

IN THE SUPREME COURT OF BELIZE A.D. 2011

CLAIM NO. 65 OF 2010

BETWEEN

HUMBERTO PATT

CLAIMANT

AND

- 1. ATTORNEY GENERAL**
- 2. POLICE DEPARTMENT**
- 3. SECURITY SERVICES COMMISSION**
- 4. BELIZE ADVISORY COUNCIL**

DEFENDANTS

Mr. Dean Lindo S.C., for claimant.
Mr. Andrew Bennett, for defendants.

AWICH Chief Justice (Ag)

1.7.2011

JUDGMENT

1. *Notes: Judicial review for an order of certiorari to quash decisions of the Security Services Commission and of the Belize Advisory Council; the duty to give reason for decision; fair procedure – the right to be heard.*
2. The formal citation of the defendants should have been, Belize Advisory Council and The Security Services Commission. The

Attorney General and the Police Department should have not been cited.

3. This claim is a judicial review claim. On 24.3.2010, Hon. Conteh, Chief Justice, granted permission to Humberto Patt under R.56 of the Supreme Court (Civil Procedure) Rules, 2005, for judicial review of two decisions, and an order of certiorari to quash the decisions. The first decision was that of the Security Services Commission – SSC in these words:

“The Commission noted that Assistant Superintendent Humberto Patt:

- (a) Had full knowledge of the incident at the San Pedro Police Station with regards to Ryan Requena and went beyond his authority.
- (b) Encouraged and instructed his subordinates to act accordingly.
- (c) His action was not befitting of an officer in charge (Sub Formation Commander).
- (d) Discussed demotion but discarded the option after considering the damage the incident may have

inflicted on the reputation of the Police and the
Government of Belize,

The Commission decided that Assistant Superintendent
Humberto Patt be dismissed from the Police Department,
Ministry of National Security, with effect from 7th July,
2008.”

4. The second decision was that of the Belize Advisory Council – BAC, dismissing the appeal of the claimant, Assistant Superintendent of Police Humberto Patt, against the decision of the Security Services Commission. The decision was conveyed to attorneys acting for Mr. Patt in a letter dated 13th January 2010. The letter simply informed him that, his appeal to the Council had been dismissed. I set out the letter in full here:

”Mr Dean R Lindo S.C.
Attorney-at-Law
#7 Church Street
P.O. Box 558
Belize City

Dear Sir,

I am directed to inform you that at its meeting of the 8th
January 2010, the Belize Advisory Council confirmed the
decision made by the Public Services Commission on the 7th

July 2008 regarding Mr Humberto Patt, Assistant Superintendent of Police, Belize Police Department.

Sincerely,

Amelia M Poornananda JP
Secretary
Belize Advisory Council”

5. No record of the proceedings of BAC was filed as part of the case papers, by Patt or the BAC. The affidavit of Mr. Alan Usher, filed for the defendants, does not say whether oral hearing was held by the BAC, but attached to it was a memorandum dated 9.11.2009, of the Solicitor General, addressed to the Chairman of the BAC. The memo dealt with the legal issues raised in the appeal.

6. In his claim, Patt complained on many grounds against the .proceedings at the SSC and its decision. The more important ones were about irregularity in the proceedings, namely: that at its proceedings the SSC decided a charge or complaint that the claimant was not charged with, and found him liable for that other charge; the SSC wrongfully called the claimant to testify, thereby caused him to unlawfully implicate himself; the SSC wrongfully acted as advocate against the case of the claimant by cross-examining him; the SSC wrongfully admitted evidence of identification of the claimant without an identification parade having been conducted; the SSC acted contrary to the law because it failed or refused to deliver their reason for their

decision; and the SSC did not inform the claimant of its right of appeal, and about the time within which to appeal.

7. The grounds of the claim against the decision of BAC were that: BAC acted “against the rule of natural justice”: it did not invite the claimant to the hearing and thereby denied the claimant opportunity to be heard at the hearing of the appeal; and BAC failed or refused, “to hand down their reason for decision”, to dismiss the claimant.

8. ***Determination***

Before his dismissal, Mr. Patt held an office in the Public Service, in particular in the Belize Police Department. He was Assistant Superintendent of Police. **The Belize Constitution at s:110D** provides that the powers to appoint, promote and take disciplinary action in respect of officers holding offices in the Security Services of Belize are vested in the Security Services Commission. I set out the section in full here:

“110D.-(1) Subject to the provisions of this section, the power to appoint persons to hold or act in offices in the security services, including the power to make appointments, and to deal with all matters relating to the conditions of service of such officers and, subject to the provisions of section 111 of this Constitution, the power to exercise disciplinary control over

persons holding or acting in such offices and the power to remove such persons shall vest in the Security Services Commission established under section 110C of this Constitution.

(2) In this section “security services” means services in the Belize Police Department, the Belize National Coast Guard Service, and in the military service as defined in subsection (3) of this section:

Provided that the provisions of this Part shall not apply to the Commissioner of Police, the Commander, Belize Defence Force or the Commandant, Belize National Coast Guard Services.”

9. Consistent with the above provisions of the Constitution, the disciplinary question against Patt was taken to the Security Services Commission. The subject matter was a complaint made by a suspect, one Requena, in police cell; he complained to the Commissioner that Patt took him out of the cell, and beat him and sprayed pepper on him. SSC decided that Patt be dismissed from the Belize Police Department. He appealed the decision.
10. An appeal from the decision of the Security Services Commission lies to the Belize Advisory Council. That is in s. **111(2) and (3) of the Constitution** which state:

“(2) Subject to the provisions of this section, an appeal shall lie to the Belize Advisory Council from any decision to which this section applies at the instance of the public officer in respect of whom the decision is made.

(3) Upon an appeal under this section the Belize Advisory Council may affirm or set aside the decision appealed against or may make any other decision which the authority or person from whom the appeal lies could have made.”

- 11 The Constitution does not provide for further appeal from the decision of the BAC. There has been no further appeal, but Patt has brought this judicial review claim.

12. Judicial review jurisdiction of the court is not an appeal jurisdiction, and judicial review proceedings are not appeal proceedings. A claim for the exercise of judicial review powers of the court is a claim requesting court to review the lawfulness or otherwise of a decision, action, or failure to act by a tribunal or public body or a person, in relation to the exercise of a public function – see **Council for Civil Service Union v Minister for the Civil Service [1985] A.C. 374; R v Inland Revenue Commissioners Ex p. National Federation of Self Employed and Small Businesses Ltd [1982] A.C. 617; R v Panel on Take-overs and Mergers Ex p. Datafin Plc [1987] Q.B. 815; and R (Beer) v Hampshire Farmers Market Ltd [2004] 1 W.L.R. 233.**

13. Judicial review jurisdiction of the court is a supervisory one, exercised to determine the lawfulness, not the merit of the decision or act or omission of an inferior court, a tribunal, public authority or anyone performing a public function. In exercising judicial review jurisdiction, court does not substitute its own decision for that of the tribunal or public authority. Deciding the merit of the decision or action is a power exercisable in an appeal.

14. So, what I shall concern myself with in this judicial review claim is error of law on the face, whether the errors be the question of illegality generally, irrationality or procedural impropriety.

15. The general rule in judicial review is that where there is an adequate alternative remedy, judicial review proceedings shall not be available – see **Birmingham City Council Ex p. Ferrero Ltd [1993] 1 All E.R. 530 CA**. That is particularly the case where the alternative remedy or way to it has been provided for in a statute. The few exceptions are where the alternative remedy or statutory way will be unsuitable or inadequate, or where the circumstances of the case are unusual. In this claim, Patt did make a choice after receipt of the decision of the SSC, to appeal to the BAC against the decision. He was generally obliged anyway, to proceed by that statutory way, if he could not bring his case within the limited exceptions. BAC has dealt with his appeal against the decision of the SSC and decided it. The questions that Patt raised in the appeal were questions that BAC had power to deal with.

Patt cannot now revert to judicial review claim against the decision of the SSC that he has appealed against.

16. In any case, I do not see any reason to suggest that the statutory appeal, the way to obtain relief from the decision of the SSC, was inadequate; and I do not see any special circumstances that would have led the court to exercise judicial review jurisdiction over the decision of the SSC. Prima facie, none of the grounds put forward have been borne out by the record as exclusive grounds for judicial review of the decision of SSC. I say nothing about the evidence regarding the merits of the appeal, because of the order I shall finally make.
17. Regarding the appeal to BAC, the evidence showed that an appeal was filed, despite the fact that SSC did not inform Patt of his right to appeal. Nothing turns on that complaint. His attorney, learned counsel Mr. Dean Lindo, SC, filed grounds of appeal supported with full argument. Then BAC sought and obtained legal opinion from the Solicitor General. However, there is no evidence of the actual appeal proceedings. There is no record or notes of the proceedings, and no written reason or reasons for the decision of BAC.
18. I accept that BAC is given power to decide its procedure, but there must be procedure and proceedings. There is no evidence of the procedure they adopted, if any. If BAC decided that it would not hear

the parties *viva voce*, BAC should have so informed them. Further, Patt raised many detailed grounds of appeal and arguments; there should have been in the decision notes to show that each or some of those grounds were considered and that the decision of BAC was made after BAC had considered the grounds. There was no indication whatsoever, of the basis on which BAC arrived at its decision.

19. For the reasons I have given, I concluded that whatever procedure BAC adopted in considering and deciding the appeal of Patt was not a fair procedure. Judicial review order of *certiorari* issues quashing the letter of BAC dated 13th January 2010, confirming the decision of SSC made on 7th July 2008, which in effect dismissed the appeal of Assistant Superintendent Humberto Patt. The order does not quash the decision of the Security Services Commission, which remains the subject of an appeal. The Belize Advisory Council is ordered to rehear the appeal of Humberto Patt. In the rehearing, BAC must call upon Patt to present his appeal orally or ask him to send written submission. It must also give the same opportunity to SSC, the respondent. BAC is ordered to consider the grounds of appeal raised by Assistant Superintendent Patt again in a rehearing and also to hear the SSC, and to decide the appeal on the rehearing.
20. The costs of these judicial review proceedings shall be paid by BAC to Patt.

21. The claim against the Security Services Commission is dismissed. No order for costs is made in regard to that part of the claim.

22. **Delivered this Friday the 1st day of July 2011**

At the Supreme Court

Belize City

SAM LUNGOLE AWICH
Acting Chief Justice