

**SUPREME COURT OF SEYCHELLES**

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**Reportable/Not Reportable/Redact**

[2021] SCSC 707

MC67/2021

In the matter between:

**THE ATTORNEY GENERAL**

**representing The Government of Seychelles,  
at the instance of the Commissioner of Police**

*(rep. by E. Almeida)*

**Petitioner**

and

**PUBLIC SERVICE APPEAL BOARD**

*(unrepresented)*

**1<sup>st</sup> Respondent**

**THELCIA BACCO**

*(unrepresented)*

**2<sup>nd</sup> Respondent**

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**Neutral Citation:** *The Attorney General v PSAB and Anor* (MC67/2021) [2021] SCSC 707 (29 October 2021).

**Before:** E. Carolus J

**Summary:** Application for leave to proceed with application for Judicial Review

**Delivered:** 29 October 2021

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**ORDER**

Leave to proceed with petition for Judicial Review is granted.

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**RULING**

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**E. Carolus, J**

[1] The Attorney General has petitioned this Court for judicial review of an order of the Public Service Appeal Board (“PSAB”) dated 27<sup>th</sup> May 2021 in Complaint No 2184. The petition is supported by an affidavit sworn by Mrs. Angele Lebon the Director General

HR/ Administration of the Seychelles Police who avers that she is authorised to make the affidavit on behalf of the petitioner. A number of documents are exhibited to the affidavit.

[2] The order of the PSAB was made pursuant to a complaint to it by 2<sup>nd</sup> respondent Ms. Thelcia Bacco regarding her dismissal from the Seychelles Police Force (“the Police Force”).

[3] The events giving rise to the order as averred in the petition are as follows: The 2<sup>nd</sup> respondent was employed with the Police Force from 2<sup>nd</sup> October 2012 and had reached the position of constable to which she was appointed on 13 January 2015. She was interdicted from police duty for alleged discreditable conduct on 9<sup>th</sup> April 2019 pending an investigation regarding her involvement in a transaction related to controlled drugs, and received only half her monthly salary for the duration of her interdiction. Pursuant to internal disciplinary proceedings within the Police Force she was found guilty of the said discreditable conduct namely condoning illegal conduct and having knowledge of the presence and cultivation of a controlled drug on the premises of her concubine where she also resided. Her dismissal was therefore recommended. She was duly dismissed with effect from 17<sup>th</sup> September 2020. The 2<sup>nd</sup> respondent filed a complaint with the PSAB against her dismissal further stating that she had not been paid. It is the order made by the PSAB pursuant to that complaint which is now sought to be reviewed.

[4] The order of the PSAB is as follows:

1. *That the Seychelles Police Force should pay the complainant all her Public Holiday.*
2. *That the Seychelles Police Force to refund the complainant the following:*
  - b. *The half salary from the date of interdiction to the date of dismissal.*
  - c. *The other half of her accrued annual leave;*
  - d. *The other half of her gratuity payment;*
  - e. *The other half of her compensation.*
3. *That all payment is to be paid to the Complainant by the 30<sup>th</sup> July 2020.*

[5] In terms of the petition, the petitioner prays the Court to:

- a) *grant the Petitioner leave to proceed with the Petition.*
- b) *direct the Respondent no.1 to disclose to the Petitioner all documents relating and incidental to the impugned Order and*
- c) *direct the Respondent no.2 to disclose to the Petitioner all originals of her contract with the Police Force dated 2<sup>nd</sup> October 2012, letter of confirmation as Special Constable dated 20<sup>th</sup> January 2014, letter of appointment as Constable dated 13<sup>th</sup> January 2015, letter of interdiction from the Police Force dated 09<sup>th</sup> April 2019, and the letter of dismissal from the Police Force dated 28<sup>th</sup> September 2020.*
- d) *issue a Writ of Certiorari to quash and set aside the order of the 1<sup>st</sup> Respondent made in complaint No.2184 dated 27<sup>th</sup> May 20121.*

[6] At this stage, the Court has to decide whether or not to grant leave to the petitioner to proceed with the petition. I note that counsel for the petitioner opted not to submit on the issue.

[7] Rule 6 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, 1995 provides that in order for the Court to grant leave to proceed, it must be satisfied that the petitioner has sufficient interest in the subject matter of the petition and that the petition is made in good faith.

[8] The petitioner is the Attorney General representing the Government of Seychelles at the instance of the Commissioner of Police. In terms of sub-Article (1) of Article 160 of the Constitution “[T]he Police Force shall be commanded by the Commissioner of Police ...”. Section 9(1) of the Police Force Act further provides that “[T]he administration of the Force throughout Seychelles shall, subject to the orders and directions of the President, be vested in the Commissioner of Police”. Given the subject matter of the petition, it is my view that that the petitioner has sufficient interest in the subject matter of the petition.

[9] Having determined that the petitioner has sufficient interest, it remains for this Court to determine whether the petition is made in good faith. In order to show good faith, the petitioner has to show that it has an arguable case on the basis of the material available to the Court that is, the petition, affidavits and other documents submitted. See *Karunakaran v Constitutional Appointment Authority* [2017] SCCA 9.

[10] The petitioner basically claims that the money awarded to the 2<sup>nd</sup> respondent by the 1<sup>st</sup> respondent is illegal, unreasonable and unjustified as she was not entitled to the same under the law, and that in making its order the 1<sup>st</sup> respondent has interfered in the administrative function and duty of the petitioner. Further that the 1<sup>st</sup> respondent's order is highly irrational as it dealt with only the monetary awards without looking into the merits of the matter and making a determination as to whether the 2<sup>nd</sup> respondent's dismissal was justified or not. Having perused the petition and gone through the materials submitted in support thereof, I find that the issues raised in the petition, disclose an arguable case. I therefore find that the requirement of good faith is fulfilled.

[11] Accordingly I grant leave to the petitioner to proceed with its petition for Judicial Review and I make the following Orders:

- (i) I direct the Registrar to serve a copy of the petition, supporting affidavits and connected documents on the respondents.
- (ii) The PSAB is directed to forward the record of proceedings in respect of Complaint No. 2184 to the Registry of the Supreme Court not later than 14 days after the date of this Order.
- (iii) I direct the Registrar to, on receipt of the record of proceedings of the PSAB in Complaint No 2184, allow the parties to peruse it and obtain copies thereof.
- (iv) The respondents are to file their objections to the petition in the Registry of the Supreme Court on or before the next mention date and serve a copy thereof on the petitioner.

[12] A copy of this Ruling is to be served on the respondents.

Signed, dated and delivered at Ile du Port on 29<sup>th</sup> October 2021.

**E. Carolus**