

**Government of Seychelles v Public Service Appeal Board  
(2005) SLR 69**

Elvis CHETTY for the Petitioner  
John RENAUD for the Respondent

**Judgment delivered on 17 October 2005 by:**

**PERERA J:** This is an application for a writ of certiorari filed by the Government of Seychelles, seeking to quash an order made by the Public Service Appeal Board (PSAB) on 18 August 2003. It is averred that two Prison Officers, namely Ansel Lame and Christopher Cadeau were formally suspended from duties without pay on 31 October 2002 by the Superintendent of Prisons on suspicion that they were involved in releasing convicted Prisoners occasionally. They were informed that such acts amounted to criminal offences.

The Complainants filed complaints before the PSAB on 15 May 2003, which were stated as follows:

Complaining about the suspension which has been going on for 6 months without pay. I understand that the case is with the Police but I do not have any salary to maintain myself. I would like at least half of my salary until the investigation is over.

The Complainants therefore were prepared to await the outcome of the Police investigation, but sought an order for the payment of at least half their salary.

On the same day, the PSAB called for the comments on these complaints from the Principal Secretary, Ministry of Social Affairs and Employment, together with the Personal Records Forms and other particulars relating to the suspension. That Ministry, by letter dated 26 May 2003 stated that both Complainants were appointed to the post of Prison Sergeant on 2 May 2002 on a probationary period for 6 months and that they were suspended without pay with effect from 24 October 2002 pending Police investigation. It was further stated that as no case against them had been filed so far, the Ministry would conduct disciplinary proceedings.

The PSAB however proceeded to hear the complaints on 3 and 31 July 2003. According to the proceedings furnished to this Court, when the Board enquired as to what the complaint was, both Complainants deviated from their written complaint seeking half pay, and sought to canvas the validity of the suspension. While Ansel Larue wanted an order of reinstatement, Christopher Cadeau did not want such an order. The Board indicated to them that it was in the interest of the Complainants that they did not seek reinstatement and that they could obtain the full salary withheld during the suspension. The Complainants, the Superintendent of Prisons and a Ministry Official agreed to that settlement. However the Superintendent informed the Board that both Complainants

were serving their probationary period at the time of the suspension and hence he had to seek approval of the Ministry.

In a formal order made on 18 August 2003, the Board stated inter alia thus:

We have examined the evidence placed before the Board. The Police have been investigating serious crimes alleged to have been committed by the Complainant(s). There is much more to be done. In the meantime we have assessed the situation on the evidence before us. The Complainant(s) (have) agreed that (they) should leave the services of the Ministry. We agree and we are of the view that that should be effective 31<sup>st</sup> July 2003.

We order that the services of the Complainant(s) be terminated in the interest of the organization with effect from 31<sup>st</sup> July 2003 and arrears of salary and all benefits associated with the termination be paid to the Complainant(s) by the 30<sup>th</sup> September 2003.

The order was conveyed to the Ministry on 20 August 2003 for compliance. The Ministry, by letter dated 4 September 2003, informed the PSAB that the Police had almost completed the investigation against the two Complainants, and as the complaints against them were serious, they should be dismissed without any benefits. The Board replied that it was functus officio and hence advised the Ministry to seek any other legal remedy. Consequently, the instant application for a writ of certiorari has been filed. The main grounds relied in paragraphs 8, 9, 10 and 11 of the petition are as follows:

- (8) It is averred that the PSAB acted ultra vires, unreasonably and with impropriety by making an order under Public Service Order 133(a) on the ground of "termination in the interest of the organization", as the case before it was of a disciplinary nature which should have been construed under other provisions of the Public Service Order including PSO 110 as read with Public Service Order 116 (III).
- (9) It is averred that the Public Service Board erred in failing to invite submissions of the representation of the Ministry at the hearing on the issue of the propriety of allowing the termination under Public Service Order 133(a).
- (10) It is further averred that the Public Service Board acted ultra petita in that Public Service Order 133 (a) was not a ground of the complaint.
- (11) It is averred that the Public Service Board wrongly construed the matter as one where it had a discretion to make any order which it wished, in that the Public Service Orders contain mandatory

provisions as to procedure to be followed in the event where Public employees are involved in alleged serious offences which have been reported to the Police.

The Respondent, the PSAB, in answer to the petition maintains that the representatives of the Ministry accepted the procedure adopted, and agreed to the order proposed by the Board. It is further averred that the PSAB is not bound by the Public service orders and that the Board is not restricted in its consideration of a Complaint by the grounds stated in the complaint.

The jurisdiction of the PSAB to hear complaints by Public Officers covers a variety of grievances that arise in the service as set out in Article 146(1) (a) to (e). Under Sub Article 6, an aggrieved Public Officer has the right to take legal or any other proceedings under any other law, notwithstanding that a complaint has been made to the PSAB. Sub Article (3) provides inter alia that the Board may refuse to consider a complaint where it is of opinion that the complaint has been delayed without reasonable cause for more than six months or the complaint is subject to the Complainants were suspended without pay on 24 October 2002, pending police investigation.

The complaints were filed on 15 May 2003, about 7 months later, and that too only to seek a variation of the Ministry order by authorizing the payment of at least half pay "until the investigation is over".

In paragraph 9 of the answer, it is averred that the PSAB "makes its own procedure which is flexible, and the Board is not subject to the control of any body or person in the discharge of its functions". Article 147(3) permits the PSAB to regulate its own proceedings, while Article 145(2) provides that the PSAB "shall not, in the performance of its functions, be subject to the direction or control of any person or Attorney". In the case of *Unuth v Police Service Commission* (1982) MR 232, the Supreme Court of Mauritius, considering Article 118 of the Constitution, which has a similar provision as our Article 145(2), held that:

It is not as in the case of judicial review in other spheres, every kind of error of law on the face of the record that can be investigated, but only instances where a service commission acts ultra vires, or disregards the Constitution or a law.

To this, I would add, disregard of Rules, regulations and orders that bind the Complainant's contract of employment. In that context, did the PSAB Act ultra vires its powers in making the order dated 18 August 2003? A citizen or a resident of Seychelles is bound by the general laws of the country. Where he joins a profession, he would in addition be governed by the regulations, orders or other rules that govern the procedure of that profession. Accordingly, the contracts of the Complainants were governed by the Public Service Orders (PSO). Admittedly, the Complainants were suspended on the basis of alleged criminal offences committed by them, pursuant to PSO 116 (iii). Termination "in the interest of the organization", which was ordered by the PSAB, is

permitted under PSO 133 (vi) where there are no disciplinary PSO's have no legal force as they are not laws, yet when a Public Officer, provisions of the PSOs cannot be disregarded, complaint should be considered in relation to these orders of employment is based. Article 146(i) limits the powers of the PS persons aggrieved by an appointment made to an office, a pro disciplinary proceedings taken in respect of an Officer, terminate a decision relating to the qualification of a person who has appointed serving in an Office. All these are governed by the PSOs. The paragraph 7 of the answer that the Board is "not bound by the PSO" is not a government body. Its powers are contained in the PSO". What is relevant is not the powers of the PSAB, but the orders the Complainant and his Department or Ministry has to contract. The Board in exercising its functions under Article 14 complaints within the provisions of the PSOs which apply to the

The Complainants had allegedly, committed criminal offence investigation pending. The Ministry had suspended their employment that investigation was complete. The Complainants acknowledged complaint, but merely sought an order for half pay pending Parties bound by the PSO's cannot agree to act contrary to its the PSAB was contrary to the provisions of PSO 133(a) as were pending. The order is therefore ultra vires its powers as orders under which the complaint ought to have been considered dated 18 August 2003 being both ultra petita and also ultra vires hereby issued quashing that order.

There will however be no order for costs.

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orders. Although the complaint is made by a Public Officer's which his contract of employment is based on to an office, any disciplinary proceedings taken in respect of an appointment or termination of an Office or is PSAB has averred in violation of the provisions of the PSO. It is a statutory institution and not the PSAB, regulations and orders made by themselves in the exercise of its powers should consider the interests of the complainant.

There was a Police investigation pending without pay, until the investigation was complete. These facts in their complaint sought an order for half pay pending Police investigation. The order of the PSAB was contrary to the provisions of PSO 133(a) as were pending. The order is therefore ultra vires its powers as orders under which the complaint ought to have been considered dated 18 August 2003 being both ultra petita and also ultra vires hereby issued quashing that order. Hence the order of certiorari is