

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2016/PUB/jrv/00011

BETWEEN

D'ANDRE RIGBY

Applicant

AND

THE COMMISSIONER OF POLICE

First Respondent

AND

THE OFFICE OF THE ATTORNEY-GENERAL

Second Respondent

Before Hon. Mr. Justice Ian R. Winder

Appearances: Avrom Thompson for the Applicant
Audirio Sears for the Respondents

25 October 2018

RULING

WINDER, J.

On 25 October 2018 I heard the Application for Judicial Review of D'Andre Rigby.

1. The Applicant was challenging the decision of the Commissioner of Police to discharge him pursuant to Section 21(1) (c) of the Police Force Act. Section 21(1) (c) provides:

“Subject to the provisions of the Constitution, a Police Officer of or above the rank of Inspector may be discharged by the Governor-General acting in accordance with the advice of the Police Service Commission, and a contracted officer may be discharged by the Commissioner when the Commissioner is satisfied that the contracted Officer is unlikely to become or has ceased to be an efficient or effective Police Officer or for any other reason his discharge is deemed necessary in the public interest.”

2. The Applicant's evidence at paragraphs 6-11 as his affidavit in support is:-
 - (6) That on the 8th of January, 2016 I was dismissed from the Royal Bahamas Police Force by Commissioner of Police Ellison Greenslade.
 - (7) That I was given no reasoning other than that my conduct was unsatisfactory. There were no examples of my poor conduct proffered nor was I cited at anytime for misconduct of any sort.
 - (8) That at no time was I ever given an opportunity to respond to any allegations as none were ever put to me.
 - (9) That I was never given a hearing of any type relative to my dismissal.
 - (10) That I verily believe that my dismissal was as a result of having been charged with a criminal offense.
 - (11) That I have been dismissed pursuant to Section 21(1)(c) of the Police Force Act 2009 and the Commissioner of Police did not inform me of any inefficiencies on my part nor has he proffered any reason as to how my discharge would be in the public's interest.

This evidence is not challenged by the Defendant.

3. In the Supreme Court decision of **Davis v. The Attorney General [1994] BHS J. No. 132**, Sawyer J. (as she then was) stated at paragraph 36:

"In light of the weight of authority which would require the commissioner to "hear" a person whom he considers ought to be discharged from the force because e.g. his usefulness is questionable or on the grounds of public policy – he is duty bound to "hear" that person fairly before he makes the decision because as was said by Byles J in *Coopr v. Wandsworth Board of Works* (1863) 14 CB (NS) 180, 'That being so, a long course of decisions beginning with Dr. Bentley's case and ending with some very recent cases, establish that although there are no positive words in a statute, requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature"

4. In *Ferguson v. COP*, I stated at paragraphs 23, 25 and 26 of that decision albeit obiter:

23. Notwithstanding that I make no finding as to the substantive question of whether there was a fair hearing, I feel compelled to make a few observations on the state of the evidence. It is beyond argument that the dismissal of a police officer, such as the applicant, may only take place following a fair hearing by the Commissioner of Police. This is so notwithstanding that the decision is personal to the Commissioner of Police.

...

25. It is therefore unacceptable that the decision to terminate a police officer should take place in the context where he is: (1) not given a genuine opportunity to consider the charges being levied against him; and/or, (2) not given a genuine or adequate opportunity to respond to the said charges. The context of an officer who is in custody en route to his arraignment before a Magistrate and being required, at the same time, to both consider and respond to the Commissioner's charges instantaneously, would raise concerns as to whether this was a deprivation of such opportunity. I restate that I make no finding as to what transpired on 8 July 2009.

26. There can be no excuse as to why, in a modern organization such as the Royal Bahamas Police Force, such a "hearing" would take

Constable of The North Wales Police v. Evans [1982] 1 W.L.R. 1155 and *Ridge v. Baldwin* [1964] A.C. 40 demonstrate that such decisions are indeed amenable to Judicial Review.

9. In the circumstances therefore I grant the Order of certiorari as prayed and order that the Applicant be paid damages, such damages to be assessed by the Registrar.

10. The Applicant shall have his reasonable costs to be taxed if not agreed.

Dated this 28th day of January 2019

A handwritten signature in black ink, appearing to read 'I. Winder', written over a faint circular stamp.

Ian Winder

Justice