

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. NO. 2133 OF 2005**

**IN THE MATTER OF JUDICIAL REVIEW ACT 2000**

**AND**

**IN THE MATTER OF THE PENSIONS ACT AND PENSIONS REGULATIONS  
CHAPTER 23:52**

**AND**

**IN THE MATTER OF REGULATION 101 OF THE POLICE SERVICE  
REGULATIONS CHAPTER 15:01**

**AND**

**IN THE MATTER OF THE DECISION OF THE COMMISSIONER OF POLICE  
WHEREBY HE FAILED TO TAKE INTO ACCOUNT THE APPLICANT'S  
HOUSE ALLOWANCE IN COMPUTING THE APPLICANT'S PENSION AND  
GRATUITY**

**AND**

**IN THE MATTER OF THE APPLICATION OF ELTON MARTIN RETIRED  
POLICE SERGEANT REGIMENTAL NUMBER 8417 FOR LEAVE TO APPLY  
FOR JUDICIAL REVIEW**

**BETWEEN**

**ELTON MARTIN**

**Applicant**

**AND**

**THE COMMISSIONER OF POLICE**

**Respondent**

**Before the Honourable Mr. Justice R. Narine**

## **Appearances**

Mr. Kenneth Thompson for the Applicant

Ms. Josefina Baptiste instructed by Mr. Bhimsingh for the Respondent

## **JUDGEMENT**

This is an application for Judicial Review. The Applicant claims the following relief:

- (a) A Declaration that the decision of the Commissioner of Police whereby he failed to take into account the Applicant's house allowance in computing his pension and gratuity, was unlawful, unreasonable and in breach of his legitimate expectation that the said allowance would be taken into account in the computation of the Applicant's pension and gratuity.
- (b) An Order of Certiorari to remove into this Honourable Court and quash the aforesaid decision.
- (c) An Order of mandamus directed to the Commissioner of Police requiring him to re-compute the Applicant's pension and gratuity, taking into account the Applicant's house allowance and pay him the sums representing pension and gratuity to which he is lawfully entitled.
- (d) Special damages representing loss of gratuity and pension.
- (e) Costs
- (f) Interest

The basic issue that arises for determination is whether the Applicant's house allowance should be taken into account in computing his pension and gratuity.

The basic facts are not in dispute. The Applicant enlisted as a Constable in the Police Service in November 1971. He retired as a Sergeant in April 2005. His monthly salary was \$8,130.00. He also received a house allowance of \$900.00. The Applicant contends that as a result of the failure of the Respondent to take into account his house allowance, he has lost \$30,000 in gratuity and \$10,000 in pension.

The Respondent maintains that house allowance ought not to be taken into account in computing gratuity and pension.

## **SUBMISSIONS OF COUNSEL**

1. The Applicant submits that he is a public officer within this meaning of section 2 of the **Pensions Act Chapter 23:52**, and that his pension and gratuity should be calculated in accordance with that Act and the Regulations made there-under.
2. The Respondent contends that the pensions and gratuities of police officers must be calculated under the provisions of the **Police Service Act Chapter 15:01** and the Rules set out in the Sixth Schedule thereto.

## **THE LEGISLATION**

Section 3 of the **Police Service Act Chapter 15:01** provides as follows:

**3(1) The several public offices, being the office of a member of the Police Service, from time to time set out in the Third Schedule shall be deemed to constitute the Trinidad and Tobago Police Service, which is hereby established for the purposes of this Act.**

**(2) A member of the Police Service who holds such a public office, that by subsection (1) is deemed to be an office in the Police Service shall be referred to as a police officer.**

This section establishes the Police Service, whose members hold the several public offices set out in the Third Schedule to the Act. The Second Schedule sets out the offices in the First Division and Second Division of the Police Service. The rank of Sergeant is an office in the Second Division.

Section 63 of the Police Service Act provides that the pensions and gratuities and other allowances of police officers in the First and Second Divisions “**shall be determined**” in accordance with the rules set out in the Sixth Schedule.

The Sixth Schedule is intituled “**Pensions and Gratuity Rules**”

Rule 4(4) of these Rules provides:

(4) Subject as herein contained, any police officer not disabled as aforesaid who has attained the age of fifty years, and has served in the Police Service -

(a) for not less than twenty years; or

(b) for not less than ten years and has retired from the Police Service with the approval of the Minister of Finance,

may be granted a monthly pension not exceeding 1/480ths of a month's pay for each completed month of service.

The **Police Service Act** defined 'pay' as the rate of pay assigned to an office in a grade by a Remuneration Order.

Section 7 of the Act provides, inter alia, that the President may by Order:

(1) determine the pay in respect of an office in a grade;

(2) establish the allowances that may be paid in addition to pay.

It follows from the wording of this section that the Act makes a clear distinction between "pay" and "allowances" which may be paid in addition to "pay".

Having regard to the express provisions of the **Police Service Act**, the computation of the Applicant's pension and gratuity, is to be made on the bases of his "pay", exclusive of house allowance.

However the Applicant contends that his pension and gratuity ought to be calculated with reference to the provisions of the **Pensions Act**.

The **Pensions Act** defines the term "police officer" as having the same meaning as under Section 2 of the **Police Service Act**.

Section 2 of the **Police Service Act** defines "police officer" as "a person who is appointed to perform the duties of an office of continuing indeterminate duration". This definition is not particularly helpful in the context of this case.

However section 3 of the **Police Service Act** provides that "the several public offices, being the office of a member of the Police Service ..... shall be deemed to constitute the Trinidad and Tobago Police Service ....."

Section 3(2) of the **Police Service Act** provides further that a member of the Police Service who holds such a "public office" shall be referred to as a Police Officer.

On the basis of these definitions Mr. Thompson argues that police officers are "public officers" within the ambit of "Public Service" as defined in Section 2 of the **Pensions Act**, in that their services are provided in a civil capacity under the government of Trinidad and Tobago. As a public officer, Mr. Thompson submits, the Applicant's pension and gratuity are to be computed under the provisions of the **Pensions Act**, under which his house allowance is to be taken into account as a "pensionable emolument" under that Act.

Having considered this submission very carefully, I am constrained to reject it for the following reasons.

In the first place the **Pensions Act** itself draws a distinction between "police officer" and "public service", which contemplates service to the country in a "civil capacity". While it is true that some police officers are assigned to certain administrative duties in the police service, it can hardly be suggested that the vast majority of police officers, are performing services "in a civil capacity". While they perform duties of a public nature, the basic functions of police officers are to investigate crime, to protect citizens from criminal elements and to preserve the peace. In order to accomplish these objectives police officers are authorized to use reasonable force and to carry firearms. They are regarded as part of the "protective services" of the country. Their functions distinguish them from the usual desk-bound pen-pushing civil servant.

In the second place, the **Police Service Act** itself, which post dates the Pensions Act, expressly provides that the persons and gratuities of police officers are to be calculated in

accordance with the Rules set out in the Sixth Schedule to that Act. It is a specific provision which sets out clearly defined guidelines for the computation of pensions and gratuities for police officers. If Parliament had intended that the **Pensions Act** should apply to police officers, then it would expressly say so.

In fact, the **Pensions Act** specifically provides in Sections 11 and 12, for public officers who have previously served as teachers, police officers and fire officers, and for public officers who subsequently join the police service. If it was intended by Parliament that pensions and gratuities for police officers are to be calculated in the same manner as public officers then why make separate provision for public officers who have served in the police service?

Mr. Thompson has further submitted that the Respondent includes personal allowance, and an examination allowance in computing pensions and gratuities for police officers. On this basis, Mr. Thompson submits that the **Pensions and Gratuities Rules** under the **Police Service Act** are complementary to the **Pensions Act** and the **Pensions Regulations** made thereunder, and that the former were not intended to replace the latter.

Once more, I am unable to accept this submission. I am not in a position to say on what basis these allowances are taken into account. There is evidence from the Respondent that an examination allowance received by the Applicant for the three (3) year period prior to his retirement was included in calculating his pension and gratuity. There is no evidence that the personal allowance of the Applicant has been taken into account.

Mr. Thompson filed further submissions on 2<sup>nd</sup> February 2006. Mr. Thompson refers to Regulation 65(1) of the **Police Service Regulations** Chapter 15:01, which provides for the annual vacation leave for police officers. In computing length of service for the purposes of an officer's vacation leave, the officer's service must include "other public service" and "service in the group" as defined in section 2 of the **Pensions Act**.

Having considered the relevant provisions, I find that these provisions do not support the contentions of the Applicant.

In the result, I hold that the computation of the pension and gratuity of the Applicant are to be calculated in accordance with the provisions of the **Police Service Act** and the **Pensions and Gratuities Rules** made thereunder. Accordingly I find that the Applicant's house allowance is not to be included in calculating his pension and gratuity. It follows that I must refuse the reliefs sought in the Notice of Motion filed herein on 9<sup>th</sup> November 2005. Having considered his submissions, I find that the Applicant was not unreasonable in seeking to have the issue determined by the Court. Accordingly, I make no order as to costs.

**THE ORDER:**

- (1) Notice of Motion filed on 9<sup>th</sup> November is dismissed.
- (2) No order as to costs.

The identical issues were raised by the Applicants in:

H.C.A. No. 1838 of 2005 Between Kenneth Nimblett vs Commissioner of Police and  
H.C.A. No. 2134 of 2005 Between Codrington Joefied and Commissioner of Police.

The same submissions were made in these matters and the decision is the same. Accordingly, I make identical orders in these matters.

**Dated this 23<sup>rd</sup> day of February 2006.**

.....  
**RAJENDRA NARINE**  
**Judge.**