

Privy Council Appeal No. 1 of 1994

Gladwyn Ophelia King

Appellant

v.

The Attorney General of Barbados

Respondent

FROM

THE COURT OF APPEAL OF BARBADOS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
3RD MAY 1994

Present at the hearing:-

LORD TEMPLEMAN
LORD BROWNE-WILKINSON
LORD MUSTILL
LORD SLYNN OF HADLEY
LORD WOOLF

[Delivered by Lord Templeman]

The appellant, Miss King, became a public servant on 1st November 1981. By September 1991 she was a clerical officer in the Ministry of Education at an annual salary of \$18,440.67. By the Public Service Reduction of Emoluments Act 1991 ("the Act of 1991") the rate of emolument payable to an officer in the public service was reduced by 8% with the result that the appellant's salary was reduced to \$16,965.50 for the period 1st October 1991 to 31st March 1993. The appellant claims that under the Constitution of Barbados her emoluments could not be reduced without payment to her of compensation.

The Civil Establishment Act c. 21 enacted on 1st April 1948 which remains in force provided as follows:-

- "2.(1) The Minister may from time to time by order -
- (a) establish offices in the public service;
 - (b) determine the number of persons who may be appointed of such offices;
 - (c) prescribe the qualifications to be possessed by persons appointed to such offices;
 - (d) determine the emoluments to be attached to such offices; and

- (e) authorise the payment of the cost of passages of officers and their families travelling outside the Island.

...

(4) An order under subsection (1) shall be provisional only and shall be of no effect until it has been laid before Parliament and approved by a resolution of each House: ...

(5) The power conferred on the Minister by this section to make orders shall be deemed to include a power, exercisable in the like manner and subject to the like conditions, to vary or revoke any such order."

By the Barbados Independence Order 1966, the Constitution of Barbados came into effect on 30th November 1966. Chapter III of the Constitution affords protection for fundamental rights and freedoms specified in section 11 including:-

"(b) protection ... from deprivation of property without compensation;"

By section 16:-

"(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except by or under the authority of a written law and where provision applying to that acquisition or taking of possession is made by a written law -

- (a) prescribing the principles on which and the manner in which compensation therefor is to be determined and given; ..."

By section 24 any person who alleges that his fundamental rights have been contravened may apply to the High Court for redress and that court may make such order as it considers appropriate for the purpose of securing the enforcement of those rights. An appeal against the decision of the High Court under section 24 lies to the Court of Appeal and then to Her Majesty in Council.

By section 48:-

"(1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Barbados."

By the Civil Establishment (General) Order 1990 the Minister in exercise of the powers conferred on him by section 2 of the Act of 1948, revoking and replacing previous orders under that Act and with the approval of Parliament as required by that Act, established offices in the public service and specified the emoluments attached to each office. The appellant is the holder of an office in the public service thus established and down to 1st October 1991 was entitled to and in receipt of the emoluments attached to her office by virtue of the 1990 Order.

The Act of 1991 was, by section 3 and the First Schedule to that Act, expressed to apply to the holders of offices established by order under the Act of 1948. The appellant was the holder of such an office and by the 1991 Act her emoluments were reduced from the September 1991 rate by 8% during the period 1st October 1991 to 31st March 1993.

When the appellant was appointed to the public service in 1981, and at all times thereafter down to the coming into force of the 1991 Act on 1st October 1991, she was entitled to the emoluments attaching to her office by virtue of an order made under the Act of 1948 by the Minister and approved by a resolution of both Houses of Parliament, subject to the power conferred on the Minister by the Act of 1948 with the like approval to vary or revoke any order for the time being in force. The appellant was not entitled to a minimum emolument but only to such emoluments as might from time to time be attached to the holder of her office by an order made and approved under the Act of 1948. Under that Act the emoluments attached to any public office could be increased or reduced by an appropriate order and could in particular be reduced by 8%.

The power conferred by section 48 of the Constitution on Parliament to make laws for the peace, order and good government of Barbados included power to make laws affecting the establishment of and emoluments attaching to offices in the public service. That power was delegated to the Minister by the Act of 1948, which remained in force after the coming into effect of the Constitution. It was open to Parliament at any time to repeal the Act of 1948 or to withdraw or supersede or exercise the powers delegated to the Minister by the Act of 1948. The Act of 1991 was an effective exercise of the jurisdiction vested in Parliament to determine the emoluments attaching to offices in the public service, if Parliament considered that it was desirable to do so in the public interest.

The appellant does not deny that Parliament had jurisdiction to enact the Act of 1991 but claims that the Act deprived her of property which she defined as the right to be paid not less than the emoluments attached to her office immediately before 1st October 1991. The appellant had no such right; her only right was and is to receive such emoluments as the Minister pursuant to the Act of 1948, or Parliament pursuant to its jurisdiction under the Constitution, from time to time attaches to her office.

On behalf of the appellant, Dr. Ramsahoye submitted that every appointment to a public office, whether contractual or statutory or made pursuant to the Constitution, was subject to an implied term that the emoluments attached to that office shall never be reduced. The Constitution has selected some officers

whose emoluments may not be reduced. By section 112 of the Constitution:-

"(3) The salary and allowances payable to the holder of any office to which this section applies and his other terms of service shall not be altered to his disadvantage after his appointment, and, for the purposes of this subsection, in so far as the terms of service of any person depend upon the option of that person, the terms for which he opts shall be taken to be more advantageous to him than any other terms for which he might have opted.

(4) This section applies to the offices of Governor-General, Judges, Director of Public Prosecutions, Auditor-General, appointed members of the Judicial and Legal Service Commission and members of the Public Service Commission and the Police Service Commission."

These provisions ensure the independence of the selected officers free from any financial pressure which Parliament or the executive might otherwise exert. Section 112 is inconsistent with the claim put forward on behalf of the appellant that every officer in the public service from field marshal to cleaner is entitled by implication to the protection which section 112 expressly confers on selected officers. Even if section 112 had not been included in the Constitution, their Lordships can discern no possible justification for any implication that the emoluments attached to the office of the appellant in the public service shall never be reduced.

The appellant had no right to a minimum salary. If she had no right to a minimum salary she had no property protected by sections 11 and 16 of the Constitution. Her only right was to such emoluments as the Minister under the Act of 1948 or as Parliament in exercise of its legislative powers from time to time attached to her office. The emoluments of the appellant were lawfully reduced by the Act of 1991. Sir Denys Williams C.J., sitting in the High Court, and the Court of Appeal (Smith and Moe JJ.A., Husbands J.A. dissenting) came to the same conclusion. Their Lordships will humbly advise Her Majesty that this appeal ought to be dismissed. The appellant must pay the costs of the respondent before their Lordships' Board.

