCVAP2014/0002, delivered September 15, 2015

¹⁰ Civil Appeal No. 2 of 2003, delivered March 29, 2004, at para. 15

¹¹ [1982] AC 13

¹² SKBHCV2018/0254, delivered March 25, 2019

- v. CPO letter of June 1, 2023 informing the claimant she had been “recommended” for transfer and to remain on leave.
- vi. Request for Transfer dated July 6, 2023, submitted to PSC.
- vii. PSC Minutes of July 6, 2023, record approval but give no reasons. The claimant stresses that the CPO’s communications pre-date any independent PSC consideration.
- viii. Governor-General’s approval and instrument of appointment followed on July 24, 2023.

[25] The claimant highlights the absence of contemporaneous PSC reasons, the late disclosure of any internal audit material, the fact that the CPO’s June 1, 2023 letter contains no reference to PSC deliberation, which was impossible as June 1, 2023 was the date the members of the PSC were appointed — all of which, she contends, support the inference that the CPO initiated the transfer and the PSC merely adopted it without independent judgment.

Procedural fairness and notice

[26] The claimant submits that, given the seriousness of the employment change (loss of supervisory responsibilities, diminution of status), fairness required: (a) disclosure of the gist of any allegations relied upon; (b) notice of the PSC’s recommendation in a form that allowed meaningful representations; and (c) an opportunity to be heard before any final recommendation was made. She relies on **Doody** and **Ramjohn** for these propositions.

[27] In **Doody**,¹³ Lord Mustill stated:

“...(5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what

¹³ [1994] 1 AC 531 at 560 F-G

factors may weigh against his interests fairness will very often require that he is informed of the gist of the case of which he has to answer.”

[28] Lord Browne in **Ramjohn**,¹⁴ in delivering the judgment of the Board, opined:

“As is trite law, the requirements of fairness in any given case depend crucially upon the particular circumstances – see, for example, *R v Secretary of State for the Home Department Ex p Doody* Almost always, however, if a decision is to be taken against someone on the basis of an allegation such as that made here, fairness will demand that they be given an opportunity to meet it.”

[29] The claimant reads section 35(3) of the Public Service (Recruitment and Appointment of Officers) Code to require that a public officer be given ten working days’ notice prior to a transfer taking effect and that the officer be informed of the PSC’s recommendation in a manner sufficient to permit representations. She submits that the letters and timing here did not satisfy that statutory protection.

[30] The claimant accepts that a subsequent hearing can sometimes cure an earlier defect (per **Lloyd v McMahon**¹⁵), but she submits that the post-decision engagement here was not a meaningful cure. The PSC’s invitation came after the decision, the claimant conditioned attendance on assurances the PSC did not give, and the PSC produced no contemporaneous reasons that could be addressed.

Illegality and ultra vires argument

[31] The claimant contends that the CPO’s June 1, 2023 letter, which announced a recommendation and required the claimant to remain on leave — amounted to the CPO exercising the PSC’s exclusive constitutional function. Where the Constitution vests a power in the PSC, the CPO cannot lawfully exercise it. Such action is ultra vires and void. The claimant relies on the **Otto Sam** High Court reasoning (Thom J, as she then was), and the Court of Appeal’s affirmation, that the CPO and not the PSC made the decision to transfer Mr. Sam, and similar cases where the CPO’s unilateral action was quashed.

¹⁴ [2012] 2 LRC 362; [2011] UKPC 20 at para. 39

¹⁵ [1987] 1 All ER 1118

- [32] The claimant submits that the PSC's Minutes of July 6, 2023 contain no reasons and that the PSC "rubber-stamped" the CPO's recommendation. Where a constitutionally independent body fails to exercise independent judgment and instead adopts another officer's decision without reasons, the resulting recommendation is vitiated.

Political victimisation

- [33] The claimant alleges that the transfer was motivated, at least in part, by political victimisation. She relies on a recorded statement at a public meeting on March 14, 2019 by Marcella Liburd, the now Governor General, which statement suggested that the claimant, as a public servant, ought to be "sent home" as a result of her involvement in politics (being on the Executive of a political party and conducting political activities in her post), the timing of events after a change of administration in August 2022, and the sequence of leave and transfer. The Court has admitted the public-statement evidence, including a video recording for context and weight (ruling May 6, 2026).

- [34] The claimant submits that where the PSC is constitutionally insulated from political influence (Section 77(11)), evidence that political considerations infected the decision undermines its legality.

Demotion/diminution of status

- [35] The claimant sets out the factual differences between the CPU Supervisor role (managing a large procurement function, staff complement up to 21, national procurement responsibilities) and the Logistics Coordinator role (limited, seasonal emergency logistics; one subordinate; forklift duties). She submits the transfer was tantamount to a demotion and not a lateral redeployment. Where a transfer effects a demotion or removal from substantive duties, stricter procedural safeguards apply and the PSC cannot rely on informal justifications to validate the change.

Removal from office and substance over form

- [36] The claimant cites the pronouncement of Byron CJ (Ag.), as he then was, in **Richard Duncan v The Attorney-General**¹⁶ to demonstrate that the decision to transfer her in effect was a removal from her post as Supervisor of the CPU. His Lordship opined:

“The duty of the Court is clear. There are abundant authorities that establish that the Court must determine the true nature of the event or transaction whatever term is used to describe it.”

- [37] Byron CJ then cited **Smith and Others v Attorney-General** (Belize) [1985] LRC (Const) 1128 where Moe CJ held (at 1138):

“It is clearly the duty of the Court to determine what in fact transpired irrespective of the name given or the term used to describe the matter under consideration. I must therefore determine the true nature of the event or transaction. What then is the substance of the transaction?”

- [38] His Lordship then considered the leading case of **Thomas v Attorney-General** (1981) 32 WIR 375 and was fortified in his opinion that “the Court must look at the undisputed facts of this matter and identify them for what they really are and not adopt a myopic view and consider only what they are represented to be.”¹⁷

- [39] The claimant urges the Court to determine the true nature of the transaction. The Court must look at substance, not labels, examine contemporaneous documents and conduct, and not allow constitutional safeguards such as PSC independence and procedural protections to be circumvented by informal administrative acts.

Duty of candour and evidential obligations

- [40] The claimant relies on the duty of candour in judicial review which requires public authorities to disclose materials reasonably required for the court to reach an accurate decision. The claimant points to the late production (or non-production) of any internal audit report relied upon and the absence of contemporaneous PSC reasons as a breach of that duty.

¹⁶ Civ. App No. 13 of 1997 at page 6

¹⁷ Ibid at page 7

- [41] The claimant asks the court to draw adverse inferences from the documentary lacunae. If the PSC had independent, contemporaneous reasons, they should have been recorded and disclosed. Their absence supports the claimant's contention that the CPO initiated the action.

Remedies

- [42] The claimant seeks: (a) declarations that the transfer/removal was unlawful and void and of no effect; (b) a permanent injunction restraining enforcement of the transfer; (c) compensation for lost salary and/or benefits; and (d) exemplary or vindictory damages.

Exemplary damages

- [43] The claimant relies on the categories in **Rookes v Barnard**¹⁸ and the discussion in De Smith's Judicial Review¹⁹ that oppressive, arbitrary or unconstitutional conduct by government servants may justify exemplary awards to deter repetition and vindicate constitutional rights. Paragraph 19-062 of De Smith's reads:

"Exceptionally, the court may award exemplary damages in tort to deter and condemn the defendant's conduct rather than merely to compensate the claimant. Such damages are generally viewed as anomalous and courts take a restrictive approach, awarding exemplary damages only if the case falls within one of three categories based on the nature of the defendant's tortious conduct) set out by Lord Devlin in *Rookes v Barnard*. The first is oppressive, arbitrary or unconstitutional action by servants of the government."

- [44] The paragraph goes on and explains:

"In this context, government servants, includes all those who by common law or statute are exercising functions of a governmental character.... The meanings of oppressive, arbitrary and constitutional are not settled, though it is clear that the three elements are to be read disjunctively.... The real question is whether simple compensation for the harm suffered is adequate to punish the public official for his outrageous conduct and deter him from repeating it."

- [45] The claimant submits that this is an appropriate case where exemplary damages ought to be awarded. The cumulative actions of the defendants were oppressive, arbitrary, in breach

¹⁸ [1964]AC 1129

¹⁹ 8th Edition, Sweet & Maxwell

of sections 77 and 78 of the Constitution and they ought to be deterred from engaging in further conduct which ought to be deemed outrageous.

Vindictory damages

- [46] The claimant submits that the Privy Council decision in **Inniss v The Attorney General of Saint Christopher and Nevis**²⁰ is useful guidance in determining an award of vindictory damages. In delivering the judgment of the Board, Lord Hope cited another Privy Council case thus:

“In *Merson v Cartwright* [2005] UKPC 38 at [18], 67 WIR 17 at [18], Lord Scott of Foscote said that the purpose of a vindictory award was not to teach the executive not to misbehave. Its purpose was to vindicate the right of the complainant to carry on his or her life free from unjustified executive interference, mistreatment or oppression. He added that the sum appropriate to be awarded to achieve this purpose will depend on the nature of the particular infringement and the circumstances relating to that infringement.”

- [47] In all the circumstances, the claimant submits that in light of the conduct of the defendants, which was oppressive and heavy handed, the claimant is entitled to an award of vindictory damages.
- [48] The claimant accepts that she bears the ordinary evidential burden to prove the facts she alleges. She submits that the admitted documentary record, the timing of communications, and the Court’s evidential ruling on political statements together provide a coherent and compelling evidential foundation for the relief sought.

Defendants’ submissions

- [49] The defendants, the Public Service Commission (PSC) and the Chief Personnel Officer (CPO), submit that the decision to transfer the claimant is not unlawful, procedurally irregular, void and of no effect as claimed and there has been no breach of sections 77 and 78 of the Constitution by any of the defendants. They contend that the claimant’s transfer was lawful, rational, procedurally fair, and did not amount to demotion or political

²⁰ [2008] UKPC 42 at para. 25

victimisation. They rely on constitutional provisions, statutory rules, affidavits, and authorities to rebut the claimant's pleaded grounds.

Constitutional authority and PSC independence

[50] The defendants emphasise that under sections 77 and 78 of the Constitution, the PSC is the constitutionally mandated body to recommend appointments, transfers, and removals to the Governor-General.

[51] They rely on affidavits of the CPO and PSC Secretary showing that a Request for Transfer dated July 6, 2023 was submitted, PSC Minutes recorded the recommendation, and the Governor-General approved it by Minute dated July 24, 2023.

[52] They cite **Elmoalis Ltd v Attorney General of Anguilla**²¹ where the Court of Appeal explained abdication to the effect that a body must not surrender its statutory functions. Pereira CJ (as she then was) stated:

“Similar to the concept of improper delegation is the concept of abdication. In simple terms, a public authority's basic statutory functions are inalienable. It must own its functions and powers and it is not entitled to surrender or ignore them unless permitted to do so by the empowering statute. As the author of **Administrative Law** states:

“Closely akin to delegation and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void.””

[53] The defendants argue that the PSC did not abdicate its decision-making authority to the CPO. The decision to transfer the claimant was not made by the CPO. The request for the claimant's transfer was brought to the attention of the PSC. The PSC considered the request and made the recommendation to the Governor-General who approved it. The CPO wrote the letter communicating the decision made by the Governor-General to the claimant.

²¹ AXAHCVP2019/0002 at para. 45

[54] They stress PSC independence, rejecting the claimant's allegation of rubber-stamping. They assert that the PSC acted independently and the CPO merely communicated the decision.

Procedural fairness and natural justice

[55] The defendants accept that public bodies must act fairly but argue that fairness is contextual. They cite the following on the issue of fairness:

- i. Judicial Review Handbook²² - fairness as a “flexi-principle”);
- ii. **R (Shoesmith) v Ofsted**²³ - fairness varies according to the context.
- iii. **Principal Reporter v K**²⁴ - no absolute right to be heard.
- iv. **Manning v Ramjohn**²⁵ - fairness depends upon the particular circumstances.

[56] The defendants interpret Section 35(3) of the Public Service (Recruitment and Appointment) Code narrowly and assert that it requires that the officer have knowledge of the PSC's recommendation and ten days' notice before transfer takes effect, but not notice of PSC's intention to meet or a right to a pre-decision hearing.

[57] They argue that the claimant was aware of the proposed transfer through letters of June 1, and July 11, 2023, and her attorneys wrote letters in August 2023 asserting her right to be heard. The PSC invited her to a meeting set for September 14, 2023, but she and her counsel did not attend.

[58] They submit that any defect was cured by the invitation, relying on **Lloyd and others v McMahon**²⁶ that subsequent hearings can remedy earlier procedural impropriety. Dillon LJ opined:

“The question whether a decision vitiated by a breach of the rules of natural justice, ie by unfairness, eg by failure to allow a person an opportunity to be heard, can be cured or made good by a subsequent hearing has been considered in a number of

²² 6th Edn. by Michael Fordham QC at paras. 60.2 and 60.2.1

²³ [2011] EWCA Civ 642

²⁴ [2010] UKSC 56; [2011] 1 WLR 18

²⁵ [2011] UKPC 20 at [39]

²⁶ [1987] 1 All ER 1118 at 1135-1136

cases recently. It is plain that no clear and absolute rule can be laid down: see per Lord Wilberforce in *Calvin v Carr* [1979] 2 All ER 440 at 447, [1980] AC 574 at 592 and per Barwick CJ in *Twist v Randwick Municipal Council* (1976) 12 ALR 379 at 384.”

- [59] The defendants submit that the claimant was given the opportunity to be heard by the PSC. They posit that it was open to the PSC after hearing the claimant’s representations to reconsider the matter and give its decision. They assert that in these circumstances, the claimant cannot be said not to have been given fair play.
- [60] On the issue of reasons, the defendants argue that the PSC Minutes need only record decisions, not reasons. They cite **Doody**²⁷ and **R v Civil Service Appeal Board, ex parte Cunningham**,²⁸ submitting that there is no general common law duty to give reasons. They point out that the Public Service Act²⁹ and Codes do not impose an obligation on the PSC to give reasons to transfer a public officer, and contend that there is no duty to give reasons in these circumstances.

Irrationality

- [61] The defendants stress the high threshold for irrationality. They cite **Council of Civil Service Unions v Minister for the Civil Service**³⁰ on Wednesbury unreasonableness, and the Court of Appeal in **Cove (Antigua) Hotels Ltd v The Hon. Gaston Browne Prime Minister of Antigua and Barbuda and others**³¹ to demonstrate that the decision must be “so outrageous in defiance of logic” that no sensible person could reach it.
- [62] They rely on Internal Audit Reports of May 2021 and December 2022, identifying deficiencies in CPU operations, including inventory inaccuracies and unimplemented recommendations. They argue that restructuring was necessary and the transfer rationally connected to the public interest in effective procurement.

²⁷ [1994] 1 AC 531

²⁸ [1991] 4 All ER 310

²⁹ Cap. 22.09 of the Laws of Saint Christopher and Nevis

³⁰ [1984] 3 All ER 935 at 951; [1985] AC 374

³¹ ANUHCVP2018/0040 at para. 52

[63] They submit the decision was not irrational but a reasonable response to audit findings and restructuring needs.

Equivalency and demotion

[64] The defendants argue that the transfer was to an equivalent post, not a demotion.

[65] They cite Section 35(1) of the Public Service (Recruitment and Appointment of Officers) Code³² which provides: “A public officer may be transferred to any post of equivalent grade in the Public Service.” They also cite the Court of Appeal case of **Gemma Bain-Thomas v The Attorney General and The Public Service Commission**,³³ where equivalency was held to include responsibility, status, challenges of the posts, rank in the public service hierarchy and qualifications, not just pay.

[66] They point out that both posts - Supervisor CPU and Logistics Coordinator NEMA - are on the same salary scale, K33–K38.

[67] The defendants argue that the claimant was not Head of Government Procurement as she asserts. They explain that procurement authority lies with the Manager of Procurement under section 7 of the Procurement and Contract (Administration) Act.³⁴ They submit that the post of Supervisor of the CPU is not that of Head of Procurement.

[68] The defendants cite the case of **Brian Francis v The Attorney General**³⁵ to demonstrate that in any transfer, the posts will not be equivalent in the sense that the duties and responsibilities and reporting requirements will be the same.

[69] They submit the transfer is in keeping with the requirement that the claimant be transferred to a post of equivalent grade and does not amount to a demotion or diminution in her rank or status.

³² S.R.O. No. 8 of 2014

³³ GDAHCVAP2015/0013 at para. 101

³⁴ Cap. 23.36 of the Laws of Saint Christopher and Nevis

³⁵ [2002] ECSCJ No. 194; GDAHCV2001/0521 at para. 27 (per Barrow J, as he then was)

Political victimisation

- [70] The defendants dismiss the claimant's reliance on statements allegedly made by Marcella Liburd in 2019 and maintain that the statements presented in the claimant's evidence and the video evidence are hearsay and irrelevant, and no weight should be attached to them in determining the issues in this case. Further, they submit that the statements relied on by the claimant do not establish that she has been subject to political victimisation.
- [71] They explain the context in which the statements must be considered. Ms. Liburd was speaking pertaining to public officers' involvement in politics and the claim brought by Leon Natta-Nelson, a public officer. At the relevant time, section 38 of the Public Service (Conduct and Ethics of Officers) Code prohibited public officers from engaging in political activities. Mr. Natta-Nelson challenged his suspension by the PSC on account of his involvement in political activities. On March 25, 2019, the High Court struck down sections 36 and 38 of the said Code as unconstitutional.
- [72] The statements relied on by the claimant were allegedly made on March 14, 2019 before the High Court decision was handed down, so that at that time, the law as it stood meant that public officers could not lawfully engage in political activities.
- [73] The defendants argue that no evidence shows that the PSC or the Governor-General acted improperly or with political motive. They stress PSC independence and deny rubber-stamping the CPO's recommendation.
- [74] They rely on the case of **Brenda Gillian Furlonge v Honourable Minister of Public Safety and Labour and The Attorney General**³⁶ for the proposition that in order to prove victimisation, the claimant must establish a causal connection between the alleged statements and the decisions to send her on leave and to transfer her. They contend that the claimant has not produced any evidence to show that the defendants or the Human Resource Department were aware of the statements or acted on instructions from the maker of the statements. They point out that while it is accepted that the Governor-General is a

³⁶ ANUHCVP2020/0009, delivered February 24, 2026

decision-maker in relation to the decision to transfer the claimant, the process to initiate the transfer did not start with the Governor-General.

- [75] The defendants submit that the claimant has not proved political victimisation and the allegation should be rejected.

Remedies

- [76] The defendants argue that the claimant is not entitled to declarations, an injunction, damages, or costs.
- [77] They emphasise that she continues to receive full salary and has not assumed the Logistics Coordinator post.

Exemplary damages

- [78] The defendants submit exemplary damages are inappropriate, citing **Rookes v Barnard**³⁷ and **Dale Naylor v Attorney General of Antigua and Barbuda and others**,³⁸ submitting that the PSC's conduct was not oppressive or unconstitutional. In **Dale Naylor** where the claimant sought exemplary damages for false imprisonment, the court found that only the first category for an award of exemplary damages as held in **Rookes v Barnard** was available, that is, where the tort involves oppressive, arbitrary or unconstitutional conduct by government servants. In deciding that there was no conduct warranting the award of exemplary damages, Kelsick J (Ag.) stated:

"In the present case, only the first is relevant. It would be useful to cite paragraph 13-019 of McGregor:

"Two conditions must be satisfied before a first category case can be established. This has to be shown to be, in Lord Devlin's words, oppressive, arbitrary or unconstitutional and, while it was said in *Holden v Chief Constable of Lancashire*, that unconstitutional action would suffice without the need for additional oppressive or arbitrary behaviour, so that in effect the three epithets fall to be read disjunctively, unconstitutional action will not suffice without the presence of aggravating features; the central requirement for exemplary damages has always been, as already said, the

³⁷ [1964] AC 1129

³⁸ ANUHCVP1999/0308, delivered March 23, 2020 at para. 42

presence of **outrageous conduct, disclosing malice, fraud, insolence, cruelty and the like**. So, the public nuisance negligently committed in *A.B. v South West Water Services*, was described by Sir Thomas Bingham MR as being 'quite unlike the abuses of power which Lord Delvin had in mind'. In *Ministry of Defence v Fletcher*, an award of exemplary damages to a victimised army recruit was set aside by the Employment Appeal Tribunal as the conduct of the army officers, **though deplorable**, did not cross the **high threshold set for a finding of oppressive or arbitrary behaviour**. In *R. (on the application of Lumba (Congo)) v Secretary of State for the Home Department*, where the Secretary of State for the Home Department was held liable for the false imprisonment of foreign national prisoners pending their deportation, the Supreme Court was not prepared to award exemplary damages to the claimants since there had not been conduct so outrageous and so unconstitutional, oppressive or arbitrary as to justify such an award. There is a careful analysis of the conduct of the senior Home Office personnel by Lord Dyson with whom, on exemplary damages, the other eight Justices agreed."

- [79] The defendants submit that there is no basis for an award of exemplary damages as the defendants' conduct was not oppressive, arbitrary or unconstitutional and does not meet the high standard set out in *McGregor*.

Vindictory damages

- [80] The defendants cite the Privy Council decision in ***Ramanoop v Attorney General of Trinidad and Tobago***³⁹ under this head. At paragraph 19 of the judgment, Lord Nicholls opined:

"An award of compensation will go some distance in vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in s 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense

³⁹ [2005] UKPC 15 at para. 19

is not its object. Accordingly, the expressions “punitive damages” or “exemplary damages” are better avoided as descriptions of this type of additional award.

- [81] The defendants submit that in this case, there is no breach of sections 77 and 78 of the Constitution as alleged and that no vindictory damages should be awarded to the claimant.
- [82] In the event that the Court disagrees with the defendants’ position, in relation to the quantum of vindictory damages, the defendants rely on the case of **Rachel Glenna M. Roberts v The Public Service Commission**.⁴⁰ In that case, a senior public officer was transferred from her substantive post to another department where there was no equivalent post, no proper office accommodation, and no clearly defined duties. Glasgow J found that the PSC acted unconstitutionally and described the conduct as a “flagrant and offensive breach” of the constitutional protections afforded to public officers. Notwithstanding those findings, the Court awarded the claimant vindictory damages of EC\$10,000.00. The defendants distinguish **Roberts** from this case, pointing out that this case does not involve a breach of constitutional rights. Notwithstanding, should the Court reject the defendants’ submission that the claimant is not entitled to vindictory damages, they proffer that an award of EC\$10,000.00 is appropriate.
- [83] The defendants ask the court to dismiss the amended fixed date claim and award costs to them.

Court’s Analysis

Issue 1: Whether the Chief Personnel Officer acted for or purported to act for the Public Service Commission in breach of section 77 of the Constitution

- [84] Section 78 of the Constitution vests in the PSC the power to make recommendations to the Governor-General in respect of the appointment, promotion, transfer, discipline and removal of public officers, and section 77 provides that the PSC shall not be subject to the direction or control of any other person or authority.

⁴⁰ GDAHCV2019/0116

[85] Section 77(11) provides:

The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

[86] Section 78(1) reads:

Subject to section 87, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), and the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the recommendation of the Public Service Commission (hereinafter in this section referred to as the Commission.).

[87] The claimant contends that the CPO's letter June 1, 2023 went beyond mere communication and in substance initiated and effected the transfer process. The June 1, 2023 letter indicated that the CPU was under restructuring and that the claimant was recommended for transfer and should proceed on further leave until the transfer was completed. The claimant relies on authorities such as **Otto Sam** to submit that where a constitutionally vested body (the PSC) is the sole decision-maker, an officer such as the CPO cannot lawfully exercise that function and any purported exercise is ultra vires.

[88] The defendants assert that the PSC recommended the transfer at its meeting of July 6, 2023, that a Request for Transfer dated July 6, 2023, was submitted to the PSC, and that the Governor-General approved the PSC's recommendation by Minute dated July 24, 2023. They submit that the CPO's letters were administrative communications and that the CPO did not purport to exercise the PSC's constitutional power. The defendants rely on the formal sequence of documents - Request for Transfer, PSC Minutes, Governor-General's Minute - to show that the PSC retained and exercised its function.

[89] Where the Constitution vests a power in a particular body, that body must exercise the power. Subordinate officers cannot lawfully usurp it. Conversely, the mere fact that an administrative officer communicates a proposed change or places an officer on leave does not, of itself, prove usurpation if the PSC later and independently considered and recommended the transfer and the Governor-General approved it. The court must examine

substance and contemporaneous documents to determine who in fact made the operative decision.

[90] The documentary evidence includes the following:

- i. May 2, 2023 letter: the Human Resource Management Department letter signed by S. Warner for the CPO advised the claimant to remain on leave until May 31, 2023 without giving reasons.
- ii. June 1, 2023 letter signed by the CPO stated that the CPU was being restructured, that the claimant was recommended for transfer, and that she should proceed on further leave until the transfer was completed. The language of recommendation in a letter from the CPO, issued before any recorded PSC decision, is the central factual trigger for the claimant's ultra vires complaint.
- iii. Request for Transfer - July 6, 2023, and PSC Minutes - July 6, 2023. The Request for Transfer was submitted to the PSC and the PSC's Minutes record approval. The Minutes contain no contemporaneous reasons.
- iv. Governor-General's Minute - July 24, 2023 - records approval of the PSC's recommendation.

[91] The chronological sequence — CPO letters in May/June 2023 followed by a Request for Transfer and PSC Minutes July 6, 2023 — is capable of two inferences. One inference, advanced by the claimant, is that the CPO initiated the transfer and the PSC later rubber-stamped that initiative. The alternative inference, advanced by the defendants, is that the CPO's letters were administrative steps taken in the ordinary course while the PSC's formal consideration and recommendation occurred on July 6, 2023.

[92] The statement by the CPO in her letter of June 1, 2023 that the claimant had been "recommended" for transfer requires careful consideration. The learned Solicitor General on behalf of the defendants submitted to the court that the word "recommended" in the letter

did not mean or rise to the level of the meaning of “recommendation” in section 78 of the Constitution. At paragraph 16 of her affidavit, the CPO denied the claimant’s assertion that the CPO cannot make a recommendation that a public officer be transferred. She averred that the CPO may present a recommendation for transfer to the PSC, and it is ultimately for the Governor-General acting on the recommendation of the PSC to determine if the public officer should be transferred. Learned counsel for the claimant countered that the defendants could not point to any provision within the Public Service Act or otherwise which gives the CPO the authority to recommend the claimant’s transfer.

[93] If the CPO meant (by the June 1, 2023 letter) that she had recommended the transfer to the PSC, the letter would be an admission that the CPO initiated the process. This raises concern for potential usurpation. The defendants have not produced contemporaneous PSC documentation predating June 1, 2023 that would show the PSC had already considered and recommended the transfer. In fact, the claimant argues that such consideration by the PSC would have been impossible because the PSC members were appointed on said June 1, 2023. In the absence of such documentation, the court must treat the June 1, 2023 letter as evidence that the CPO had taken a proactive role in recommending the claimant’s transfer.

[94] The absence of contemporaneous PSC reasons in the Minutes weakens the defendants’ position that the PSC exercised independent judgment at the July 6 meeting. Where a constitutionally independent body records only approval without reasons, and where the operative communications pre-date the meeting, the court may draw an adverse inference that the PSC did not exercise independent deliberation. That inference is reinforced where the authority being exercised is exclusively vested in the PSC.

[95] On the evidence before the court, the CPO’s June 1, 2023 letter went beyond a neutral administrative communication. It stated that the claimant had been “recommended” for transfer and directed her to remain on leave pending completion of the transfer. The PSC’s recorded approval post-dates that letter and the PSC’s Minutes contain no contemporaneous reasons. In those circumstances, the Court finds that the CPO did purport

to initiate and advance the transfer process in a manner that encroached upon the PSC's constitutional function. The CPO thereby acted in a manner inconsistent with section 77 of the Constitution to the extent that the leave direction and the recommendation language were used to effect or to pre-empt the PSC's exclusive decision-making role.

- [96] The court does not find that every administrative act by the CPO was unlawful. The CPO may lawfully communicate decisions once properly made by the PSC and may lawfully require leave in appropriate circumstances. However, on the facts of this case, the CPO's communication of June 1, 2023, taken together with the absence of contemporaneous PSC reasons, demonstrate that the CPO purported to act for the PSC and thereby acted ultra vires in relation to the substantive decision to transfer the claimant.

Issue 2: Whether the Public Service Commission abdicated its responsibilities to the Chief Personnel Officer who is not a member of the PSC

- [97] The question is whether, on the evidence, the PSC in fact surrendered or failed to exercise its constitutional functions under section 77 of the Constitution by adopting, ratifying or otherwise rubber-stamping a transfer initiated by the CPO, so that the PSC's recommendation is vitiated for want of independent judgment.
- [98] The claimant says the CPO's early correspondence, including the June 1, 2023 letter and the PSC Minutes of July 6, 2023, show that the CPO initiated the action and the PSC thereafter adopted or rubberstamped that action without independent reasons or process.
- [99] The defendants rely on affidavits of the CPO and PSC Secretary showing that a Request for Transfer dated July 6, 2023 was submitted, PSC Minutes recorded the recommendation, and the Governor-General approved it by Minute dated July 24, 2023.
- [100] Section 78 of the Constitution vests the PSC with the power to make recommendations to the Governor-General in respect of appointment, promotion, transfer and removal. Section 77(11) provides that the PSC "shall not be subject to the direction or control of any other person or authority".

- [101] A constitutionally-vested body abdicates if it surrenders its decision-making function or fails to exercise independent judgment, allowing another person or body to determine outcomes. Conversely, a subordinate officer may lawfully prepare papers, make recommendations to the PSC, and communicate decisions once properly made. The line is drawn at who in fact makes the operative decision. Authorities such as **Endell Thomas** and **Otto Sam** illustrate that where a subordinate purports to exercise the PSC's exclusive function, the action is ultra vires.
- [102] The court must decide between two competing inferences: (a) the CPO merely communicated an administrative step and the PSC independently considered and decided the matter on July 6, 2023; or (b) the CPO initiated and effectively determined the outcome, and the PSC thereafter adopted that outcome without independent reasons.
- [103] The absence of contemporaneous PSC reasons and the fact that the CPO's letter used the language of a "recommendation" before any recorded PSC action make the latter inference a realistic and cogent inference to draw.
- [104] The defendants rely on the formal sequence of documents - Request for Transfer; PSC Minutes, Governor-General's Minute - and on affidavits asserting that the PSC considered the matter. Formal documentation of a later approval is relevant but not dispositive. The court must examine whether the PSC's Minute reflects genuine deliberation or merely records a pre-determined outcome.
- [105] Where the PSC's Minute contains no reasons and the only contemporaneous documentary material that explains the decision is the CPO's pre-meeting correspondence, the defendants' evidential position is weakened unless they can produce other contemporaneous PSC papers such as draft agendas, internal memoranda, Minutes of discussions or individual member notes showing independent consideration.
- [106] If the defendants could produce credible, contemporaneous evidence from PSC members or the PSC Secretary showing independent consideration, for example, a Minute of

discussion, member affidavits describing deliberations, or a contemporaneous file note, that would rebut the inference of abdication.

[107] Absent such contemporaneous material, the court may place weight on the timing and content of the CPO's communications and draw the adverse inference that the PSC did not exercise independent judgment.

[108] On the material before the court, the CPO's letters preceded the PSC's recorded approval and the PSC's Minutes contain no reasons. The defendants have not produced contemporaneous PSC deliberative material that demonstrates independent decision-making prior to or at the July 6 meeting.

[109] In those circumstances, the court is entitled to conclude that the PSC, as recorded, did not manifestly exercise independent judgment and that the decision recorded on July 6, 2023 bears the hallmarks of adoption of a pre-existing administrative determination initiated by the CPO.

[110] The Court finds that, on the balance of probabilities, the PSC abdicated its constitutional responsibility to the extent that the operative decision to transfer the claimant was initiated and advanced by the CPO and thereafter adopted by the PSC without contemporaneous reasons or evidence of independent deliberation.

[111] This conclusion is without prejudice to any discrete lawful acts the PSC may have performed. It is confined to the finding that the PSC did not, on the available record, exercise the independent judgment the Constitution requires in respect of the claimant's transfer.

Issue 3: Whether the Chief Personnel Officer possessed lawful authority to issue the leave letters to the claimant

[112] I have included this issue based on the claimant's submissions that (i) the CPO's letters, in particular the June 1, 2023 letter, initiated the claimant's transfer, and (ii) that the leave/transfer constituted the claimant's removal from office. The legal question is whether the CPO's direction of June 1, 2023 was a lawful exercise of administrative authority

(management of leave) or whether it crossed the constitutional line by purporting to exercise or to pre-empt the PSC's exclusive power to recommend transfers and removals under sections 77 and 78 of the Constitution. In determining this issue, the court considers: (a) whether the CPO is, in law, the Permanent Secretary Human Resources authorised by section 27(1) of the Public Service Standing Orders to require leave; and (b) even if so, whether the exercise of any leave power was used to effect a transfer or to usurp the PSC's function and is therefore ultra vires.

- [113] Section 61 of the Constitution and the Public Service Standing Orders define the office and role of Permanent Secretaries. Section 61 of the Constitution provides:

Where any Minister has been charged with responsibility for any department of the Government, he shall exercise general direction and control over that department; and, subject to such direction and control, every department of the Government shall be under the supervision of a permanent secretary whose office shall be a public office:

Provided that two or more departments may be placed under the supervision of one permanent secretary.

- [114] Section 27(1) of the Public Service Standing Orders, No. 11 of 2014, provides: "A public officer may be required by the Permanent Secretary Human Resources, to take leave which is due to him or her." On its face, section 27(1) authorises a Permanent Secretary (Human Resources) to require leave. It does not, by its text, authorise any other officer to exercise that power.

- [115] The defendants rely on section 27(1) to justify the CPO's leave directions. They treat the CPO as having lawful authority to require leave in the public interest as her position amounts to that of a Permanent Secretary, and submit that the letters were administrative steps while the formal transfer process proceeded.

- [116] The claimant contends the CPO is not a Permanent Secretary within section 61 of the Constitution, so section 27(1) of the Public Service Standing Orders does not empower her. The claimant also refers the Court to section 5 of the Public Service Act which deals with the Permanent Secretaries Committee which is comprised of the Head of the Public Service and Permanent Secretaries. She points out that there is no evidence that the CPO's position

amounted to that of a Permanent Secretary and no evidence that the CPO was a member of the Permanent Secretaries Committee. Further, the claimant says the June 1 letter went beyond leave management by stating the claimant had been “recommended” for transfer and by tying leave to completion of that transfer — conduct that pre-empted the PSC and was therefore ultra vires.

- [117] The statutory text of section 27(1) confers the leave-requiring power on the Permanent Secretary Human Resources. The court is left in difficulty in resolving this issue. Apart from the defendants’ oral submission, there is no evidence that the CPO is the *de facto* Permanent Secretary Human Resources or whether she usurped the function of another person who is in fact the Permanent Secretary. On the face of the record, it is the Permanent Secretary who is authorised to exercise the power under section 27(1).
- [118] Even if the CPO is properly considered a proper officer to require leave, the power cannot be used to displace or usurp a constitutionally vested function. The power to require leave is administrative and time-limited. It does not include the power to recommend or effect transfers or removals to the Governor-General which is a function reserved to the PSC. A valid delegation of leave powers therefore does not authorise an officer to use leave as the vehicle for effecting a transfer or removal without PSC exercise of its constitutional function.
- [119] The Court must look to the substance of the transaction as emphasised by Byron CJ in **Richard Duncan**.⁴¹ The June 1, 2023 letter did more than require leave. It stated that the claimant had been “recommended” for transfer and directed leave pending completion of that transfer. That language, together with the fact that the PSC’s recorded approval post-dates the letter and the PSC Minutes contain no reasons, supports the inference that the leave direction was used to effect or to pre-empt a transfer rather than to manage ordinary vacation leave. Where leave is used in that way, the action is susceptible to being characterised as ultra vires even if the officer had some delegated or other leave authority.

⁴¹ Civ. App. No. 13 of 1997 at page 6

- [120] A later PSC recommendation and Governor-General approval do not automatically validate an earlier ultra vires act. If the earlier leave direction pre-empted the PSC's independent exercise of its function, the subsequent formalities will not necessarily cure the constitutional defect unless the PSC can show it genuinely exercised independent judgment at the relevant meeting and that any procedural defects were remedied in a manner that renders the overall process lawful. The absence of contemporaneous PSC reasons weakens any argument that the later PSC action cured the earlier ultra vires conduct.
- [121] If the CPO is not the Permanent Secretary Human Resources within the meaning of section 61 of the Constitution, then section 27(1) of the Public Service Standing Orders does not authorise her to require compulsory leave under that provision. The defendants' reliance on section 27(1) therefore fails as a legal justification for the June 1 direction.
- [122] Even if the CPO is the Permanent Secretary Human Resources, the June 1, 2023 communication, which asserted a recommendation for transfer and tied leave to completion of that transfer, exceeded the proper scope of a leave direction and encroached on the PSC's exclusive constitutional function. In that event the leave direction is ultra vires to the extent it was used to effect or to pre-empt a transfer.
- [123] On the present record (CPO letters predating the PSC Minute and absence of contemporaneous PSC reasons), the court characterises the June 1, 2023 letter, insofar as it purported to recommend or to effect a transfer, as ultra vires the constitutional allocation of functions. The May 2, 2023 direction, if genuinely a short, delegated leave direction, might be lawful standing alone. However, in context, it formed part of a sequence used to exclude the claimant from substantive duties pending a transfer advanced by the CPO and, in my respectful view, is therefore tainted.

Issue 4: Whether the transfer amounted to a demotion/diminution in standing

- [124] The question is whether the claimant's reassignment from Supervisor, Centralised Purchasing Unit (CPU) to Logistics Coordinator, NEMA produced a material diminution in

status, responsibilities or standing such that it should be characterised as a demotion rather than a lawful lateral transfer.

[125] Section 35(1) of the Public Service (Recruitment and Appointment of Officers) Code permits transfer to a post of equivalent grade, but equivalence is assessed by responsibility, status, challenges of the posts, rank in the public service hierarchy and qualifications, not by pay alone.

[126] In **Gemma Bain-Thomas v The Attorney General of Grenada and The Public Service Commission**,⁴² Blenman JA affirmed the view of the judge in the court below on equivalency. Her Ladyship stated:

“The learned trial judge, in my view, quite correctly stated that equivalency is not restricted only to the pay and emoluments grade to which an officer is being transferred. It must include such factors as responsibility, status, challenges of the posts, rank in the public service hierarchy and I would add qualification.”

[127] In my view, each case must turn on its particular circumstances. Therefore, in the context of this case, the Court will compare the substance of the two posts to include managerial scope, staff complement, budgetary and national responsibilities, reporting lines and professional content.

[128] The claimant’s position reveals:

- **Pay grade.** Both posts are agreed to fall within the K33–K38 band. Pay parity is therefore not decisive. Pay equivalence does not neutralise a material diminution in duties and status. The authorities require a holistic assessment.
- **Staff complement and managerial responsibility:** The claimant’s evidence describes the CPU Supervisor as heading a unit with up to 21 staff and exercising supervisory and procurement coordination functions. The Logistics Coordinator role is said to supervise one subordinate and to be operationally focused.

⁴² GDAHCVAP2015/0013 at para.101

- **Scope and national significance.** The CPU role involved national procurement coordination across government departments and oversight of significant procurement activity. The Logistics Coordinator role is described as seasonal, emergency-focused and narrower in remit.
- **Nature of day-to-day tasks.** The CPU role involved strategic procurement, policy and managerial duties. The Logistics Coordinator role involves operational logistics tasks (including forklift duties) that are not managerial in character.
- **Reporting line and status.** The claimant asserts a higher reporting profile as head of a unit. As Supervisor, CPU, she reported to the Permanent Secretary, Ministry of Finance. The Logistics Coordinator reports within NEMA with a lower strategic profile.
- **Responsibility and scope.** The evidence indicates that the CPU Supervisor had broad procurement coordination responsibilities across government and supervised a substantial staff complement. The Logistics Coordinator role is narrower and operational. This points to reduced responsibility.
- **Status and rank.** Although both posts share a salary band, the claimant's managerial status is materially different from the Logistics Coordinator's more limited remit. Status is therefore diminished.
- **Professional content and challenge.** The CPU role involved strategic procurement oversight and management of complex processes and budgets. The Logistics Coordinator role is episodic and operational. The professional challenge of the post is reduced.
- **Staff and reporting.** A reduction from supervising a substantial complement to supervising one person as asserted is a clear indicator of diminution.

[129] The Court weighs the defendants' counter-arguments as follows:

- **Pay scale equivalence.** The defendants correctly note salary parity. Under the multi-factor test, this is only one factor and is not determinative.
- **Statutory procurement head.** The defendants point to statutory procurement roles (e.g., Manager of Procurement under the Procurement Act) to argue that the CPU Supervisor was not the statutory “Head of Procurement”. That reduces any submission that the claimant held the apex statutory procurement role, but it does not answer whether her practical managerial and national coordination responsibilities were materially curtailed by the transfer. The claimant’s former supervisor averred that given her responsibilities, she was in effect the Head of Procurement.
- **Operational justification.** Restructuring and audit findings may justify a transfer in principle, but they do not negate a factual finding that the new post is materially less senior in substance.

[130] On the evidence the Court finds:

(a) the CPU Supervisor post involved broader managerial responsibility, national procurement coordination and supervision of a substantially larger staff complement than the Logistics Coordinator post.

(b) the Logistics Coordinator role is narrower, procurement responsibilities limited to disaster relief, operationally focused and of lesser strategic significance; and

(c) the claimant’s day-to-day duties and professional challenge were materially reduced by the reassignment.

[131] Applying the multi-factor test, I am of the view that the reassignment produced a material diminution in the claimant’s responsibilities, status and professional standing. The transfer

must therefore be characterised as a demotion rather than a lateral transfer, notwithstanding pay parity.

Issue 5: Whether the transfer amounted in substance to a removal from office

- [132] This head follows the Court's finding that the reassignment was a demotion/diminution in status. The issue is whether the claimant's exclusion from her substantive post as Supervisor of the Centralised Purchasing Unit, followed by her transfer to Logistics Coordinator at NEMA, amounted in substance to a removal from office. The Court must determine whether, taken together, the leave directions, the CPO's pre-meeting communications and the PSC's subsequent recommendation had the practical effect of depriving the claimant of her substantive office, that is, whether the measures amounted in substance to a removal from office rather than a lawful transfer or temporary administrative leave. The jurisprudence makes it clear that the Court must look beyond the terminology employed by the defendants and ascertain the true nature of the transaction.
- [133] The sequence of events shows the claimant was required to remain on leave after her vacation entitlement expired (May 2, 2023 letter) and then told on June 1, 2023 to remain on leave "until the transfer is completed". No return date was given, and the leave was not framed as a short, time-limited administrative measure.
- [134] The Court notes that the claimant was not removed from the public service altogether, as she was subsequently appointed to the new post by instrument dated August 21, 2023. However, the authorities make it clear that removal from one's substantive office may occur where the officer is excluded without reasons, denied a return date, and reassigned to a materially diminished role.
- [135] In **Richard Duncan**, Byron CJ held that the Court must look to the substance of the transaction. In that case, indefinite leave was held to be in substance a removal from office.
- [136] Likewise, in the Jamaica case of **Lackston Robinson v Daisy Coke and others**,⁴³ the High Court quashed a direction that the Applicant take vacation leave "until further orders", holding

⁴³ Claim No. 81 of 2002

that exclusion without application or hearing was unlawful and tantamount to suspension or removal.

[137] Applying those principles, the claimant's exclusion from CPU duties without reasons or return date, and her subsequent reassignment to a post of materially lesser status and the creation of an additional Supervisor post for the CPU, amounted to removal from her substantive office.

[138] I am also of the view that the diminution in responsibilities — from heading a 21-person unit with national procurement responsibilities to supervising one staff member in a seasonal disaster-relief role — is a demotion tantamount to removal.

[139] The claimant continued to receive salary while not turning up for the new post. That fact is relevant to the issue of compensation, but it does not negate the practical reality that she was excluded from performing the substantive functions of her office for an indefinite period.

[140] Taken together — indefinite leave, exclusion from substantive managerial duties, material diminution in status, creation of an additional CPU Supervisor post and absence of contemporaneous PSC reasons or a meaningful pre-decision hearing — the court is constrained to conclude that the measures had the practical effect of removing the claimant from her substantive office or, at minimum, effecting an unlawful demotion tantamount to removal. The CPO's use of leave and the PSC's subsequent Minute cannot, on the facts found, be treated as a lawful, routine administrative transfer.

Issue 6: Whether the claimant was denied procedural fairness without notice, reasons, or an opportunity to be heard in breach of the rules of natural justice

[141] The question is whether, in the circumstances found - CPO pre-meeting communications; PSC Minute recording approval without reasons; indefinite leave; demotion/removal in substance - the claimant was afforded the procedural safeguards required by law, specifically adequate notice of the case against her, disclosure of the gist of any allegations or reasons, and a meaningful opportunity to make representations before a final decision was taken.

- [142] Where the PSC's recommendation affects appointment, transfer or removal, the Constitution's protection of PSC independence and the requirement that the PSC not be subject to direction or control mean that procedural safeguards are especially important. Procedural irregularity in this context may render the recommendation void.
- [143] A subsequent hearing may cure an earlier procedural defect only if it is genuinely effective and affords the officer a real opportunity to address the matters that were decisive as held in **Lloyd v McMahon** and subsequent authorities.
- [144] The PSC invited the claimant to a meeting after the July Minutes. The claimant and her counsel did not attend those meetings as there was no response that the meeting would proceed on the terms requested. The reassignment effected a demotion and, on the court's findings, amounted in substance to a removal from substantive duties.
- [145] The May 2 and June 1, 2023 letters gave no substantive reasons for the continued leave or for the proposed transfer. The PSC's Minute of July 6, 2023 recorded approval but did not set out reasons. Where a decision affects an officer's substantive post and status (here a demotion/removal in substance), fairness requires disclosure of the gist of the case and reasons sufficient to enable meaningful response. The absence of contemporaneous reasons is therefore a material procedural defect.
- [146] The claimant was not given a pre-decision opportunity to address the matters that led to her exclusion from duty and proposed transfer. The post-decision invitation to meet the PSC does not, in this case, cure the defect because it was offered after the operative exclusion and after the PSC's recorded approval. The invitation was not shown to have afforded a genuine opportunity to influence the decisive decision. The claimant's insistence on meaningful assurances before attending was understandable in the circumstances.
- [147] The defendants rely on internal audit reports and restructuring as legitimate reasons. Those materials were not disclosed contemporaneously and were produced late, that is, in these very proceedings, clearly in an attempt to provide reasons for the claimant's transfer. The duty of candour in judicial review and the requirements of fairness in administrative

decision-making require that material relied upon to justify adverse measures be disclosed in time to permit effective response. Late disclosure undermines the claim that the process was fair.

- [148] The more serious the consequence (demotion or effective removal), the more robust the procedural protections required. Given the court's findings that the reassignment was a demotion and amounted in substance to removal, the procedural shortcomings are not trifling. They go to the heart of the legality of the PSC's recommendation and the CPO's conduct.
- [149] The claimant was not given contemporaneous disclosure of any allegations or audit material prior to the CPO's communications. Internal audit reports relied upon by the defendants were not disclosed to her before the decision was made. The reliance on the findings in the reports (of deficiencies in CPU operations, including inaccuracies and unimplemented recommendations) to send the claimant on leave while the CPU was being restructured, implies that there was dissatisfaction with the claimant in the performance of her duties as Supervisor, CPU. In these circumstances, fairness demanded that the claimant be informed of any allegations against her, for example, as to deficiencies in her work performance, and that she be given a chance to respond.
- [150] The defendants contend that the later PSC engagement cured any earlier defect. The Court must ask itself whether the later process was genuinely remedial. On the present record the later meetings were post-decisional, the PSC's Minute contained no reasons, and the claimant was excluded from substantive duties in the interim. In my view, those facts mean the later process did not operate as an effective cure.
- [151] On the balance of probabilities, I find that the claimant was denied procedural fairness. She was not given adequate notice of the gist of the case against her, was not provided contemporaneous reasons or the material relied upon, and was not afforded a meaningful pre-decision opportunity to be heard before the operative exclusion and the PSC's recommendation. This was a serious breach of the rules of natural justice.

Issue 7: Irrationality/Wednesbury unreasonableness

- [152] The classic test from **Associated Provincial Picture Houses Ltd v Wednesbury Corporation**⁴⁴ is whether the decision was “so unreasonable that no reasonable authority could ever have come to it”, requiring “something overwhelming”. Courts apply this high threshold cautiously. Irrationality is more than mere unfairness or error. It requires a decision that defies logic or accepted moral standards.
- [153] The court has already found the transfer was a demotion and amounted in substance to removal. A decision that strips an officer of substantive duties without reasons or process is *prima facie* irrational. The claimant was to be moved from her post dealing with a massive procurement budget, procuring supplies for all government departments to a post with procurement responsibilities limited to seasonal or episodic disaster relief. The job description for the Logistics Coordinator requires the claimant to operate a forklift which she has never done and is not qualified to do.
- [154] The Wednesbury test requires “something overwhelming”. In my view, in light of the combination of (a) *ultra vires* CPO action, (b) PSC abdication, (c) absence of contemporaneous reasons, (d) indefinite exclusion from duties, (e) demotion/removal in substance and (f) no opportunity to be heard, cumulatively, that threshold is reached.
- [155] While restructuring and audit findings can be legitimate reasons, their late disclosure and absence from contemporaneous PSC records mean they cannot rescue the decision. A reasonable authority would have recorded and communicated such reasons contemporaneously. Their absence supports the inference of irrationality.
- [156] On the balance of probabilities, I rule that the decision to transfer/remove the claimant was irrational in the Wednesbury sense. The cumulative defects — *ultra vires* initiation, PSC abdication, absence of contemporaneous reasons, indefinite exclusion, no opportunity to be heard, and substantive demotion — render the decision “so unreasonable that no reasonable authority could ever have come to it”.

⁴⁴ [1948] 1 KB 223 at 229, 230 (per Lord Greene MR)

Issue 8: Whether the decision was vindictive, heavy handed, and/or amounted to victimisation

- [157] Under this head, the court must determine whether the measures taken in respect of the claimant were punitive or oppressive in character and whether improper considerations materially influenced the decision.
- [158] The claimant's position is that the sequence and tone of communications show punitive and disproportionate treatment. The CPO initiated the process, and the PSC rubber-stamped it. The claimant relies on **Doody, Ramjohn, Otto Sam, Endell Thomas, Richard Duncan** and regional authorities on PSC independence and the need to look at substance over form.
- [159] The defendants' position is that the PSC retained independence and exercised its function. The CPO's letters were administrative and lawful. The defendants maintain that public statements relied on by the claimant are hearsay or irrelevant and do not show that the PSC or CPO acted on political instructions. They assert that fairness is contextual and any post-decision engagement cured defects, relying on **Shoemith, Principal Reporter v K, Lloyd v McMahon, Cove Hotels** and other authorities on *Wednesbury* and fairness. The defendants deny vindictiveness and political motive.

Vindictiveness/heavy-handedness

- [160] Punitive or disproportionate administrative measures, indefinite exclusion from duties, and use of leave as a vehicle to exclude an officer are characteristics of vindictiveness or heavy-handedness. Regional PSC cases such as **Otto Sam** and **Endell Thomas** emphasise that constitutional protections for public officers must be vindicated.
- [161] The CPO's June 1, 2023 letter used "recommended" language and tied leave to completion of a transfer before any recorded PSC decision. That pre-decision language, combined with the May 2, 2023 direction to remain on leave without reasons, produced an indefinite exclusion from substantive duties.
- [162] Applying the reasoning in **Otto Sam** and **Endell Thomas**, the court must look to who in fact made the operative decision and how the administrative instruments were used. The record

supports the inference that leave was used as the vehicle to exclude the claimant pending a transfer that materially reduced her status. In my view, that use of administrative power is punitive in effect.

- [163] On the balance of probabilities, I find that the decision was heavy-handed and vindictive in administrative character. The measures taken were disproportionate, procedurally abusive, and produced punitive exclusion from substantive office.

Political victimisation

- [164] The public statements admitted in evidence and the change of administration provide relevant background and make political motive a plausible inference. The claimant relies on timing and the sequence of communications to link politics to the outcome.

- [165] The defendants point to the Request for Transfer, PSC Minute and internal audit reports as legitimate non-political explanations. Critically, the record lacks contemporaneous evidence that PSC members, the Governor-General, or the CPO acted on explicit political instructions or that political actors communicated with decision-makers to effect the transfer. Background statements are not shown to have been communicated to or acted upon by the decision-makers at the relevant time.

- [166] While motive may be inferred from surrounding facts, the court must be satisfied on the balance of probabilities that political considerations materially influenced the decision. The authorities require a causal link to decision-makers. Absent contemporaneous documentary or witness evidence tying political actors to the decision, I am of the view that the inference is speculative.

Governor-General's role.

- [167] The Governor-General's approval is ordinarily a formal constitutional act taken on the recommendation of the PSC. Approval by the Governor-General, even where Her Excellency previously held political office as a member of the political party now in office, does not alone establish that political considerations caused the PSC's recommendation

unless there is evidence the Governor-General intervened or communicated political instructions to the PSC or CPO.

[168] Where the PSC has abdicated or where another has usurped PSC functions, the court will scrutinise the process for signs of improper influence, but the inquiry must be fact-based and requires a causal link to decision-makers.

[169] The operative CPO communications (May 2, and June 1, 2023) pre-date the PSC Minute of July 6, 2023. The Request for Transfer and PSC Minute post-date those letters. The Governor-General's formal approval followed the PSC Minute later in July. That chronology shows the Governor-General's approval was procedural and subsequent to the PSC's recorded action. Approval in that sequence is not, without more, evidence that the Governor-General influenced the transfer.

[170] The claimant relies on Ms. Liburd's earlier public statements as contextual evidence. Those statements made since March 2019 are relevant background, but the court must ask whether they were communicated to, or acted upon by, the CPO or PSC members at the time the operative decisions were taken. The record contains no contemporaneous document or witness evidence showing that the Governor-General (in her then political capacity or later as Governor-General) or any political actor instructed the PSC or CPO to transfer the claimant. Absent such evidence, the public statements remain background rather than causal proof.

[171] The Governor-General's Minute approving the PSC recommendation is a constitutional formality triggered by the PSC's recommendation. The constitutional scheme contemplates that the Governor-General acts on the PSC's recommendation. Approval therefore does not, in itself, demonstrate that the Governor-General or any person in, or in support of, the current administration influenced the PSC's decision-making process. To infer causation from the Governor-General's later approval would be to invert the constitutional sequence. The court must first identify evidence that the Governor-General or political actors influenced the PSC or the CPO before or during the PSC's deliberations. While the claimant's evidence raises a real question, it does not establish the necessary causal link. Although the Governor-

General had previously made political statements, her subsequent approval of the PSC's recommendation was a constitutional formality, and no contemporaneous evidence shows that she or any political actor influenced the PSC or the CPO. Accordingly, political victimisation is not proved.

- [172] I rule that vindictiveness and heavy-handedness have been proved. The CPO's and PSC's conduct was oppressive and disproportionate in effect. Procedural safeguards were not observed. On the other hand, I find that political victimisation is not proved. The evidence does not sufficiently connect political statements to the decision.

Issue 9: What remedies are appropriate

- [173] The claimant seeks declarations that the transfer was unlawful and void and of no effect; a permanent injunction restraining any transfer to a lesser post; full compensation for lost salary and benefits; exemplary or vindictory damages.
- [174] The defendants maintain that the PSC acted within its constitutional remit; the CPO's letters were administrative and lawful under the Standing Orders. They point out that the claimant continues to receive salary and has not assumed the Logistics Coordinator post. They contend that vindictory damages should not be awarded and exemplary damages are inappropriate.
- [175] Declarations are the primary remedy in constitutional and administrative law, serving to vindicate the rule of law. The claimant asks for declarations that the transfer was unlawful, void, irrational, procedurally irregular, and in breach of natural justice principles, that it amounted to a demotion and removal from her substantive office, and that the PSC abdicated its responsibilities to the CPO.
- [176] On the Court's conclusions, declarations are appropriate. The contemporaneous record demonstrates that the CPO initiated the process, that the PSC failed to provide reasons, and that the claimant was excluded from her substantive office without notice or hearing. This amounted to a breach of sections 77 and 78 of the Constitution and of natural justice principles. Declarations will therefore issue to mark the unlawfulness of the transfer and the

breach of constitutional safeguards.

- [177] The claimant seeks a permanent injunction restraining the PSC from transferring her to a post of lesser equivalence without lawful justification. The defendants submit that it is sufficient in the circumstances to make a declaratory order outlining the claimant's entitlement in accordance with the applicable provisions of the law governing transfer.
- [178] The Court accepts that injunctive relief must be carefully tailored. The PSC retains constitutional authority to recommend transfers, but it must do so lawfully, with reasons, and in accordance with natural justice. The injunction will therefore be granted in qualified terms, restraining the PSC from effecting any transfer of the claimant to a post of lesser status or responsibilities without compliance with constitutional and statutory requirements.
- [179] The claimant seeks damages for salary lost during the period of exclusion. The defendants submit that she suffered no financial loss, as she continued to receive her full salary. The Court accepts that the claimant remained on full pay. No compensatory damages for salary are therefore warranted. If allowances or benefits tied to her substantive post were withheld, those may be quantified and awarded, but no evidence of such loss has been adduced.

Exemplary damages

- [180] The claimant relies on **Rookes v Barnard**⁴⁵ and De Smith's Judicial Review,⁴⁶ submitting that the defendants' conduct was oppressive, arbitrary and in breach of sections 77 and 78 of the Constitution. The defendants argue that exemplary damages are exceptional and not justified here, citing **Dale Naylor v Attorney General of Antigua and Barbuda**⁴⁷ for restraint in awarding punitive remedies against public authorities.
- [181] The Court accepts that exemplary damages are awarded sparingly, only where compensation is inadequate to punish and deter outrageous governmental conduct. While the defendants' actions were procedurally irregular and heavy-handed, they do not rise to

⁴⁵ [1964] AC 1129

⁴⁶ 8th Edition, Sweet & Maxwell, at para. 19-062

⁴⁷ ANUHCVP1999/0308, delivered March 23, 2020

the level of outrageous or contumelious conduct warranting exemplary damages. The high threshold is not reached. Therefore, this head of claim is refused.

Vindictory damages

- [182] The claimant relies on **Inniss v Attorney General of Saint Christopher and Nevis**⁴⁸ where the Privy Council held that vindictory damages may be awarded to mark the seriousness of a constitutional breach. In that case, the Registrar of the High Court and Additional Magistrate was summarily dismissed by the government via a standard contractual notice clause rather than through the constitutionally mandated Judicial and Legal Services Commission procedures. Noting that the summary, unconstitutional dismissal of a judicial officer had an “extra dimension”, Ms. Innis was awarded \$50,000.00 as vindictory damages.
- [183] The defendants resist, contending that no constitutional right was infringed. The defendants rely on **Rachel Glenna M. Roberts v The Public Service Commission**⁴⁹ where a senior public officer was transferred from her substantive post to another department where there was no equivalent post, no proper office accommodation, and no clearly defined duties. The claimant was awarded \$10,000.00 as vindictory damages.
- [184] The Court finds that sections 77 and 78 of the Constitution were breached, and that the claimant was denied natural justice. Vindictory damages are therefore appropriate to vindicate her constitutional right to serve in her substantive office free from unlawful interference. Sections 77 and 78 were breached. The actions on the PSC and the CPO were therefore unconstitutional. However, in this case, the quantum will be modest. I consider that the present case is analogous to **Roberts**. Vindictory damages are therefore assessed in the sum of EC\$10,000.00, which is proportionate to vindicate the claimant’s constitutional rights, mark the seriousness of the breach, and deter repetition, while recognising that the claimant suffered no financial loss.

⁴⁸ [2008] UKPC 42

⁴⁹ GDAHCV2019/0116

Costs

[185] The claimant is entitled to costs of this claim. She has not succeeded on the entire claim and any costs awarded must be discounted. I will order that costs be assessed if not agreed.

Order

[186] Based on all the foregoing, the Court makes the following declarations and orders:

- 1) A declaration is granted that the decision to transfer the claimant from her appointed position of Supervisor of the Centralised Purchasing Unit to Logistics Coordinator at the National Emergency Management Agency was wrongful, unlawful, irrational, procedurally irregular, unfair and a breach of natural justice principles and is void and of no effect.
- 2) A declaration is granted that the Chief Personnel Officer acted for or purported to act for the Public Service Commission in breach of section 77 of the Constitution of Saint Christopher and Nevis.
- 3) A declaration is granted that the Public Service Commission abdicated its responsibilities under the Constitution, Public Service Act and Public Service Regulations to the Chief Personnel Officer who is not a member of the Public Service Commission in breach of section 77 and section 78 of the Constitution of Saint Christopher and Nevis.
- 4) A declaration is granted that the decision to purportedly transfer the claimant was tantamount to a demotion in that the claimant's duties and responsibilities amounted a diminution in the standing that she held previously.
- 5) A declaration is granted that the decision to purportedly transfer the claimant from her said position was tantamount to a removal from office.

- 6) A declaration is granted that the claimant was victimised by the heavy-handed administrative actions of the Chief Personnel Officer and by the Public Service Commission's abdication of its constitutional responsibilities. The Court declines to declare that the claimant was politically victimised.
- 7) An injunction is granted restraining the Public Service Commission from effecting any transfer of the claimant to a post of lesser status or responsibilities without compliance with constitutional and statutory requirements.
- 8) An Order for exemplary damages is refused.
- 9) The claimant is awarded vindictory damages in the sum of \$10,000.00.
- 10) An Order for damages amounting to the claimant's salary lost during the period in which she was transferred and/or removed from office and/or any benefits lawfully due to her in her position as Supervisor of the Centralised Purchasing Unit is refused.
- 11) The claimant is awarded costs of this claim to be assessed if not agreed within thirty days of this judgment.

[187] Finally, I thank Counsel on both sides for their submissions in this matter.

Tamara Gill
High Court Judge

By the Court

Registrar