

IN THE SUPREME COURT OF BELIZE, A.D. 2000

ACTION NO. 438

IN THE MATTER of an application for leave to apply for
Judicial Review

AND

IN THE MATTER of a Decision of the Commissioner of Police
dated 4th and 26th September, 2000

AND

IN THE MATTER of the Police Act Chapter 109 of the Laws of
Belize, Revised Edition 1980

THE QUEEN

and

THE ATTORNEY GENERAL
EX PARTE AIP CARDINAL SMITH

Respondent
Applicant

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Dean O. Barrow S.C. for the Applicant.

Miss Tanya Longworth, Crown Counsel, for the Respondent.

JUDGMENT

1. This is an application for judicial review, pursuant to leave granted by the Court on Tuesday 31st October 2000, of the decision of the Commissioner of Police conveyed by way of letters to the Applicant dated 4th and 26th September 2000, to retire the Applicant from the Belize Police Department.
2. The Applicant accordingly seeks the following reliefs from this Court:
 - (1) An order of certiorari to remove into court and quash the decision of the Commissioner of Police dated 4th September 2000 to retire the Applicant from the Belize Police Department.

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 - (1) An order of **certiorari** to remove into court and quash the decision of the Commissioner of Police dated 4th September 2000 to retire the Applicant from the Belize Police Department.

- (2) An order of **Prohibition** to prevent the Commissioner of Police from exceeding his jurisdiction in retiring the Applicant from Belize Police Department.
 - (3) An order of **Mandamus** requiring the Commissioner of Police to reinstate the Applicant in the Belize Police Department.
3. In support of both his application for leave and at the review hearing itself, the Applicant relied upon his Affidavit sworn on 6th October 2000. This Affidavit is reproduced here in its entirety:

"I, CARDINAL SMITH, Assistant Inspector of Police, of Roaring Creek Village, Cayo District, Belize MAKE OATH AND SAY as follows:

- 1) I am a member of the Belize Police Department, holding the rank of Assistant Inspector.
- 2) By way of a letter dated 4th September 2000, the Commissioner of Police informed me that he had formed the opinion that it was desirable in the public interest that I be retired from the Police Department. I attach hereto and mark **CS1** a copy of the said letter.
- 3) By way of a letter dated 12th September 2000, my attorney replied to the Commissioner pointing out that he had no basis for his decision and that that decision, which the Commissioner had said was to be finalized in two weeks, needed to be rescinded. I attach hereto and marked **CS2** a copy of the said letter.
- 4) The Commissioner has now replied to the letter of 12th September 2000 confirming his decision and declaring the effective date of my retirement to be 18th September 2000. I attach hereto and mark **CS3** a copy of the Commissioner's reply dated 26th September 2000.
- 5) While the Commissioner of Police has power under the Constitution of Belize to appoint and remove police officers below the rank of Inspector, the Police Act sets out how the power to remove is to be exercised. The Commissioner is in violation of the Act is that no charge or case was ever brought against me either disciplinarily or criminally, nor was I ever told of any allegations against me or given any opportunity to know that complaints had been made of my conduct as a police officer.

- 6) I have not been "in the centre of what appears to be illegal policing", and have never been made privy to any evidence or material suggesting same, or even questioned in that regard before the conclusion was formed by the DPP/Police Commissioner. I have never seen or been made aware of any accusation or statement made by either the Human Rights Commissioner of Belize, Hector Balcarcel or Ricardo Guzman concerning actions or alleged actions on my part in any circumstances.

- 7) I therefore say that the decision of the Commissioner to retire me, and meantime to place me on enforced leave, is contrary to the rules of natural justice, unreasonable, without any jurisdiction and ultra vires the Police Act. For these reasons, I pray that the Court will grant me the relief sought.

C Smith"

4. It is also pertinent to produce in full the letters of the Commissioner of Police to the Applicant dated 4th and 26th September 2000 respectively:

"4th September, 2000

Mr. Cardinal Smith
Assistant Inspector of Police
Roaring Creek Village
CAYO DISTRICT

Dear Mr. Smith:

As a result of a complaint made by the Human Rights Commission of Belize regarding the alleged ill-treatment and torture of two persons, Hector Balcarcel and Ricardo Guzman, while in police custody in April 1999, we have investigated the facts and circumstances of the case. The Director of Public Prosecutions to whom the Investigation File was sent for review has advised that while other officers were also involved, you and AIP Eli Salazar were in the center of "what appears to be illegal policing". The evidence suggests that both of you may have committed serious human rights violations against the said Balcarcel and Guzman.

This incident has damaged the image of the Police in the public eye at a time when every effort is being made to improve the police-public relations.

Having carefully considered the matter, I am of the opinion that it would be desirable in the public interest that you be retired from the Police Department. However, to relieve any hardship to you and in recognition of past services you will be paid full pension benefits payable immediately.

Should you wish to make any representations against your proposed retirement in the public interest, please do so within two weeks of the date of this letter. A final decision in the matter will be taken after due

consideration of your reply, if any, and having regard to all the other circumstances of the case.”

“26th September, 2000

Mr. Cardinal Smith
Roaring Creek Village
CAYO DISTRICT

Dear Mr. Smith:

In furtherance to my letter referenced CPPF 26/2000 (3) dated 4th September, 2000, you are now advised that the effective date of your retirement is 18th September, 2000.

Please be advised that the relevant documents required to facilitate calculation of your gratuity and pension are being prepared for submission to the Office of the Accountant General.

Thank you for the years of service given to the Belize Police Department and people of Belize.”

5. These letters are at the heart of this application, particularly the statements in them by the Commissioner of Police that he was “of the opinion that it would be desirable in the public interest that . . . (the Applicant) *be retired from the Police Department*” and . . . you (that is the Applicant) *are now advised that the effective date of your retirement is 18th September 2000.*

The upshot of all this is that the Applicant is no longer a member of the Belize Police Department and now seeks, by these proceedings, to impugn the action of the Commissioner of Police.

6. In support of the Commissioner of Police's action two Affidavits were filed both dated 5 December 2000, one by the Commissioner of Police himself and the other by Inspector of Police Justo Augustine.
7. Again, I believe it is helpful to set out here in full these two Affidavits. First, the Affidavit of the Commissioner of Police:

“I, HUGHINGTON WILLIAMS, Commissioner of Police, of Belize Police Department Belmopan, Cayo District MAKE OATH AND SAY as follows:

- 1) I am Commissioner of Police and as such head of the Belize Police Department. I make this affidavit in connection with a decision taken by me, and which is the subject matter of the Applicant's application. The matters set out below are within my own knowledge.
- 2) That on 24th December 1999 I directed Assistant Inspector Keith Lino, Commander, Internal Affairs and Discipline to conduct an investigation into the allegations of police brutality against Hector Balcarcel and Ricardo Guzman.
- 3) That on 28th January, 2000, at a bi-weekly staff officers meeting, I directed Senior Superintendent of Police Bernard Lino, to head a second investigation into the allegations of police brutality against Hector Balcarcel and Ricardo Guzman.
- 4) That both investigations were carried out and reports submitted to me. The completed and combined investigation file included an opinion on the evidence by the Director of Public Prosecutions.
- 5) That the investigation filed included a written statement by AIP Cardinal Smith relating to the allegations made. I attach hereto and mark **HW1** a copy of said statement.
- 6) As a result of the investigations and of the opinion of the Director of Public Prosecutions, I wrote to AIP Smith on the 4th September 2000 informing him of the results of the investigations, of the DPP's opinion insofar as it referred to him, and of the proposed disciplinary action to be taken by the department. AIP Smith was given two weeks to make representations as to why the department should not act as proposed. The letter also stated that a final decision would be taken after due consideration of his reply, if any. A true copy of said letter is contained in the Applicant's application bundle and marked "CS1".
- 7) That I received a letter dated 12th September 2000 from Attorney, Dean Barrow on behalf of AIP Smith. The letter demanded that I rescind "the decision to retire" AIP Smith. It claimed that I had no jurisdiction to act as I proposed and that AIP Smith had not been informed of the charges against him or given an opportunity to make representations in his defence. A true copy of said letter is contained in the Applicant's application bundle and marked "CS2".
- 8) As the two-week time period allowed for representations by AIP Smith had not yet elapsed on the 12th September, I had not at that time made a final decision with respect to AIP Smith.
- 9) That I did not receive any other correspondence from AIP Smith, at any time, containing any representations as to why the Department should not proceed to retire him.
- 10) That in the absence of any representations by AIP Smith and at the expiration of the two weeks allotted for such representations to be

made, I decided to retire AIP Smith in the public interest, as proposed in the letter of the 4th September 2000.

- 11) I wrote to AIP Smith on the 26th September 2000 informing him of my decision. A true copy of the said letter is contained in the Applicant's application bundle and marked "CS3".
- 12) That in making the decision to retire AIP Smith in the Public interest I acted in accordance with the power given to me as Commissioner of Police by section 110 of the Constitution of Belize.

H Williams"

Now the Affidavit of **Inspector Justo Augustine**:

"I, JUSTO AUGUSTINE, Inspector of Police of 6 Racoon Ave. Belmopan, Cayo District, Belize MAKE OATH AND SAY AS FOLLOWS:

- 1) I am member of the BELIZE POLICE FORCE, holding the rank of Inspector. I am also commander of the Joint Intelligence Coordination Centre of the BELIZE POLICE DEPARTMENT. I make this affidavit in relation to my participation in the investigation which resulted in the decision of the Commissioner of Police now under challenge. The matters set out below are within my own knowledge.
- 2) I was part of the investigating team headed by Senior Superintendent Bernard Lino. We were directed to conduct an investigation of allegations of Police brutality against Hector Barcaral and Ricardo Guzman.
- 3) In that capacity I assisted Superintendent Lino in the interviewing of and recording of statements from Police Officers who played any role during the period of detention of the complainants.
- 4) That on Saturday 29th January 2000, AIP Smith was scheduled to be interviewed and to give a written statement with regard to the investigation. On that day he came to the office in Belmopan, where the interviews were being done. He and I then went into the office of Superintendent Lino. AIP Smith was told, in my presence, by Superintendent Lino that an investigation was being carried out with regard to complaints of Police brutality made by Hector Balcarcel and Ricardo Guzman. AIP Smith refused to give a statement at that time. He left the building.
- 5) On Sunday 30th January 2000 AIP Smith returned to the offices in Belmopan and informed me that he was prepared to give a statement with regard to the matters alleged.

- 6) I informed him that several of the statements taken so far were implicating him as one of the key perpetrators of the alleged abuse. I then asked him to give his side of the story.
- 7) That I wrote down the statement made by AIP Smith, duly read it back to him and had him sign it. There is now shown to me marked "HW1" a true copy of that statement.

J Augustine Insp."

8. From all of these materials, it appears that it was allegations of police brutality meted out to **Hector Balcarcel** and **Ricardo Guzman** which provided the backdrop to the events culminating in the action by the Commissioner of Police against the Applicant.
9. The question, I believe, that arises for determination in this case is whether the action by the Commissioner of Police to retire the Applicant as he claims "in the public interest" was lawful. It is significant to note that in his Affidavit, the Commissioner of Police avers: *"That in taking the decision to retire AIP Smith in the Public interest I acted in accordance with the power given to me as Commissioner of Police by section 110 of the Constitution of Belize."*
10. In other words, does the Constitution of Belize, in fact and in law, give the Commissioner of Police any such powers? It is also to be noted that the practical effect of the Commissioner of Police's action was to remove the Applicant from the Belize Police Department.
11. **Section 110** of the Constitution provides:

"(1) Power to appoint persons to hold or act in any office in the Police Force (including power to confirm appointments) below the rank of Inspector and to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Commissioner of Police."

(2) The Commissioner of Police may, subject to such conditions as he thinks fit, delegate any of his powers under this section, by directions in writing, to any officer of the Police Force.”

12. It is thus clear that, on the evidence, the Applicant, an **Assistant Inspector of Police**, at the time, was an officer of the rank contemplated and provided for by **section 110**.

13. In relation to the word **remove** in **section 110**, I respectfully adopt the dictum of the Board of the Privy Council in the case of *Endell Thomas v Attorney General of Trinidad & Tobago* (1981) 3 WLR, 601 at page 610 on the word **“remove”**:

“To remove from office in the police force in the context of section 99(1) (not too dissimilar to the provision in the Belize Constitution) . . . embraces every means by which a police officer’s contract of employment (not being a contract for a specific period) is terminated against his own free will, by whatever euphemism the termination may be described as, for example, being required to accept early retirement.”

I therefore hold that the action of the Commissioner of Police was a removal of the Applicant within the meaning and purport of **section 110** of the Constitution, even though the Commissioner of Police stated it to be “desirable in the public interest” that he be retired.

14. The question therefore is: does the power “to remove” junior police officers granted by **section 110** to the Commissioner of Police, constitute without more, a power to remove **simpliciter**? That is to say, can the Commissioner of Police simply get up on any day and remove any junior police officer because **section 110** seemingly invests him with this power? This was vigorously contended for by Ms. Tanya Longworth, the learned Attorney who

represented the Respondent in these proceedings. She even averred that given the Constitutional supremacy provision in section 2 of the Constitution this must be so: **section 110** she submitted grants an unfettered power to the Commissioner of Police in this respect.

15. I, on the other hand, do not, with respect to the learned Attorney, think so. The Privy Council, for example, in a case not very much different from the instant case, had to consider the exercise of the power to remove a police officer in provisions of the Trinidad and Tobago Constitution that were very similar to those in the Belize Constitution in Chapter VIII relating to the Public Service. Lord Diplock expressing the view of the Board on this issue stated:

" . . . there are overwhelming reasons why "remove" in the context of 'to remove and exercise disciplinary control over' (a provision be it noted not different from that in section 110 of the Belize Constitution) police officers in section 99(1) and in corresponding sections relating to the other public services must be understood as meaning 'remove for reasonable cause' of which the Commission is constituted the sole judge, and not as embracing any power to remove at the Commission's whim. To construe it otherwise would frustrate the whole constitutional purpose of Chapter VIII of the Constitution . . ." at p. 610, Endell Thomas (supra).

16. Of course, this is not to say that the Commissioner of Police in the instant case before me acted on a whim. Rather, it must be said that as the letter of 4th September 2000 itself stated, the action against the Applicant was necessitated by the need for the good image of the police to improve the police-public relations. But in my view to be a valid and lawful exercise of the power to remove, it must be done for a reasonable cause. This would necessarily involving telling the policeman or woman affected, the reason. Particularly so as in this case, where grave allegations of human rights abuses have been made. The officer concerned must be afforded the

opportunity to know the accusations against him and be afforded the opportunity to meet those accusations. To remove for reasonable cause therefore I believe imports the requirements of procedural fairness, natural justice if you will.

17. I am therefore prepared to hold and, do hold that the power to remove junior police officers granted to the Commissioner of Police in **section 110** of the Constitution is subject to the requirements of natural justice: any exercise of that power without observing the rules of natural justice, particularly the opportunity to let the officer affected know the allegations against him and have the opportunity to rebut them (**audi alteram partem**), would in my view be flawed and insupportable.
18. I am fortified in this view by the consideration that under the provisions of the **Police Act - Chapter 138, 2000 Edition of the Laws of Belize** in Part III dealing with discipline, it is provided in **section 24(8)** as follows:

“The Commissioner of Police or the officer deputed by him **shall**, while conducting disciplinary proceedings under this section, follow any regulations made by the Minister in that behalf in section 52 and, in the absence of such regulations, **comply with the rules of natural justice.**” (emphasis added)

It would therefore be very surprising and distressing, I dare say, to find that the Constitution, the supreme law with all its protective provisions of individual human rights and freedoms, including the protection of the law, could cavalierly jettison the requirement of natural justice by the simple conferment of removal powers on the Commissioner of Police in the case of junior police officers.

This, I hold, cannot be the intendment of the Constitution in this regard. It runs against the grain of the whole architecture of **Chapter VIII** of the

Constitution and its provisions relating to the Public Service over whom independent Public Services Commission variously organised, is given superintendence.

19. Moreover, although there is a right of appeal to the Belize Advisory Council against the decision of the Commissioner of Police under section 110, this for now is only theoretical, as I am not aware of any provision by the National Assembly granting this right, as it is provided for in section 111 (c) of the Constitution. Also in view of what I have already said in relation to section 24(8) of the Police Act, it would be ironical if a junior police officer is proceeded against disciplinarily, he would have, at least, the protection of natural justice, but if he is proceeded against under section 110 of the Constitution this protection would not be available! In my view, junior police officers are as much entitled to the full and vigorous protection of the law, especially in so vital an area as the right to work to earn a living. This right can only be interfered with by due process, including the observance of the requirements of natural justice.
20. It should however be remembered that allegations of human rights abuses of persons in police custody could well constitute a breach of discipline against the Police Act. This is more so where the allegations pertain to the beating of persons in police custody. Section 41(1) provides specifically in paragraph (4) as follows:

“Every Assistant Inspector of police or non-commissioner officer or constable of the Force who . . . offers or uses unwarrantable personal violence to or ill-treats any person in his custody . . . shall be deemed to have committed an offence against discipline and may on conviction thereof by the Commissioner or, in his absence, by an officer of the Force deputed by him, be punished for such an offence.”

21. The Commissioner of Police in evidence stated that he decided to act under

section 110 of the Constitution against the Applicant and not disciplinary because although the latter would have succeeded, it would have taken a long course and resulted in hardship to him and his family. However, this in my view, does not justify the way section 110 was used in this instance. It was open to the Police Department to proceed against the Applicant either under the Constitution (section 110) or under the provisions of the Police Act. But in either case, the Applicant was entitled to know the specifics of the allegations against him and be afforded the opportunity to put his own side. This was not done in this case.

22. The Commissioner of Police was cross-examined at length by Mr. Dean Barrow S.C. , the learned attorney for the Applicant. I must say I was impressed by the candour and truthfulness of the Commissioner of Police. He made a favourable impression on me as a responsible Commissioner who cared for the good image of the Belize Police Department, the welfare of his officers and men and women and the necessity for the Belize Police Department to observe and maintain good police practices and good relationship with the public.
23. However, from all the evidence in this case, including the testimony of the Commissioner of Police it is clear that the Applicant was never told what the specific allegations against him were nor was he afforded an opportunity to rebut, if he could, those allegations. The Commissioner of Police states in his Affidavit (already produced above) that as a result of allegations of police brutality against Hector Balcarcel and Ricardo Guzman, he instituted investigations as a result of which he wrote to the Applicant informing him of the results and the decision to retire him and that he the Applicant should respond as to why he should not be retired. In cross-examination, the Commissioner of Police also stated he did not disclose the contents of the file of accusations against the Applicant to him and that in writing him he was not giving him the opportunity to rebut any evidence against him, but only to allow him an opportunity to say why the action (to retire him) by the Department should not be taken.

24. The Commissioner of Police also testified that the Applicant did not see the evidence of the allegations of abuse of human rights even though the file the Commissioner had according to him, contained allegations directly accusing the Applicant. The Commissioner however, also testified that he did not himself conduct any investigation, but he directed investigation into the allegations.
25. Inspector **Justo Augustine** also testified *viva voce* and stated that he was part of an investigating team led by Mr. Lino. He stated that the Applicant and Lino had an argument when he told him that he wanted a statement, although Lino did not tell the Applicant that he was being investigated because of allegations by **Balcarcel** and **Guzman**. Augustine testified that he got a statement from the Applicant after he asked him to tell him about the incident involving **Balcarcel** and **Guzman**. He also said that he did not tell the Applicant that he was investigating him although he informed him that he was highlighted.
26. From all this, it is clear to me that the whole process and procedure adopted regarding the Applicant and his connection to the allegations of abuse of human rights of **Balcarcel** and **Guzman** fell well short of the requirements of natural justice. A statement was obtained from the Applicant about some apparently generalised allegation of abuse of human rights: no specifics were given to him nor was he told his own role, if any, in the alleged abuses and asked what he had to say.
27. I am therefore satisfied that in all the circumstances of this case, the action taken against the Applicant was arrived at in the absence of natural justice and therefore tainted. As Lord Morris of Borth-y-Gest stated in **Ridge v Baldwin** (1963) 3 All E.R. at page 102:

“It is well established that the essential requirements of natural justice at least include that before someone is condemned he is to have an

opportunity of defending himself and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he had to meet."

See also *Kanda v The Government of Federation of Malaya* (1962) A.C. 322 and *Roberts v Attorney General* 51 WIR 272.

Therefore, simply to tell the Applicant as Inspector Augustine deposed in his Affidavit that several statements implied him as a key perpetrator of human rights abuses was not, in my view, enough.

I am therefore satisfied that in arriving at the decision in the way and manner he did to retire the Applicant, in effect, to remove him from the Belize Police Department the Commissioner of Police, was wrong. It fell short of the requirement of natural justice.

28. Without doubt, allegations of human rights abuses of persons in police custody are grave and serious and, deserve the swiftest response to stamp them out and bring those responsible to book. Indeed, there should be no place in the ranks of the Belize Police Department for rogues and charlatans masquerade as policemen and women only to brutalise persons in their custody. They are a definite blot on the good name of the Department.

But equally also when such allegations of police brutality are made, they must be investigated and, if found to be established, immediate and appropriate action taken against those responsible. And such action must however be taken in accordance with the natural justice rule of **audi alteram partem** - hear the other side. This is only but a requirement of fair play. When appropriate action is taken in consonance with natural justice, the result can only be condign and uplifting. The **audi alteram** rule must be observed especially where the possibility for removal or dismissal may follow. As Kelly CB stated in *Wood v Wood* (1874) LR 9 Exch 190 at page 196:

"This rule is not confined to the conduct of strictly legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."

29. In the letter of 4th September 2000 the Commissioner of Police stated to the Applicant that there was evidence suggesting that he had committed serious human rights violations against Balcarcel and Guzman. But quite what the evidence was was not disclosed to the Applicant. This letter goes on to inform the Applicant that it was the Commissioner of Police's opinion that it was desirable that he be retired in the public interest. This I hold to be a priori determination to remove the Applicant even before he could even know the specifics of "serious human rights violations" he allegedly committed against Balcarcel and Guzman. This cannot be right or fair.
30. For all these reasons therefore, I find that the Commissioner of Police utilized his powers wrongfully under section 110 and the Applicant was denied natural justice by the actions of the Commissioner of Police. In the result, I therefore find that the decision to retire the Applicant in the "in the public interest" whatever this phrase may mean, was in the circumstances and facts of this case, void.
31. In writing this judgment and in the light of the relief asked for by the Applicant and taking the evidence on a whole, I had thought not to make any orders in this case until I had given counsel the opportunity to address me. Indeed, towards the conclusion of the hearing, I asked counsel what appropriate orders I could make if there were found to be a breach of natural justice in relation to the Applicant. But I believe both counsel were consumed with their respective arguments and submissions and did not rise up to my query.
32. Finally, I must state that my role in these proceedings has been supervisory and not appellate. It is to ensure that the decision the Applicant complained of was reached lawfully, and if not, to quash the decision of the

Commissioner of Police to retire the applicant from the Belize Police Department and remit the matter to the Commissioner of Police for proper consideration in accordance with the findings in this judgment.

33. Also, in the light of the second relief sought by the Applicant and in view of my findings in this matter, the Commissioner of Police is hereby prohibited from exceeding his jurisdiction in retiring, in the public interest, the Applicant from the Belize Police Department.
34. Further, the Commissioner of Police is hereby directed to reinstate the Applicant in the Belize Police Department.
35. I award costs in the amount of \$5,000.00 to the Applicant.


A. O. CONTEH
Chief Justice

DATED: 31st July 2001