

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2020] SCSC 77
MC 111/19

In the matter between:

THE GOVERNMENT OF SEYCHELLES

Plaintiff

AT THE INSTANCE OF COMMISSIONER

OF POLICE represented by the Attorney General
(rep. by Chinasamy Jayarag)

and

1. PUBLIC SERVICE APPEAL BOARD

1ST Defendant

CARLOS ROUCOU
(rep. by John Renaud)

Neutral Citation: *Government of Seychelles v PSAB and Anor* (MC111/19) [2021] SCSC
77 (24th March 2021).
Before: Pillay J
Summary: Judicial Review – jurisdiction of PSAB
Heard: 29th October 2020
Delivered: 24th March 2021

ORDER

- [1] The Petition is therefore allowed. A writ of certiorari is issued quashing and setting aside the order of the first Respondent made in complaint No. 2096 dated 24th October 2019.
- [2] No order is made for costs.

JUDGMENT

PILLAY J

- [1] The Petitioner prays the Court to issue a writ of certiorari to quash and set aside the order of the 1st Respondent made in complaint No. 2096 dated 24th October 2019.
- [2] On 15th July 2020 Mr Renaud appearing for the first Respondent indicated that he had instructions not to defend the matter.
- [3] Following the position taken by Mr Renaud the Learned Chief Justice proceeded to grant the application. On a reading of the proceedings the application for leave to proceed with the Judicial Review was granted and the matter scheduled for hearing.
- [4] Notice was served on the second Respondent on 21st October 2020 for him to appear on 29th October 2020 for the hearing of the matter. On 29th October 2020 Mr. Chinnasamy addressed the Court on the points of law. Mr. Renaud being absent and having previously indicated his instructions not to defend the second Respondent was given a chance to address the Court. Other than saying that he had been victimised since the case “happened” he had nothing further to say. In any event he could only be successful in any response he could come up with if the first Respondent were successful in getting the Petition dismissed.
- [5] The order made by the 1st Respondent in Complaint No2096 dated 24th October 2019 that the Petitioner challenges is as follows:
- (1) That the Seychelles Police Force back pay the complainant his driving allowance of SR 600 monthly with effect from September 2018 to June 2019 less the amount of SR 1200 which has already been paid.*
- (2) That all payments should be made to the complainant by 30th November 2019.*
- [6] Mr. Chinnasamy for the Petitioner submitted that the above order made by the “first Respondent granting the relief sought and on the complaint of the second Respondent is illegal in view of the express provision of the Article 146 (1) of the Constitution and that

the first Respondent is functioning outside of its mandate and exceeding its jurisdictional power vested in it while making the said order and as such ultra vires.”

- [7] It was his submission that the relief sought does not fall within the categories of grievances enumerated in the Article 146 of the Constitution. He further submitted that the second Respondent raised the grievance of his allowances which is not a grievance mentioned by Article 146 (1). He submitted that the first Respondent ought not to have taken jurisdiction and is unconstitutional. It was his submission that by taking jurisdiction on a grievance that is outside the scope of Article 146 (1) of the Constitution, the PSAB has acted ultra vires.
- [8] Learned Counsel referred to the case of Attorney General v Public Service Appeal Board SCA 1995 to illustrate the point that the Supreme Court has power to review the Public Service Appeal Board’s decision when the Board acts ultra vires.
- [9] He also relied on the case of The Government of Seychelles v The Public Service Appeal Board (2020) SCSC 4 (CP16/2019) where it was held that “Article 146 (1) of the Constitution limits the PSAB’s jurisdiction to only the five instances listed.”
- [10] The Petitioner provided the Court with further authorities being Government of Seychelles v Public Service Appeal Board (CS 306/2003 [2005] SCSC 52 (17 October 2005) wherein the Court held that “Article 146 (1) limits the powers of the PSAB to hear complaints of persons aggrieved by an appointment made to an office, a promotion to an office, any disciplinary proceedings taken in respect of an Officer, termination of an appointment or a decision relating to the qualification of a person who has applied for an office or is serving in an office”; Government of Seychelles at the Instance of the Commissioner of Police v Public Service Appeal Board and Jenita Barra MC 91/2017 [2019] SCSC1173 (29th November 2019) wherein Govinden J found that in view of the findings in the case of Attorney General v PSAB (CS2/95) it is settled law that decisions of the Public Service Appeal Board may be reviewed by the Supreme Court in its Supervisory jurisdiction; and the case of The Government of Seychelles v Public Service Appeal Board & Anor (CP16/2019)[2020] SCSC 4 (27th March 2020)

[11] I agree with counsel for the Petitioner. The matter before the Court is merely a matter of law. Was the order dated 24th October 2019 made by the first Respondent ultra vires?

[12] Article 146 (1) of the Constitution provides that:

The Public Service Appeal Board shall hear complaints by person aggrieved by:

(a) An appointment made to an office;

(b) Promotion to an office;

(c) Disciplinary proceedings taken in respect of that officer;

(d) The termination of an appointment of a person who was holding an office;

(e) Any decision relating to the qualification of a person who has applied for an office or serving in an office.

[13] The case of **Government of Seychelles v Public Service Appeal Board & Anor (CP16/2019)[2020] SCSC 4 (27th March 2020)** was referred to the Constitutional Court requesting that the Constitutional Court considers “whether the order granted by the PSAB in which it directed the Commissioner of Police to re-examine the second Respondent’s personal situation and consider the social difficulties and that she be refunded 2 months salaries; is outside the PSAB’s mandate and exceeds the jurisdictional power vested in it by Article 146 (1) of the Constitution.”

[14] In answer to that referral question the Constitutional Court found that “Article 146 (1) is clear and specific that the Constitution confers authority on PSAB to adjudicate on matters that have been assigned to it...The PSAB being a creature of the Constitution derives its jurisdiction from the provisions of the Constitution and any other relevant statutory enactment. As it is a constitutionally established institution with an essential constitutional function, its jurisdiction cannot extend beyond what is conferred to it by the Constitution. It has only those powers given to it by the Constitution and must exercise its functions in accordance with the Constitution.”

- [15] “The Constitution limits the PSAB’s jurisdiction to only the five instances listed...” as per Article 146 (1) above.
- [16] Therefore, matters of payment of allowances do not fall within any of the five categories. It is not within the ambit of the complaints that the Public Service Appeal Board can hear under Article 146 (1).
- [17] With that said the only conclusion that can be reached is that the first Respondent’s decision and order made on 24th October 2019 was ultra vires.
- [18] The Petition is therefore allowed. A writ of certiorari is issued quashing and setting aside the order of the first Respondent made in complaint No. 2096 dated 24th October 2019.
- [19] No order is made for costs.

Signed, dated and delivered at Ile du Port on ... *24th March 2021*

As.

Pillay J